No. 1 of 2019

VIRGIN ISLANDS

ELECTIONS (AMENDMENT) ACT, 2019

ARRANGEMENT OF SECTIONS

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I Assent
(Sgd.) Augustus J. U. Jaspert,
Governor.
29th January, 2019

VIRGIN ISLANDS

No. 1 of 2019

An Act to amend the Elections Act, 1994 (No. 16 of 1994).

[Gazetted 31st January, 2019]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title.

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

Section 2 amended.
No. 16 of 1994
Revised edition at 30 June 2013

2. The Elections Act, 1994 (hereinafter referred to as "the principal Act") is amended in section 2 by

(a) inserting before the definition of "competent witness" the following definition:

""By-elections" means an election held in a single political constituency to fill a vacancy (other than a vacancy created by a dissolution of the House of Assembly), during a government's term of office;";

(b) inserting after the definition of "preliminary list" the following definitions:

""prison" means a place of incarceration in the Virgin Islands;

"prison officer" means a person who is appointed to serve in a prison for the custody, safety, security and supervision of prisoners;";

(c) inserting after the definition of "election documents" the following definitions:

""electronic poll book" means the electronic device in which the name and other particulars of every person applying to vote are consecutively entered by the poll clerk as soon as the applicant's right to vote at the polling station has been ascertained and before any such applicant is allowed to vote;";

"electronic tabulating system" means the use of equipment for casting, scanning and tabulating of ballots and reporting of voting results by electronic means;";

(d) inserting after the definition of "local electoral district" the following definition:

""manual voting system" means the method of casting and tabulating ballots by hand and the culmination and reporting of voting results by hand;";

(e) by deleting the definition of "rejected ballot paper" and substituting with the following definitions:

"rejected ballot paper (manual voting system)" when utilising the manual voting system, means a ballot paper which has been handed by the presiding officer to a voter to cast his or her vote but which at the close of the poll has been found in the ballot box unmarked or so improperly marked that in the opinion of the returning officer, it cannot be counted;"; and

"rejected ballot paper (electronic tabulating system)" when utilising the electronic tabulating system, means a ballot paper which has been handed by the presiding officer to a voter to cast his or her vote but which at the close of the poll has been found in the ballot box unmarked or so improperly marked that the electronic tabulating system cannot count it as a valid vote;".

Insertion of section 2A.

3. The principal Act is amended by inserting after section 2, the following section:

"Use of manual and electronic tabulating system.

2A. For the purposes of this Act the manual voting system or the electronic tabulating system may be utilised for general elections or in any other election or referendum in the Territory.".

Section 18 amended.

4. Section 18 of the principal Act is amended by inserting after subsection (5), the following subsection:

"(5a) Subject to subsection (5), where hard copies of the preliminary list are requested by the public there shall be a charge of fifty cents per page.".

Section 24 amended.

5. Section 24 of the principal Act is amended by repealing subsections (7) and (8) and substituting the following subsections:

"(7) A person who has been issued a voter registration card which is lost, destroyed, defaced or expired, may submit an application to the Supervisor of Elections for a duplicate voter registration card or new registration card in Form 12.

(8) Where, upon an application under subsection (7), the Supervisor of Elections is satisfied as regards

(a) to the loss, mutilation, destruction or defacing of a voter registration card, he or she shall upon payment of a replacement fee of twenty dollars by the applicant, issue the applicant with a duplicate voter registration card which shall be valid and treated as if it were the original voter registration card; or

(b) to an expired voter registration card, he or she shall issue the applicant with a new voter registration card replacing the expired voter registration card.".

Amendment of Part III heading.

6. The principal Act is amended by deleting the heading of Part III and substituting with the following:

"**PART III**
BY-ELECTIONS AND ARRANGEMENTS FOR ELECTIONS".

Insertion of section 24A.

7. The principal Act is amended by inserting after section 24 under Part III the following section:

"By-elections for vacancies.

24A. Whenever an elected member of the House of Assembly vacates his or her seat for any reason other than a dissolution of the House of Assembly, a by-election shall be held to fill the vacancy on such date as the Governor shall appoint by Proclamation published in the *Gazette* within two months, but not less than twenty one days, of the occurrence of the vacancy, unless the House of Assembly is sooner dissolved or will be dissolved under section 84 of the Virgin Islands Constitution Order, 2007, within four months of the occurrence of the vacancy.".

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8. Section 27 of the principal Act is amended in subsection (1) by deleting the sum "$500" and substituting with the words "one thousand dollars ($1000)". Section 27 amended.

9. Section 33 of the principal Act is amended by deleting subsections (2) and (3) and substituting with the following subsections Section 33 amended.

"(2) Every ballot box shall be made of some durable material with a locking mechanism and an opening in the top and shall be so constructed that the ballot papers may be introduced therein but cannot be withdrawn therefrom unless the ballot box is unlocked.

(3) In a general election or in any other election or referendum, the same polling station may be used for an election, both for the Territorial electoral district and for a local electoral district.".

10. Section 34 of the principal Act is amended Section 34 amended.

(a) by deleting subsection (2) and substituting with the following:

"(2) In a general election or in any other election or referendum,

(a) where the manual voting system is utilised, when the same polling station is used for an election both for the Territorial electoral district and for a local electoral district, the ballot papers provided for the Territorial electoral district shall be of a different colour or otherwise

boldly distinguished, and they shall be numbered with a distinctive series of numbers, from those provided for the local electoral district; or

(b) where the electronic tabulating system is utilised, when the same polling station is used for an election both for the Territorial electoral district and for a local electoral district, a single ballot paper may be provided for the Territorial electoral district and the local electoral district.";

(b) in subsection (3) by deleting paragraph (f) and substituting with the following:

"(f) a blank poll book or where the electronic tabulating system is utilised, an electronic poll book;".

Section 35 amended.

11. The principal Act is amended by deleting section 35 and substituting with the following:

"Polling and Counting Agent.

35. (1) A political party may, before the commencement of the poll, appoint not more than three polling agents to attend at a polling station, but only two of those polling agents shall remain in the polling station at any given time, provided that this shall not be construed as preventing any of the polling agents from handing over his or her duties to another polling agent in the polling station within such period and in such manner as may be directed by the Supervisor of Elections.

