

No. of 2024

VIRGIN ISLANDS
POLICE (AMENDMENT) BILL, 2024
ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Sections 35B and 35C inserted
3. Part IIIA inserted

No. of 2024

**Police
(Amendment) Bill, 2024**

**Virgin
Islands**

I ASSENT

**Governor.
, 2024**

VIRGIN ISLANDS

No. of 2024

A BILL FOR

AN ACT TO AMEND THE POLICE ACT, REVISED EDITION 2013, TO MAKE PROVISION FOR ENHANCED INVESTIGATIVE POWERS AND PROCEDURES; AND RELATED MATTERS.

[Gazetted , 2024]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and commencement

1. (1) This Act may be cited as the Police (Amendment) Act, 2024.

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

Sections 35B and 35C inserted

2. The Police Act, Revised Edition, 2013 (hereinafter referred to as the “principal Act”) is amended by inserting after section 35A the following sections:

“Witness Statements

35B. (1) A police officer may, in the course of a criminal investigation, interview witnesses and take witness statements, in accordance with the provisions of this Act and any other applicable law.

(2) Witness statements shall be recorded in a manner that ensures the accuracy and integrity of the evidence, including audio or video recording where possible.

(3) The Commissioner shall maintain a secure system for the storage and retrieval of witness statements.

(4) The Police Force may cooperate with foreign law enforcement agencies in taking witness statements for use in international investigations and prosecutions.

(5) The Governor may make regulations prescribing the procedures for

- (a) the taking, handling, and storage of witness statements;
- (b) the training of police officers in the procedures under paragraph (a); and
- (c) such other matters as are necessary or expedient to give effect to this section.

Interviews and oral admissions

35C. (1) Subject to the Evidence Act, No. 15 of 2006, and subsections (2) to (4), an investigating officer shall record, in writing, the interview of any person suspected of, or charged with, committing a criminal offence.

(2) An interview under subsection (1), shall also be recorded by video-recording unless it is not reasonably practicable to do so.

(3) Where an interview is to be conducted under this section, a person suspected of, or charged with, committing a criminal offence shall, pursuant to section 23(7), be given an opportunity to have his or her counsel present before the interview is conducted.

(4) Where it is not reasonably practicable to record an interview by video-recording but it is reasonably practicable to record the interview by audio-recording, the interview shall be recorded by audio-recording.

(5) Where it is not reasonably practicable to record an interview by video-recording or audio-recording pursuant to subsections (2) and (4), the investigating officer shall record in the custody record of the suspect, the reason the interview could not be recorded by video-recording or audio-recording.

(6) Any removable recording medium used in the recording of an interview shall be new.

(7) For the purposes of this section, “removable recording medium” includes magnetic tape, optical disc, solid state memory card or any removable physical recording medium which can be played and copied.

(8) An investigating officer shall record, in a witness statement, any reason for the failure of complying with any provision of this section.

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

(10) The Governor may issue Codes of Practice under section 28

- (a) in connection with the audio-recording or video-recording of interviews of persons suspected of the commission of criminal offences which are held by police officers at police stations; and

- (b) requiring the audio-recording or video-recording of interviews of persons suspected of the commission of criminal offences, or of such descriptions of criminal offences as may be specified in the Code of Practice, which are so held, in accordance with the code as it has effect for the time being.

(11) Any person who without lawful authority

- (a) possesses, plays or offers to supply a recording of an interview under this section to any person; or
- (b) copies, tampers with, modifies, erases, publishes or disseminates a recording of an interview under this section,

commits an offence.

(12) A person who commits an offence under subsection (11) is liable

- (a) on summary conviction to a fine of [one hundred thousand dollars and to imprisonment for up to five years]; or
- (b) on conviction on indictment to a fine of [five hundred thousand dollars and to imprisonment for up to ten years].

(13) The Governor, in consultation with the Commissioner and the Director of Public Prosecutions, may make Regulations respecting

- (a) the procedure to be followed, the type of equipment to be used and the arrangements to be made where a person is to use any audio or video recording medium;
- (b) the types of photographs, screens and support devices;
- (c) forms to be provided or submitted for the purposes of this Part; and
- (d) for such other matters as are necessary or expedient for giving effect to this section.”.