(2) An independent candidate may, before the commencement of the poll, appoint not more than two polling agents to attend at a polling station, but only one of those polling agents shall remain in the polling station at any given time, provided that this shall not be construed as preventing any of the polling agents from handing over his or her duties to another polling agent in the polling station within such period and in such manner as may be directed by the Supervisor of Elections.

(3) A political party or independent candidate may before the commencement of the poll appoint not more than two counting agents to attend at the counting of the votes.

(4) An agent may be appointed on behalf of more than one candidate.

(5) Every appointment of an agent shall be in writing and shall state the name and address of the person appointed and shall be duly signed by the designated representative of the political party or the independent candidate and submitted to the Supervisor of Elections no later than seven days after Nomination Day for candidates.".

Section 36 amended.

12. Section 36 of the principal Act is amended by deleting subsection (2) and substituting with the following:

"(2) Where the

(a) manual voting system is utilised, the ballot of each voter shall be a printed paper in Form No. 22 (in this Act called "a ballot paper") in which the names, addresses, occupations and symbols of the candidates, alphabetically arranged in the order of their surnames and numbered accordingly shall be printed exactly as they are set out in the nomination paper. Each ballot paper shall have attached to it a counterfoil with a number printed on the face of the ballot paper and there shall be a line of perforations between the ballot paper and the counterfoil; or

(b) electronic tabulating system is utilised, the ballot of each voter shall be a printed paper in Form No. 22A (in this Act called "a ballot paper") in which the names, addresses, occupations and symbols of the candidates, alphabetically arranged in the order of their surnames and numbered accordingly shall be printed exactly as they are set out in the nomination paper."

Insertion of section 36A.

13. The principal Act is amended by inserting after section 36 the following section:

"Testing of electronic tabulating system.

"**36A.** (1) Where the electronic tabulating system is to be utilised for general elections, on any day not more than ten days prior to the election day, the Supervisor of Elections shall conduct the testing of the electronic tabulating system to ascertain that the equipment will be without error and count the votes cast for all offices and on all measures.

(2) A public notice of the time and place for the testing of the electronic tabulating system under subsection (1), shall be provided by the Supervisor of Elections at least forty eight hours prior to such testing, by publication or announcement in designated media services of general circulation in the Territory.

(3) Upon testing of the electronic tabulating system the Supervisor of Elections shall certify the accuracy of the test and such test shall be open to representatives of political parties, members of the press and the general public.

(4) Where any error is detected upon the testing of the electronic tabulating system, the cause for such error shall be ascertained and corrected, and an errorless count shall be made before the electronic tabulating system is approved for use in the election.

(5) For the purposes of this section the electronic tabulating system shall be tested with or without the use of electricity.".

Section 40 amended.

14. Section 40 of the principal Act is amended

(a) by deleting the marginal note and substituting with the following marginal note "Proceedings at poll-manual voting system";

(b) in subsection (1) by inserting the words "Where the manual voting system is utilised," before the words "at the hour fixed for opening poll"; and

(c) by deleting subsection (4) and substituting with the following:

"(4) Every voter, upon entering the polling station, shall present his or her voter registration card or Government issued identification, such as his or her driver's licence or passport, to the poll clerk, and the poll clerk shall then ascertain if the name of the voter appears on the official list of voters used at the polling station. When it has been ascertained that the applicant voter is qualified to vote at the polling station his or her name shall be entered in the poll book to be kept by the poll clerk in Form No. 23, a number corresponding to the consecutive number allotted to the voter on the official list of voters being prefixed to the voters name in the appropriate column

of the poll book, and the voter shall be immediately allowed to vote, unless an election officer or any agent of a candidate present at the polling station desires that he or she be first be sworn.".

Insertion of section 40A.

15. The principal Act is amended by inserting after section 40 the following section:

"Proceedings at poll - electronic tabulating system.

40A. (1) Where the electronic tabulating system is utilised, at the hour fixed for opening the poll

(a) the presiding officer shall in the presence of such of the candidates, their agents and voters as are present unlock the equipment and ascertain that there are no ballot papers or other papers therein, after which the equipment shall be locked. The equipment shall remain in full view of all present and shall be maintained there until the close of the poll; and

(b) the presiding officer shall

(i) verify and document the unique identifier (serial number) of the equipment delivered to the polling station;

(ii) verify that the public count is zero ("0") on each applicable equipment;

(iii) verify the accuracy of the date and time on the applicable equipment;

(iv) confirm that all equipment are open for voting, as applicable; and

(v) at a minimum print one zero tape from each applicable equipment and the presiding officer, poll clerk and candidates or agents present shall sign the zero tape and thereafter the presiding officer shall secure the zero tapes in the pouch designated in a safe location to be returned with election materials; and

(2) Immediately after subsection (1) is complied with, the presiding officer shall call on voters to vote.

(3) The presiding officer shall secure the admittance of every voter in the polling station and shall see that they are not impeded or molested at or about the polling station.

(4) Every voter, upon entering the polling station, shall present his or her voter registration card or Government issued identification, such as his or her driver's licence or passport, to the poll clerk, and the poll clerk shall then ascertain if the name of the voter appears on the official list of voters or in the electronic poll book, and when it has been ascertained that the voter is qualified to vote at the polling station, the voter shall immediately be allowed to vote, unless an election officer or any agent of a candidate present at the polling station desires that he or she be first sworn.

(5) The poll clerk shall

(a) make such entries in the electronic poll book opposite the name of each voter;

(b) enter in the electronic poll book opposite the name of each voter as soon as the voter's ballot paper has been deposited in the ballot box, the word "voted";

(c) enter into the electronic poll book the word "Sworn" or "Affirmed" opposite the name of each voter, to whom any oath or affirmation has been administered indicating the nature of the oath or affirmation; and

(d) enter in the electronic poll book the words "Refused to be sworn" or "Refused to affirm" or "Refused to answer" opposite the name of each voter who has refused to take an oath or affirm, when he or she has been legally required so to do, or has refused to answer questions which he or she has been legally required to answer.

16. Section 42 of the principal Act is amended

Section 42 amended.

(a) in subsection (1) by deleting the words "one agent for each candidate appointed by such candidate" and substituting with the words "two agents for each political party or one agent for each independent candidate"; and

(b) in subsection (2) by deleting the words "and hear his or her name as given in by him or her".

17. Section 43 of the principal Act is amended

Section 43 amended.

(a) by deleting the marginal note and substituting with the following marginal note "General mode of taking ballot- manual voting system."; and

(b) in subsection (1) by inserting the words " Where the manual voting system is utilised," before the words "each vote shall receive".

18. The principal Act is amended by inserting after section 43 the following section:

Insertion of section 43A.

"General mode of taking ballot - electronic tabulating system.

43A. (1) Where the electronic tabulating system is utilised each voter shall receive from the presiding officer a ballot paper on which such officer has previously placed his or he initials as indicated in Form No. 22.

(2) The presiding officer shall instruct the voter how to make his or her mark, which shall be a cross ("X") or by shading the designated oval sign, by referring him or her to a specimen ballot paper posted in a conspicuous place at the polling station.

(3) The voter on receiving the ballot paper shall forthwith enter one of the polling compartments in the polling station and there mark his or her ballot paper by marking a cross ("X"), or shading the designated oval sign, within the space opposite the name of the candidate for whom (or, in the case of an election in the Territorial electoral district where there is more than one seat to be filled, the names of the candidates) he or she intends to vote for.

(4) Immediately after complying with subsections (1), (2) and (3) the presiding officer shall direct the voter to insert the ballot paper in the electronic tabulating system.

(5) A voter who has inadvertently dealt with a ballot paper delivered to him or her so that it cannot conveniently be used shall return that ballot paper to the presiding officer who shall cancel it by writing or stamping the word "spoiled" across the face of the same and thereafter deliver another ballot paper to that voter.

(6) Every voter shall vote without undue delay and once the ballot paper has been placed in the ballot box, he or she shall leave the polling station immediately.

(7) If at the hour of the closing of polls in accordance with section 30(3), there are any voters who

(a) are qualified to vote, but have not been able to do so since their arrival at the polling station; and

(b) are in line of waiting voters,

the poll shall be kept open to enable such persons to vote in accordance with the directions of the presiding officer.

(8) Where there are any matters or issues to be determined respecting the line of waiting voters, the presiding officer shall decide every question arising therefrom and the decision of the presiding officer shall be final.".

Section 45 amended.

19. Section 45 of the principal Act is amended

(a) by deleting subsection (1)(a) and substituting with the following

"(a) his or her voter registration card or at least one Government issued identification, such as his or her driver's licence or passport; or";

(b) in subsections (2), (3) and (7) by inserting after the words "poll book" the words " where the manual voting system is utilised or electronic poll book where the electronic tabulating system is utilised,";

20. Section 46 of the principal Act is amended in subsection (1) by deleting the words "In any such case the name, address and occupation shall be correctly entered in the poll book and the fact that the oath has been taken shall be entered in the proper column of the poll book." and substituting with the words "In any such case the name, address and occupation shall be correctly entered in the poll book where the manual voting system is utilised or in the electronic poll book where the electronic tabulating system is utilised, and the fact that the oath has been taken shall be entered in the proper column of the poll book or electronic poll book.". Section 46 amended.

21. Section 47 of the principal Act is amended Section 47 amended.

(a) in subsection (1) by

(i) inserting after paragraph (b) the following paragraphs:

"(c) is a person on remand; or

(d) is travelling in advance of the date of general elections;

(ii) deleting the words "3 days" and substituting with the words "four days";

(b) in subsection (2) by deleting the words "subsection 1(b)" and substituting the words "subsections (1) (b), (c) and (d)";

(c) by inserting after subsection (2) the following subsections:

"(2a) For the purposes of voting at an advanced poll, a voter referred to in subsection (1) (c), where

(a) the electronic tabulating system is utilised, the electronic tabulating system may be taken to the prison to allow persons on remand to vote; or

(b) the manual voting system is utilised, the persons on remand shall under the supervision of correctional officers be taken to the designated polling stations where registered to vote.

(2b) For the purpose of voting at an advanced poll, a voter referred to under subsection 1(d) where a person is travelling shall provide his or her travel ticket to the Supervisor of Elections, as evidence of travel together with his or her application.";

(d) by inserting after subsection (5) the following subsection:

"(6) For the purposes of this section "remand" means the lawful detention of an accused person in a prison, while awaiting trial or the continuation of his or her trial.".

Section 48 amended.

22. Section 48 of the principal Act is amended

(a) by deleting the marginal note and substituting with the following marginal note "Conduct of advance polls-manual voting system."; and

(b) in subsection (1) by inserting the words "Where the manual voting system is utilised," before the words "at an advance poll,".

Insertion of section 48A.

23. The principal Act is amended by inserting after section 48 the following section:

"Conduct of advance polls-electronic tabulating system.

48A. (1) At an advance poll, where the electronic tabulating system is utilised, one ballot box may be used for each district and the electronic tabulating system shall tabulate the votes for each polling station.

(2) The officer conducting the poll shall complete Form 31 in accordance with the provisions of section 50 (1) (g).

(3) Before commencing an advance poll the Supervisor of Elections or designated staff of the Office of Elections shall provide the returning officer or the presiding officer the form on which the seal numbers and the protective counter numbers for each machine are recorded and the presiding officer shall

(a) conduct the set up procedures for the electronic tabulating system; and

(b) verify that the number registered on the protective counters and the numbers on the

seals which the machines are sealed correspond with the numbers recorded on the form.

(4) Upon completion of the process under subsection (3) the presiding officer shall with the agents and other officials observing run the paper tape to verify that all counters are registered at zero (000), and the presiding officer shall thereafter

(a) print a zero totals report;

(b) verify that the date, time, election and polling station name are accurate;

(c) sign the paper tape for certificate and proceed to the voting mode.