Part IIIA inserted

3. The principal Act is amended by inserting immediately after section 38 the following new Part:

“PART IIIA SPECIAL INVESTIGATIVE TECHNIQUES

Division 1 Interpretation of Part IIIA

Interpretation of this Part

38A. (1) In this Part, unless otherwise prescribed

“authorising authority” means the Commissioner or a senior police officer designated as such;

“controlled delivery” means the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence;

“electronic surveillance” means

- (a) the monitoring, interception, copying or acquisition of messages, data or signals transmitted by electronic means; or
- (b) the monitoring or recording of activities by electronic means, for the purposes of investigating a serious offence that has been, is being, or may be committed;

“investigating authority” means a police officer or other law enforcement officer who have been given authorisation to carry out a special investigative technique under this Part in writing by the Commissioner;

“law enforcement officer” means

- (a) a member of the Force;
- (b) an officer of the Customs Department;
- (c) an officer of the Immigration Department;
- (d) an officer of the Financial Investigation Agency; or
- (e) any other person authorised under any law to perform functions related to the enforcement of criminal law or the investigation, prevention, detection or prosecution of a criminal offence;]

“senior police officer” means a police officer of the rank of Superintendent or above;

“serious criminal behaviour” means behaviour involving the commission of a serious offence;

“serious offence” means an offence for which the penalty includes imprisonment for a term of more than one year;

“special investigative technique” means

- (a) a controlled delivery;
- (b) a covert operation; or
- (c) electronic surveillance;

“covert operation” means the technique whereby a law enforcement officer or an individual acting under the direction of a law enforcement authority assumes a covert or false identity to obtain evidence or information regarding suspected criminal activities.

(2) For the purposes of the definition of “controlled delivery”

- (a) a reference to “illicit or suspect consignments” includes consignments of narcotic drugs, currency, firearms, ammunition, explosives, and other related materials; and

- (b) a reference to a “designated competent authority” means the authorising authority or the investigating authority.

Division 2
Controlled deliveries

Authorisation for controlled delivery

38B. (1) A controlled delivery is lawful only if it has been authorised in accordance with this Part.

(2) The authorising authority may, on an application by a senior police officer give written authorisation for

- (a) a controlled delivery to be carried out; and
- (b) specified persons or classes of persons to carry out or participate in the controlled delivery.

(3) An application to conduct a controlled delivery shall be made in writing and specify

- (a) all available information regarding the consignment and its destination;
- (b) whether the matter has been the subject of a previous application; and
- (c) any additional information as required by the authorising authority.

Conditions for authorisation of controlled delivery

38C. The authorising authority shall not approve an application for a controlled delivery unless satisfied, on reasonable grounds, that

- (a) a serious offence has been, is being, or is highly likely to be committed;
- (b) the nature and extent of the suspected criminal activity are such as to justify the conduct of the controlled delivery;
- (c) any unlawful activity will be limited to the minimum necessary to achieve the objectives of the controlled delivery;
- (d) the controlled delivery will be conducted in a way that ensures that, to the greatest extent possible, any illicit goods involved in the controlled delivery will be under the control of a law enforcement officer at the end of the controlled delivery;
- (e) the controlled delivery will not be conducted in such a way that a person is likely to be induced to commit an offence that the person would otherwise not have intended to commit; and
- (f) any conduct involved in the controlled delivery will not cause the death of or serious injury to any person and will

not seriously endanger the life, health, or safety of any person.

Determination of applications

38D. (1) After considering an application, the authorising authority may

- (a) authorise the controlled delivery, subject to any conditions which the authorising authority may consider appropriate, including as to the type and extent of substitution of the consignment; or
- (b) refuse the application to conduct the controlled delivery.

(2) The authorising authority shall keep a written record of the application and the subsequent decision made under subsection (1).

Revocation and cancellation of authorisation

38E. (1) The authorising authority may revoke an authorisation granted under section 38D if it is no longer satisfied, on reasonable grounds, that any of the conditions referred to in subsection 38C are being met.

(2) The authorising authority shall cancel an authorisation granted under section 38D upon receipt of a request for cancellation from the applicant.

Treatment of items post-operation

38F. Any item imported into the Territory in the course of an approved covert operation or controlled delivery, when no longer required for the purposes of the due enforcement of this Act, shall be dealt with as prohibited and illegal items as prescribed under the laws of the Territory

International Cooperation

38G. The Commissioner, in consultation with the Attorney General, may enter into agreements or arrangements with the law enforcement agencies of other jurisdictions or international organisations for the purpose of conducting controlled deliveries.

Division 3 *Covert Operations*

Authorisation of covert operations

38H. (1) The authorising authority may authorise covert operations for the purpose of

- (a) gathering evidence of serious criminal behaviour; or
- (b) the prevention, detection or investigation of an offence related to money laundering, terrorist financing or other financial crimes.