(5) At the close of the advance poll after the last voter has voted the presiding officer shall forthwith act in the following order:

(a) announce the close of poll and record in the electronic poll book, in the manner specified in paragraph (c) the hour at which the poll is closed;

(b) the ballot papers shall remain in their boxes and the presiding officer shall seal the ballot boxes with the seals provided by the Supervisor of Elections;

(c) close the poll on the electronic tabulating system and run the paper tape;

(d) remove the media stick placing it with the printed report in a designated pouch;

(e) seal the designated pouch and place it in a second pouch which shall be sealed and thereafter placed with other elections materials in the designated carrying case;

(f) verify and document the public count on the relevant equipment by verifying that the public counts match the number of votes on the electronic polling book and exit register;

(g) lock and secure the voting equipment and election materials from any physical access to prepare for transportation;

(h) count the spoiled ballot papers, if any, place them in the special envelope supplied for that purpose and indicate thereon in words the number of such spoiled ballot papers and seal the envelope and initial it;

(i) count the unused ballot papers, place them with all the counterfoils of all used ballot papers in the special envelope supplied for that purpose and indicate thereon in words the number of such unused ballot papers, then seal the envelope and initial it;

(j) check the number of ballot papers supplied by the returning officer against the number of spoiled ballot papers, if any, the number of unused ballot papers and the number of voters whose names appear in the electronic poll book as having voted in order to ascertain that all ballot papers are accounted for; and

(k) record the number of ballot boxes in his or her possession, the number of ballot papers issued to electors, the number of unused ballot papers, the number of spoiled ballot papers and all other information required in Form No. 31 and attach his or her signature thereto.

(6) Each sealed pouch shall be immediately removed and given by the officer conducting the poll to the Supervisor of Elections who shall secure them until delivered by him or her to the counting station identified for counting votes.

(7) The ballot boxes, electronic poll books, envelopes containing the spoiled and unused ballot papers, official list of voters, pouches containing media sticks, reports and other documents used at a polling station shall be transmitted to Supervisor of Elections.

(8) For the avoidance of doubt, it is hereby declared that the other provisions of this Act applying to voters, to voting procedure and to elections shall apply so far as is convenient to the taking of an advance poll as they apply to the taking of a poll at an election.".

Section 49 amended.

24. Section 49 of the principal Act is amended in subsection (1) by deleting the words "one agent for each candidate" and substituting with the words "two agents for each political party or one agent for each independent candidate".

Section 50 amended.

25. Section 50 of the principal Act is amended

(a) by deleting the marginal note and substituting with the following marginal note "Proceedings at the close of Polling Day-manual voting system."; and

(b) in subsection (1) by deleting the words " Forthwith after the last voter has voted the presiding officer shall Act in the following order" and substituting with the words "Where the manual voting system is utilised, after the last voter has voted, the presiding officer shall Act in the following order".

Insertion of section 50A.

26. The principal Act is amended by inserting after section 50 the following section

"Proceedings at the close of Polling Day-electronic tabulating system.

50A. (1) Where the electronic tabulating system is utilised, after the last voter has voted, the presiding officer shall forthwith act in the following order:

(a) announce the close of poll and record in the electronic poll book, in the manner specified in paragraph (c), the hour at which the poll was closed;

(b) seal the ballot boxes with the seal provided by the Supervisor of Elections;

(c) close the poll on the electronic tabulating system and run the paper tape;

(d) remove the media stick placing it with the printed report in a designated pouch;

(e) seal the designated pouch and place it in a second pouch which shall be sealed and thereafter placed with other elections materials in the designated carrying case;

(f) verify and document the public count on the relevant equipment by verifying that the public counts match the number of votes on the electronic polling book and exit register;

(g) lock and secure the tabulating equipment and election materials from any physical access to prepare for transportation;

(h) count the spoiled ballot papers, if any, place them in the special envelope supplied for that purpose and indicate thereon in words the number of such spoiled ballot papers and seal the envelope and initial it;

(i) count the unused ballot papers, place them in the special envelope supplied for that purpose and indicate thereon in words the number of such unused ballot papers, then seal the envelope and initial it;

(j) check the number of ballot papers supplied by the returning officer against the number of spoiled ballot papers, if any, the number of unused ballot papers and the number of voters whose names appear in the electronic poll book as having voted in order to ascertain that all ballot papers are accounted for; and

(k) record the number of ballot boxes in his or her possession, the number of ballot papers issued to electors, the number of unused ballot papers, the number of spoiled ballot papers and all other information required in Form No. 31 and attach his or her signature thereto.

(2) The ballot boxes, electronic poll books, envelopes containing the spoiled and unused ballot papers, official list of voters, pouches containing media sticks, reports and other documents used at a polling station shall be transmitted to the place identified for the counting of votes.

(3) The returning officer for each local electoral district may specially appoint one or more persons for the purpose of collecting the ballot boxes and papers aforesaid from a given number of polling stations, and such persons shall, on delivering the ballot boxes and papers to the returning officer, take the oath in Form No. 33.

(4) Subject to subsection (5), the candidates or their agents are entitled to follow the official vehicles transporting the ballot boxes and other election materials to the place identified for the counting of votes by the Supervisor of Elections.";

(5) The presiding officer or poll clerk and a police officer shall accompany the conveyance containing the ballot boxes and the polling agents or agents and candidates shall if they so desire be allowed to follow the conveyance carrying the ballot boxes in a separate conveyance in convoy.

(6) The presiding officer shall, with the ballot boxes and papers aforesaid, transmit or deliver to the returning officer for the appropriate district, in the envelope provided for that purpose, the keys of such ballot boxes.".

Section 51 amended.

27. Section 51 of the principal Act is amended

(a) by deleting the marginal note and substituting with the following marginal note "Counting of votes- manual voting system."; and

(b) in subsection (1)

(i) by inserting the words "Where the manual voting system is utilised," before the words "After the ballot boxes from every polling station"; and

(ii) in paragraph (c) by deleting the words "poll clerks" and substituting with the words "tally clerks"; and

(c) in subsection (3) by deleting the words "additional returning officers and counting agents" and substituting with the words "additional returning officers, counting agents and tally clerks,".

Insertion of section 51A and 51B.

28. The principal Act is amended by inserting after section 51 the following section:

"Counting of votes, etc-electronic tabulating system.