(2) An authorisation under subsection (1) shall not be given unless the authorising authority

- (a) has reasonable grounds to suspect that persons, whether known or unknown, are engaging or are about to engage in serious criminal behaviour of the kind to which the proposed covert operations relate;
- (b) is satisfied, on reasonable grounds, that the scope of the proposed covert operations is not more extensive than is reasonably justified having regard to the nature and extent of the suspected serious criminal behaviour;
- (c) is satisfied, on reasonable grounds, that the proposed covert operations are proportionate to the objective sought to be achieved, meaning that the operations are justified by the social harm of the serious criminal behaviour against which they are directed;
- (d) is satisfied, on reasonable grounds, that the proposed covert operations are properly designed to provide persons engaging or about to engage in serious criminal behaviour an opportunity
 - (i) to manifest that behaviour; or
 - (ii) to provide other evidence of that behaviour,without undue risk that persons without a predisposition to serious criminal behaviour will be induced to engage in such behaviour that they would otherwise have avoided; and
- (e) any conduct involved in the covert investigation will not cause the death of or serious injury to any person and will not seriously endanger the life, health or safety of any person.

(3) Before granting authorisation under subsection (1), the authorising authority shall consider whether authorisation for similar operations has previously been sought and, if so, whether it was refused, and the reasons for that refusal.

(4) An authorisation under this section shall

- (a) be in writing;
- (b) be signed by the authorising authority;
- (c) specify the persons who are authorised to participate in the operations;
- (d) state the nature of the conduct in which the authorised participants are permitted to engage;
- (e) specify the date and time at which the authorising authority signs the authorisation, and the time from which it takes effect, which may be contemporaneous with or later than the time of signing, but shall not be earlier; and
- (f) state the period, not exceeding three months, for which the authorisation is given.

(5) The authorising authority may, from time to time, renew an authorisation granted under this section for further periods not exceeding three months each.

(6) The Commissioner shall issue written guidelines detailing the conduct of covert operations, including protocols for the recording, storing and handling of evidence obtained during such operations.

(7) All covert operations shall be subject to review and oversight by a designated senior officer within the Police Force.

(8) The authorising authority shall, within fourteen days after giving or renewing authorisation under this section, ensure that a copy of the instrument of authorisation is provided to the Governor.

Division 4
Electronic Surveillance

Electronic surveillance

38I. (1) Electronic surveillance is only lawful if it has been authorised in accordance with this section.

(2) Subject to section 38J, the electronic surveillance of persons may be authorised by the Commissioner or Deputy Commissioner (in this section referred to as the “authorising authority”) on application by a police officer of the rank of Inspector or above.

(3) An application to conduct electronic surveillance shall be submitted in writing or by such means as may be prescribed.

(4) The authorising authority shall keep a written record of the application and the subsequent decision made under subsection (3).

(5) The application for authorisation for electronic surveillance shall specify

- (a) the type of electronic surveillance for which authorisation is sought;
- (a) the duration for which the authorisation is sought;
- (b) the nature of the information that it is expected to be collected;
- (c) the individuals, locations, or devices that are the target of the surveillance;
- (d) the measures that are in place to ensure that the privacy and other human rights of individuals are protected as far as possible;
- (e) whether the matter has been the subject of a previous application; and
- (f) any other information or requirements as prescribed by Regulations.

(6) Subject to the provisions of this section, the authorising authority may, after having considered the application

- (a) authorise the electronic surveillance, subject to such conditions as may be appropriate; or
- (b) refuse the application for electronic surveillance.

(7) The authorising authority shall not authorise the electronic surveillance unless satisfied on reasonable grounds that

- (a) a serious offence has been, is being, or is likely to be committed; and
- (b) the nature and extent of the suspected criminal activity are such as to justify the type of electronic surveillance for which authorisation is sought.

(8) The authorisation under this section shall specify the time period for which the electronic surveillance is authorised, which shall not exceed three months.

(9) The authorisation may be renewed on application and an application for renewal shall comply with the requirements of an initial application under this section.

(10) The authorising authority shall revoke an authorisation granted under subsection (6) if it is no longer satisfied, on reasonable grounds, of any of the matters referred to in subsection (5).

(11) The authorising authority shall cancel an authorisation granted under subsection (6) upon receipt of a request for cancellation from the applicant.

(12) A person shall not disseminate outside the Royal Virgin Islands Police Force or other relevant law enforcement agency any information obtained through electronic surveillance without the approval of the Commissioner and such approval may be given only for the purposes of

- (a) preventing or prosecuting a serious offence;
- (b) enhancing international cooperation on the prevention or prosecution of serious crime; or
- (c) ensuring proper oversight of the activities carried out under this Part.

Requirement for warrant for use of electronic surveillance

38J. (1) A police officer authorised under section 38I may apply to a Magistrate or a Judge of the High Court to issue a warrant authorising the use of electronic surveillance equipment in relation to a particular item or person.