51A. (1) Where the electronic tabulating system is utilised, as soon as the ballot boxes from the polling stations have been received

(a) the designated returning officer shall, in the presence of the candidates or their agents that are present, and if the candidates or any of them are absent, then in the presence of those present, and of at least two voters if none of the candidates is represented

(i) examine the ballot boxes, and envelopes received from each polling station one at a time, ensuring that the seals thereon are securely affixed;

(ii) count and record the number of ballot boxes and envelopes received from each polling station, ensuring that all ballot boxes and envelopes are accounted for in accordance with Form No. 31;

(iii) record the number of votes for each candidate, including in the case of the Territorial electoral district, those blanks contained in ballot papers that reflect unmarked ballots in accordance with Form No. 35; and

(b) in the presence of the candidates or their agents that are present, and if the candidates

or any of them are absent, then in the presence of those present, and of at least two voters if none of the candidates is represented, the electronic tabulating system will reject all ballot papers

(i) which have not been marked for any candidate;

(ii) on which votes have been given for more than the number of candidates to be selected for the local electoral district and the territorial electoral district; or

(iii) on which more than one vote has been cast for any one candidate.".

(2) Immediately after the counting of the votes pursuant to this section has terminated, a candidate or his or her counting agent present at the count may, by completing Form No. 34, demand a recount and thereupon, unless the returning officer considers the demand to be unreasonable having regard to the result of the first count, the returning officer shall proceed to recount the votes to ascertain the result of the poll.

(3) Where the tabulation of the number of votes pursuant to this section results in a margin of one percent but not less than one half percent of the total votes cast between the two leading candidates in an electoral district there shall be an automatic electronic re-tabulation of the votes.

(4) Where the margin of victory in subsection (3) is less than one half of a percent of the total votes cast there shall be a manual recount of the votes.

(5) The returning officer shall, after the tabulation of the votes as the case may be

(a) subject to the final declaration made by the Supervisor of Elections under subsection (11)

(i) in the case of a local electoral district, declare the candidate who is found to have the largest number of votes to be elected as the member for the electoral district;

(ii) in the case of a Territorial electoral district, declare the number of votes received by each candidate or candidates as the case may be;

(b) complete Form No. 35.

(6) Subject to subsection (5), as soon as practicable after the receipt of all ballot boxes, envelopes, statements and packets, the Supervisor of Elections shall ascertain the total votes cast in favour of each candidate by checking the votes recorded on the statement submitted by the returning officers or computer technician of each district and thereupon make a declaration in accordance with subsection (17).

(7) If a ballot box has been destroyed or is missing, the Supervisor of Elections shall ascertain the cause of the destruction or loss and shall complete the validation of the results from the statement of the votes recorded by the returning officer for that district as if he or she had received the ballot box.

(8) If at any time before the counting of votes is completed in accordance with this section, a ballot box or boxes used at a polling station are destroyed, lost, damaged or tampered with, to such an extent that the result of the poll at that polling station cannot be ascertained, the returning officer for the particular district to which the box or boxes relate shall forthwith report the matter to the Supervisor of Elections.

(9) The Governor shall, in consultation with the Supervisor of Elections, after taking all the material circumstances into account

(a) declare by proclamation the poll at the polling station referred to under subsection (8) to be void and issue such directions as he or she thinks fit for the resumption and completion of the counting of votes and of the election; and

(b) issue a writ under the Public Seal of the Territory addressed to the relevant returning officer, appointing a day, and fixing the hours for taking a fresh poll at that polling station.

(10) The poll under subsection (9)(b) shall be held at the appropriate polling station or stations in accordance with the provisions of this Act in all respects as if it is the original poll.

(11) The Supervisor of Elections shall adjourn the declaration of results pursuant to subsection (13) until the taking of the fresh poll in accordance with subsection (9)(b) has been completed.

(12) For the avoidance of doubt, it is hereby declared that all provisions relating to proceedings at the close of poll, transporting of ballot boxes, statements etc., to counting and recounting of votes and to elections shall be complied with as regards all other polling stations to which subsection (8) does not apply.

(13) On the completion of the count or recount, as the case may be, in an election

(a) in a local electoral district to return one member to the House of Assembly, the candidate with the largest number of votes shall be declared by the Supervisor of Elections to be elected as a member for the local electoral district;

(b) in a Territorial electoral district to return more than one member to the House of Assembly, the number of candidates equal to the members to be returned with the largest number of votes shall be declared by the Supervisor of Elections to be elected as members for the Territorial electoral district.

(14) Whenever after the count of votes (including any recount) is completed, an equality of votes is found to exist between any candidates and the addition of one vote would entitle any of those candidates to be elected

(a) in the case of a local electoral district, a new writ shall be issued in respect of that electoral district and all proceedings for an election of a member for that electoral district shall commence afresh;

(b) in the case of the Territorial electoral district, the Territorial returning officer shall declare elected any candidate or candidates who received a larger number of votes than the number so found equal and a new writ shall be issued and all proceedings shall be commenced afresh for the election of a member or members to fill the remaining vacancy or vacancies.

Mechanical failure of Electronic tabulating system.

51B. (1) Where the electronic tabulating system is utilised and the equipment develops a mechanical failure on election day or day of referendum and cannot be repaired by technicians, the returning officer shall forthwith report the matter to the Supervisor of Elections.

(2) Upon reporting of the matter by the returning officer to the Supervisor of Elections under subsection (1), the Supervisor of Elections shall take all material circumstances into account and if satisfied that the mechanical failure of the equipment is material and cannot be repaired by technicians the Supervisor of Elections shall direct that the manual voting system and procedures for the manual voting system under this Act, be utilised for the remainder of the election day.".

29. Section 54 of the principal Act is amended

Section 54 amended.

(a) by deleting the marginal note and substituting with the following marginal note " Election return- manual voting system"; and

(b) in subsection (1) by inserting the words "Where the manual voting system is utilised," before the words " The returning officer within the time specified";

(c) by inserting the words "(manual voting system)" after the words "rejected ballot papers"; and

(d) in subsection (5) by deleting the words "500" and substituting the words "5,000".

Insertion of section 54A

30. The principal Act is amended by inserting after section 54 the following section:

"Election return-electronic tabulating system.

54A. (1) Where the electronic tabulating system is utilised, the returning officer within the time specified for the return of a writ shall forward to the Supervisor of Elections-

(a) the writ with his or her return in Form No. 36 endorsed thereon that the candidate or candidates with the largest numbers of votes have been elected;

(b) a report of proceedings showing that the number of votes cast for each candidate at each polling station, and making such observations as the returning officer may think proper as to the state of the election papers as received from the presiding officer;

(c) a statement of the number of persons to whom, it appears from the electronic poll book and electronic tabulating system have been supplied in the electoral district;

(e) the reserve supply of undistributed blank ballot papers;

(f) the electronic poll book used at each polling station, a packet containing the unused ballot papers, , a packet containing the spoiled ballot papers, and a packet containing the official lists of voters used at the polling stations, and the written appointments of candidates agents; and

(g) all other documents used for the election.

(2) The Supervisor of Elections shall, on receiving the return of any member or members elected to serve in the House of Assembly, cause it to be entered, in the order in which such return is received by him or her, in a book to be kept by him or her, for

such purpose and thereupon immediately cause a notice to be published in the Gazette of the name of the candidate or candidates so elected and in the order in which it was received.

(3) The Supervisor of Elections shall, on receiving the return of any member or members elected to serve in the House of Assembly, transmit the writ with the return endorsed thereon to the Governor within the time specified in such writ. The Governor shall within 7 days of the receipt of the said writ return the same to the Supervisor of Elections for safe custody in accordance with section 55.

(4) The Supervisor of Elections shall, immediately after each general election, cause to be printed a report giving, by polling divisions, the number of votes polled for each candidate, the number of rejected ballot papers (electronic tabulating system), the number of names on the official lists of voters, together with any other information that he or she may deem fit to include; and shall also, at the end of each year, cause to be printed a similar report on the by-elections held during the year.

(5) If a returning officer wilfully delays, neglects or refuses duly to return a person who ought to be returned to serve in the House of Assembly for any electoral district, and if it has been determined on the hearing of an election petition respecting the election for that electoral district that the person was entitled to have been returned, the returning officer who has so wilfully delayed, neglected or refused duly to make such return of his or her election shall forfeit to the person aggrieved the sum of $5,000 and costs in addition to all damages sustained."

Section 56 amended.

31. Section 56 of the principal Act is amended by inserting after the words "section 54" the words " or section 54A."

Insertion of section 79A.

32. The principal Act is amended by inserting after section 79 the following section

"Code of Conduct.

"**79A.** The code of conduct for political parties and candidates as set out in Schedule 4 shall regulate the conduct of political parties and candidates for general elections in the Virgin Islands.".

Schedule 2 amended.

33. Schedule 2 of the principal Act is amended

(a) by deleting Form 12 and substituting with the following form:

"**FORM NO. 12**

[Section 24(7)]

GOVERNMENT OF THE VIRGIN ISLANDS

ELECTIONS ACT

APPLICATION FOR A DUPLICATE VOTER REGISTRATION CARD/ NEW VOTER REGISTRATION CARD

To the Supervisor of Elections

Elections Office

I, ……..……. whose address is …….. *(give full names in block capitals)* ……...…….

solemnly and sincerely declare that

(a) I am qualified as a voter under section 68(1) of the Virgin Islands (Constitution) Order;

(b) I am not disqualified from voting under section 68(3) of the said Constitution or section 6 of the Elections Act;

(c) I was the holder of a voter registration card bearing serial registration No. ……which was issued to me on or about the……day of ……...… 20 ……. .

(provide appropriate information if known) and that the said card has been *lost/mutilated/ destroyed/defaced/ expired

(*delete as applicable) in the following circumstances – (here set out in detail the circumstances)……..……

……

…….

Accordingly, I hereby apply for a duplicate voter registration card/ New voter registration card, and

(a) * I undertake that if the original card which was issued to me is found that I will return it forthwith to the Supervisor of Elections.

OR

(b) * I enclose with this application my present mutilated or defaced card.

OR

(c) * I enclose with this application my expired voter registration card.

(*delete as applicable)

Date this……day of……..…, 20…. .

Signature of
applicant……..…….

Signature of
witness……..……”

Name of witness…….

(in block capitals)

(b) in Form No.21 by inserting the words “MANUAL VOTING SYSTEM” after the words “DIRECTIONS FOR THE GUIDANCE OF VOTERS”;

(c) by inserting after Form No. 21 the following form:

“FORM NO. 21A

[Section 34(3) (e)]

GOVERNMENT OF THE VIRGIN ISLANDS

ELECTIONS ACT

DIRECTIONS FOR THE GUIDANCE OF VOTERS

ELECTRONIC TABULATING SYSTEM

---

1. Each voter may vote only at one polling station. A voter may vote for only one candidate in a local electoral district election and for as many candidates as there are vacancies in the Territorial electoral district election.

2. Each voter will go into one of the compartments and place a cross on the right hand side opposite the name of the candidate for whom he or she votes, thus X, **OR** shade the oval sign.

3. The voter shall then return the ballot paper to the folder and deposit it in the ballot box. The voter shall then sign the exit book and forthwith leave the polling station.

EXAMPLE OF A SINGLE BALLOT FOR

LOCAL AND TERRITORIAL ELECTORAL DISTRICT

(VOTING WITH AN X)

INSTRUCTIONS – LOCAL DISTRICT

Supposing JOHN JONES and GEORGE SMITH are the candidates in a local electoral district and the voter wishes to vote for JOHN JONES, he or she may place a cross **OR** shade the oval sign opposite JOHN JONES' name.

1.	Jones, John Shopkeeper Tortola	(Symbol)	X
2.	Smith, George Carpenter Virgin Gorda	(Symbol)	

INSTRUCTIONS – TERRITORIAL ELECTORAL DISTRICT

In the territorial electoral district in a general election, where the voter is entitled to vote for as many as four candidates, supposing there are six candidates, namely SARAH BLACK, YVONNE DOTY, REBECCA KNIGHT, HEZEKIAH MAYABA, TYRONE ROAD AND ANTON ROGER. If the voter wishes to vote for SARAH BLACK, REBECCA KNIGHT, HEZEKIAH MAYABA, AND TYRONE ROAD, he or she may place a cross or shade the oval sign opposite their names as follows:

1.	Black, Sarah Merchant Virgin Gorda	(Symbol)	X
2.	Doty, Yvonne Beautician Anegada	(Symbol)	
3.	Knight, Rebecca Attorney-at-Law Tortola	(Symbol)	X
4.	Mayaba, Hezekiah Mechanic Jost Van Dyke	(Symbol)	X
5.	Road, Tyrone Fisherman Salt Island	(Symbol)	X
6.	Roger, Anton Accountant Tortola	(Symbol)	

FORM NO. 21A

[Section 34(3)(e)]

GOVERNMENT OF THE VIRGIN ISLANDS

ELECTIONS ACT

DIRECTIONS FOR THE GUIDANCE OF VOTERS

ELECTRONIC TABULATING SYSTEM

---

1. Each voter may vote only at one polling station. A voter may vote for only one candidate in a local electoral district election and for as many candidates as there are vacancies in the Territorial electoral district election.