(2) The Magistrate or Judge may issue a warrant if satisfied, by information on oath, that

- (a) there are reasonable grounds for suspecting that the item or person has been, or is likely to be, used in connection with the commission of a serious offence;
- (b) the use by police officer of an electronic surveillance equipment to listen to or record words spoken by or to

persons in the vicinity of the item or person will, or is likely to, assist the police in, or in connection with, investigation that are being made in relation to the use, or likely use, of the item or person in connection with the commission of a serious offence; and

(c) obtaining some or all of the information by other means is not practicable or would be less effective.

(3) A warrant issued under subsection (2) may authorise one or more of the following:

(a) the use of electronic surveillance equipment by the police for the purpose of listening to or recording words spoken by or to any person while the person is in the vicinity of the item or person;

(b) the entry onto premises by the police for the purpose of

(i) installing the electronic surveillance device or a part of the electronic surveillance device in or on the item or premises;

(ii) maintaining, using or recovering the device or a part of the device under subparagraph (i).

(4) A warrant issued under this section may be subject to any conditions or restrictions that the Magistrate or Judge sees fit to specify in the warrant.

Division 5 General provisions

Evidentiary provisions

38K. (1) Notwithstanding the Evidence Act, No. 15 of 2006, any evidence relating to the details as to how a special investigative technique was carried out shall be admissible in court

(a) to establish or rebut an allegation that unreasonable force was used during the carrying out of the special investigative technique; or

(b) to decide the admissibility of a confession or admission, or other evidence averse to the suspect if the suspect alleges that the evidence was induced or obtained by the use of unreasonable force.

(2) Information contained in a communication retained in a foreign State in accordance with the law of that foreign State and certified by a judicial officer of that foreign State to have been so intercepted and retained, shall be admissible as evidence in proceedings for the prosecution of a serious offence.

(3) Any evidence not obtained pursuant to this Part shall not be admissible as evidence in court.

Protection from liability

38L. (1) Notwithstanding any other law, an authorised person who engages in conduct authorised under this Part shall not be subject to criminal or civil liability for that conduct, even if such participation would, but for this Part, constitute an offence.

(2) Subsection (1) shall apply retrospectively to any participant in a covert operation or controlled delivery conducted prior to the commencement of this Part, provided that the requirements of

- (a) section 38C, in the case of a controlled delivery;
- (b) section 38H(2), in the case of a covert operation; or
- (c) section 38I, in the case of electronic surveillance,

could have been met had they been in force at the time.

Reporting obligations on special investigative techniques

38M. The authorising authority shall submit a report annually to the Governor, in such manner as the Governor may determine, respecting

- (a) the classes of offences for which authorisations were given or renewed under this Part; and
- (b) the number of authorisations that were approved, refused, revoked and cancelled under this Part.

Regulations for special investigative techniques

38N. The Governor may make regulations to provide for

- (a) the procedures governing controlled deliveries, covert operations and electronic surveillance;
- (b) the handling, storage, and use of data obtained through the special investigative techniques referred to in paragraph (a), including measures to ensure the security of information disclosed by or to the investigatory authority;
- (c) the training and certification of personnel involved in the activities referred to in paragraph (a);
- (d) the oversight and reporting mechanisms to ensure the proper conduct of activities referred to in paragraph (a); and
- (e) any other matter necessary or expedient to give effect to the purposes of this Part.”.

Passed by the House of Assembly this day of , 2024.

Speaker.

Clerk of the House of Assembly.

OBJECTS AND REASONS

The Police (Amendment) Bill, 2024 seeks to amend the Police Act Revised Edition, 2013 (“the principal Act”) to rectify certain deficiencies identified in the Fourth Round Mutual Evaluation Report of the Caribbean Financial Action Task Force (CFATF) regarding the Virgin Islands. This legislation addresses directly the shortcomings highlighted under the Financial Action Task Force’s Recommendation 31, including the need for statutory provisions for special investigative techniques, particularly, witness statements, covert operations and controlled deliveries. The Bill therefore aims to align the jurisdiction’s legal framework with international standards by addressing identified gaps, enhancing law enforcement’s effectiveness in investigating and prosecuting serious crimes, while safeguarding individual rights and ensuring necessary oversight and accountability.

Clause 1 would set out the short title and commencement of the legislation.

Clause 2 amends the principal Act by inserting after section 35A new sections 35B and 35C which deal respectively with witness statements and interviews as set out below.