2. Each voter will go into one of the compartments and place a cross on the right hand side opposite the name of the candidate for whom he or she votes, thus X, **OR** shade the oval sign.

3. The voter shall then return the ballot paper to the folder and deposit it in the ballot box. The voter shall then sign the exit book and forthwith leave the polling station.

EXAMPLE OF A SINGLE BALLOT FOR

LOCAL AND TERRITORIAL ELECTORAL DISTRICT

(VOTING SHADING THE OVAL)

INSTRUCTIONS – LOCAL DISTRICT Supposing JOHN JONES and GEORGE SMITH are the candidates in a local electoral district and the voter wishes to vote for JOHN JONES, he or she must place a cross **OR** shade the oval sign opposite JOHN JONES' name.				**INSTRUCTIONS – TERRITORIAL ELECTORAL DISTRICT** In the territorial electoral district in a general election, where the voter is entitled to vote for as many as four candidates, supposing there are six candidates, namely SARAH BLACK, YVONNE DOTY, REBECCA KNIGHT, HEZEKIAH MAYABA, TYRONE ROAD AND ANTON ROGER. If the voter wishes to vote for HEZEKIAH MAYABA, TYRONE ROAD, REBECCA KNIGHT AND SARAH BLACK, he or she must place a cross or shade the oval sign opposite their names as follows:			
1.	Jones, John Shopkeeper Tortola	(Symbol)		1.	Black, Sarah Merchant Virgin Gorda	(Symbol)	
2.	Smith, George Carpenter Virgin Gorda	(Symbol)		2.	Doty, Yvonne Beautician Anegada	(Symbol)	
				3.	Knight, Rebecca Attorney-at-Law Tortola	(Symbol)	
				4.	Mayaba, Hezekiah Mechanic Jost Van Dyke	(Symbol)	
				5.	Road, Tyrone Fisherman Salt Island	(Symbol)	
				6.	Roger, Anton Accountant Tortola	(Symbol)	

(d) in Form 22 by inserting the words "MANUAL VOTING SYSTEM" after the words "BALLOT PAPER".

(e) by inserting after Form 22 the following form:

"FORM NO. 22A
(Section 34(3)(e))
GOVERNMENT OF THE VIRGIN ISLANDS
ELECTIONS ACT

BALLOT PAPER FOR ELECTRONIC TABLULATING SYSTEM

No.

General Elections/By-Election .....
.....Local and Territorial Electoral District
Polling Day: .....

Initial of P.O. .....

Instructions

Making Selections

Fill in the oval to the right of the name of your choice. You must blacken the oval completely, and do not make any marks outside of the oval.

Do not cross out or erase, or your vote may not count. If you make a mistake or a stray mark, ask for a new ballot from the Presiding Officer.

Turning in the ballot

Insert the completed ballot into the ballot sleeve. Deposit the ballot in the electronic voting system and return the ballot sleeve to the Poll Clerk.

Local Electoral District
Vote for one Candidate

1.	Jones, John Shopkeeper Tortola	(Symbol)	◯
2.	Rock, Jenny Businesswoman Tortola	(Symbol)	◯
3.	Smith, George Carpenter Virgin Gorda	(Symbol)	◯
4.	Ante, Jack Welder Anegada	(Symbol)	◯

Territorial Electoral District
Vote for up to Four Candidates

1.	Black, Sarah Merchant Virgin Gorda	(Symbol)	◯
2.	Doty, Yvonne Beautician Anegada	(Symbol)	◯
3.	Knight, Rebecca Attorney-at-Law Tortola	(Symbol)	◯
4.	Mayaba, Hezekiah Mechanic Jost Van Dyke	(Symbol)	◯
5.	Roach, Tyrone Fisherman Salt Island	(Symbol)	◯
6.	Rogers, Anton Accountant Tortola	(Symbol)	◯

Thank you for voting. Please deposit your finished ballot.

(f) by deleting Form No. 31 and substituting with the following form:

"FORM NO. 31

[Sections 48(2), 50(1)(g) and 51(1)(b)]

GOVERNMENT OF THE VIRGIN ISLANDS
ELECTIONS ACT

BALLOT PAPER AND BALLOT BOX ACCOUNT

General Election or Other Election: ……
Polling Division: ……
Polling Station: ……

BEFORE POLL

	Total Number
1. Ballot papers received	……
2. Ballot boxes received	……

AFTER POLL

1. Ballot boxes in possession	……
2. Ballot papers unused	……
3. Ballot papers issued to electors	……
4. Ballot papers spoilt	……
5. Ballot papers which should be in Ballot Box	……

……..
Signature of Presiding Officer

……
Date".

Insertion of Schedule 3.

34. The principal Act is amended by inserting after Schedule 2 the following Schedule:

"SCHEDULE 3

[Section 79A]

CODE OF CONDUCT FOR POLITICAL PARTIES AND CANDIDATES

Purpose of Code

1. The purpose of this Code is to promote conditions that are conducive to free and fair elections and a climate of tolerance in which electioneering activity may take place without fear or coercion, intimidation or reprisals.

General Principles

2. (i) All political parties and their members and supporters, and all candidates and their supporters, must promote conditions conducive to free, fair and democratic elections conducted through a secret ballot in a climate of democratic tolerance in which political activity may take place without fear of intimidation or reprisals.

(ii) All political parties and their members and supporters, and all candidates and their supporters, must accept that others have the right to present their political principles and ideas in a peaceful environment without intimidation or fear of reprisal, and must respect that right.