The CFATF MER highlighted a deficiency in the existing legislative framework, notably the absence of statutory provisions enabling law enforcement authorities to take witness statements outside the scope of international cooperation cases. To rectify this deficiency, the proposed new sections 35B and 35C have been inserted into the principal Act.

Proposed new section 35B grants police officers the authority to interview witnesses and take witness statements during investigations. This provision mandates that the witness statements be accurately recorded, potentially through audio or video means, to preserve the integrity of the evidence. It also provides for cooperation with foreign law enforcement agencies and the establishment of regulations governing, among other things, the handling and storage of such statements.

Proposed new section 35C outlines the procedures for conducting interviews and recording oral admissions of suspects or persons charged with an offence. It requires that these interviews be documented in writing and, where practicable, be video-recorded to ensure transparency and accuracy. The new section also makes provision for audio recording as an alternative, mandates the presence of a representative for the suspect or accused during interviews and specifies conditions under which evidence obtained during interviews may be admissible.

Clause 3 amends the principal Act by inserting a new Part IIIA which makes provision for the use and carrying out of special investigative procedures as set out below.

Division 1 of new Part IIIA provides for the interpretation of certain terms used in that Part.

Division 2 deals with controlled deliveries. In this regard, the provisions under this Division seek to rectify the absence of statutory provisions for controlled deliveries, as highlighted in the MER (Criterion 31.2(d)). Part IIIA therefore introduces a legal mechanism for the controlled delivery of illicit or suspect consignments under the supervision of a designated competent authority. Controlled deliveries may be authorised by a senior police officer following a written application from a senior police officer. The application must provide comprehensive details regarding the consignment, its intended destination and any prior applications for similar operations. Authorisation can only be granted if there are reasonable grounds to suspect that a relevant offence has been, is being, or is likely to be committed, and if the operation is justified by the nature and extent of the suspected criminal activity. The provisions of Division 2 mandate minimising the risk of harm to individuals and property. Authorisation may be revoked if these conditions are no longer met, and there are stringent reporting requirements to the Governor.

Division 3 of the new Part IIIA deals with covert operations. In response to the identification of the lack of statutory provisions for covert operations in the CFATF MER (Criterion 31.2(a)), this new Division seeks to provide a legal basis for the authorisation of covert operations by the Commissioner of Police. These operations may be authorised when necessary for the prevention, detection or investigation of serious criminal conduct, particularly offences involving financial crimes. Authorisation must specify the participants, the conduct they are permitted to engage in and the duration of the operation, which shall not exceed three months. The authorisation of covert operations is contingent upon reasonable grounds for suspicion of criminal behaviour and must be proportionate to the objectives sought. The operations are designed to ensure that individuals are not induced to commit offences they would otherwise not have committed. All covert operations are subject to oversight by a designated senior officer within the Police Force.

Division 4 of new Part IIIA deals with electronic surveillance. To this effect, the Division addresses the concerns expressed by CFATF in the MER regarding the absence of statutory provisions for electronic surveillance (Criterion 31.1(c)), which previously only applied to international cooperation cases. Under new Part IIIA, electronic surveillance is permissible only when authorised by the Commissioner of Police or Deputy Commissioner. Applications for electronic surveillance must include detailed information about the type of surveillance, its duration, the targets and the protective measures for privacy and human rights. Authorisation is granted based on reasonable grounds that an offence has been, is being, or is likely to be committed and that the surveillance is justified by the nature and extent of the suspected criminal activity. In certain circumstances, a warrant from a High Court Judge is required, particularly when surveillance involves listening to or recording private communications.

Division 5 of new Part IIIA deals with general provisions in relation to the special investigative techniques provided under Part IIIA. In this regard, the Division contains evidentiary provisions which seek to ensure the admissibility of evidence obtained through controlled deliveries, covert operations or electronic surveillance in legal proceedings, thereby addressing the appeal by CFATF for the adoption of enhanced investigative powers to assist in the prosecution and prevention of serious crimes. Evidence obtained under these measures is admissible in court to establish facts related to the use of force during investigations or to determine the admissibility of confessions or other evidence. Furthermore, evidence obtained from foreign jurisdictions in compliance with their legal requirements can be admitted in local proceedings if certified by a judicial officer from the respective State.

Moreover, this Division also provides legal protections for authorised participants from civil and criminal liability for engagement in activities authorised under this Part. Additionally, the Division also enables the Governor to make regulations to give effect to this new Part and provide for procedures for obtaining warrants, handling data and ensuring security and oversight.

The amendments contained in the Bill aim to enhance the Territory's compliance with international standards on law enforcement powers and ensure more robust investigative procedures, thereby strengthening the jurisdiction's capacity to combat financial crime and other serious offences.

Attorney General