(iii) The emphasis must be on issues rather than personalities. Candidates must also avoid defamation of character of their opponents, their families and supporters.

(iv) No abusive attacks or innuendos may be directed to campaigners or their family members for reason of their political affiliation, race, social origins and background, education, gender, religion, or any other reason.

(v) Candidates must seek to be truthful about the past and present socio-economic state of the Virgin Islands.

(vi) Every person entitled to vote must be able to do so freely. Victimisation of person, interference with employment rights, intimidation, and the enticement with favours are gravely wrong. Persons are entitled to express their political views without fear of persecution or victimisation.

Application

3. This Code will apply to political parties, candidates for election, election agents for candidates and members and supporters of political parties and candidates.

Public Commitment

4. Every political party and every candidate must

(a) give wide publicity to this Code and ensure that their members and supporters are familiar with this Code and their obligation to comply with its terms; and

(b) publicly state that throughout the Territory, everyone has the right

(i) to freely express their political beliefs and opinions;

(ii) to freely challenge and debate the political beliefs and opinions of others;

(iii) to canvas for membership and support from voters;

(iv) to freely attend public meetings convened by others;

(v) to freely distribute campaign material;

(c) publicly condemn any action that may undermine the free and fair conduct of elections and in particular to condemn unreservedly and publicly any violence or intimidation and co-operate with the law enforcement agencies in apprehending the culprits;

(d) disseminate accurate information on electoral processes;

(e) accept the result of an election or challenge the result by due process of law.

Prohibited Conduct: Politically-Motivated Violence or Intimidation

5. No political party or any of its members or supporters, and no candidate or any of his or her supporters, may -

(a) use violence, hateful language or threaten violence or incite or encourage the use of violence, against anyone on account of his or her political opinions or membership or support of a political party or participation in the election, including in speeches, songs and slogans;

(b) intimidate, or incite or encourage the intimidation, of anyone on account of his or her political opinions or membership or support of a political party; act in a way that may provoke violence or intimidation;

(c) use violence or threats or illegal pressure to force a voter to refrain from voting or to vote for a candidate or political party against his or her will;

(d) force a voter to reveal the identity of the candidate voted for or take reprisals against a person because of the way in which he or she has voted or is believed to have voted.

Prohibited Conduct: Other Prohibited Acts

6. No political party or any of its members or supporters, and no candidate or any of his or her supporters, may

(a) publish false or defamatory allegations about a party, its candidate(s), representatives or members;

(b) discriminate on the grounds of race, ethnicity, sex, gender, class or religion in connection with an election or political party;

(c) prevent the distribution of leaflets and the display of posters of other parties and candidates;

(d) damage or deface property, including the election posters, placards, banners and other election material of another party or candidate, and any posters or other voter education materials disseminated by the Office of the Supervisor of Elections;

(e) bar or inhibit access to meetings or to voters for the purpose of election campaigning;

(f) carry or display weapons at political meetings or at marches, demonstrations, rallies or other public political events;

(g) bribe a voter to exercise his or vote in a particular manner;

(h) bribe or intimidate an election official to induce him or her to make a false entry in the voters roll or to alter or falsify election results;

(i) coerce or offer monetary or other kinds of inducements to persons for them to participate in the activities of a political party not of their choice, or

(i) to become or not become a member of certain political party, stand or not stand as candidates, or to withdraw or

not to withdraw their candidacies or membership of a political party;

(ii) to violate the secrecy of the vote;

(j) procure the support or assistance of any official or public officer to act in a partisan manner or further the interest of any political party to cause;

(k) encourage a person to vote knowing that he or she is not entitled to do so;

(l) use the information on the voters list supplied by the Office of the Supervisor of Elections for commercial purposes or to harass or intimidate voters and they may not publish personal information about voters contained in the voter's list.

Compliance

7. (1) Every political party and every candidate must comply with this Code and

(a) in the case of a political party, instruct its candidates, persons who hold political office in the party and its representatives, members and supporters to comply with this Code and any applicable electoral and general laws;

(b) in the case of a candidate, instruct the representative and supporters of the candidate to comply with this Code and any applicable electoral and general laws.

(2) Every political party should restrain its office-bearers, members and supporters, and all candidates should restrain their representatives and supporters, from contravening this Code and any applicable electoral or general law, and must take or initiate appropriate disciplinary action against those who contravene this Code or that law.

Duty to Co-operate

8. Every political party and every candidate must co-operate-

(a) with other parties to avoid the risk of electoral-related conflict; in particular, they must endeavour not to call public meetings, marches or rallies that coincide with those called by another party or candidate contesting the election;

(b) with the election authorities to protect and enhance their role to supervise and administer elections;

(c) with law enforcement officers to maintain peace during the election period.

Conduct during Polling Period

9. (1) No political party or candidate may, from midnight, twenty-four hours before polling day in any election until polling stations are closed on that day-

(a) convene or hold a public gathering of any kind;

(b) publish, or cause or permit the publication, of any advertisement or statement promoting or opposing a particular party or candidate;

(c) disrupt the work of election officials at a polling station or counting station;

(d) campaign or display campaign material within 200 metres of a polling station or counting station.

(2) On polling day in any election, all political parties and their members and supporters, and all candidates and their supporters, must -

(a) co-operate with election officials to ensure that polling is peaceful and orderly and that voters are completely free to exercise their vote without being subjected to intimidation, annoyance or disturbance; and

(b) generally, conduct themselves so as to respect the secrecy and integrity of the ballot.

Announcements of Results of Elections

10. No candidate, and no office-bearer or member of a political party, may purport to declare or announce the results of an election before it has been declared officially by the Supervisor of Elections.

Respect for Media and Journalists

11. Every political party and candidate

(a) must respect the role of the news media before, during and after an election;

(b) may not prevent access by members of the news media to public political meetings, marches, demonstrations and rallies; and

(c) must take all reasonable steps to ensure that journalists are not subjected to harassment, intimidation, threat or physical assault by any of their representatives or supporters.".

Passed by the House of Assembly this 22nd day of January, 2019.

(Sgd.) Ingrid Moses-Scatliffe,
Speaker.

(Sgd.) Phyllis Evans,
Clerk of the House of Assembly.