

**2010 No. 2474**

**CARIBBEAN AND NORTH ATLANTIC TERRITORIES**

**The Montserrat Constitution Order 2010**

*Made* - - - - - *13th October 2010*

*Laid before Parliament* *20th October 2010*

*Coming into force in accordance with section 1(2)*

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SCHEDULE — FORMS OF OATHS AND AFFIRMATIONS

At the Court at Buckingham Palace, the 13th day of October 2010

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by sections 5 and 7 of the West Indies Act 1962(a) and of all other powers enabling Her to do so, is pleased, by and with the advice of Her Privy Council, to order, and it is ordered, as follows:

### **Citation and commencement**

1.—(1) This Order may be cited as the Montserrat Constitution Order 2010.

(2) This Order shall come into force on such day as the Governor, acting in his or her discretion, may appoint by proclamation published in the *Gazette* (“the appointed day”).

(3) On the appointed day the following provisions of this Order shall have effect as the Constitution of Montserrat; but the Governor, acting in his or her discretion, may by proclamation published in the *Gazette* appoint a later day for the coming into force of section 18(1) to (8), and in that event until that later day the definition of “period of public emergency” in section 21(1) shall have effect as if there were substituted for the words “section 18(1)” the words “the Leeward Islands (Emergency Powers) Order in Council 1959”.

## THE CONSTITUTION OF MONTSERRAT

### Preamble

Whereas the people of Montserrat are entitled to preserve for themselves and future generations the fundamental rights and freedoms to which they are entitled by virtue of their inherent dignity as persons and as citizens of a free and democratic society;

Believing in the concept of true democracy with free and fair elections;

Acknowledging that their society is founded on social justice, moral and spiritual principles, democratic values and respect for fundamental human rights and the equitable distribution of resources, the rule of law and the supremacy of God;

Recalling their desire for a Constitution which reflects these values and their aspirations for social justice, economic empowerment and political advancement;

Recognising their inherent right to pursue their hopes, visions, aspirations and their right to self-determination;

Now, therefore, the following provisions have effect as the Constitution of Montserrat.

## PART I

### FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

#### **Fundamental rights and freedoms of the individual**

2. Whereas the realisation of the right to self-determination must be promoted and respected in conformity with the provisions of the Charter of the United Nations;

Whereas every person in Montserrat is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, without distinction of any kind, such as sex, sexual orientation, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely—

(a) life, liberty, security of the person and the protection of the law;

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(a) 1962 c. 19.

- (b) freedom of conscience and of religion, of expression, and of assembly and association;
- (c) protection for his or her private and family life, the privacy of his or her home and other property and from deprivation of property save in the public interest and on payment of fair compensation,

the subsequent provisions of this Part shall have effect for the purpose of affording protection to the aforesaid rights and freedoms, and related rights and freedoms, subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said protected rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

### **Protection of right to life**

3.—(1) Every person’s right to life shall be protected by law.

(2) No person shall be deprived intentionally of his or her life.

(3) A person shall not be regarded as having been deprived of his or her life in contravention of this section if he or she dies as the result of a lawful act of war or the use, to such extent and in such circumstances as are permitted by law, of such force as is no more than absolutely necessary—

- (a) for the defence of any person from violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or
- (c) in action lawfully taken for the purpose of suppressing a riot, insurrection or mutiny.

### **Protection from inhuman treatment**

4. No person shall be subjected to torture or to inhuman or degrading treatment or punishment.

### **Protection from slavery and forced labour**

5.—(1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced or compulsory labour.

(3) For the purposes of this section, “forced or compulsory labour” does not include—

- (a) any labour required in consequence of the sentence or order of a court;
- (b) any labour required of a member of a disciplined force in pursuance of his or her duties as such or, in the case of a person who has conscientious objections to service in a naval, military or air force, any labour that that person is required by law to perform in place of such service;
- (c) labour required of a person while he or she is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place in which he or she is detained; or
- (d) any labour required for the purpose of dealing with any situation arising during a period of public emergency or at a time when any other emergency or calamity threatens the well-being of the community, to the extent that the requiring of such labour is reasonably justifiable for that purpose.

### **Protection from arbitrary arrest or detention**

6.—(1) No person shall be deprived of his or her personal liberty save in any of the following cases where reasonably required and in accordance with a procedure prescribed by law—

- (a) in execution of the sentence or order of a court, whether established for Montserrat or some other country, in respect of a criminal offence of which he or she has been convicted or in consequence of his or her unfitness to plead to a criminal charge;

- (b) in execution of the order of a court punishing him or her for contempt of that court or of another court;
- (c) in execution of the order of a court made in order to secure the fulfilment of any obligation imposed on him or her by law;
- (d) for the purpose of bringing him or her before a court in execution of the lawful order of a court;
- (e) on reasonable suspicion that he or she has committed, is committing or is about to commit a criminal offence;
- (f) in the case of a minor, under the order of a court or with the consent of his or her parent or guardian, for the purpose of his or her education or welfare;
- (g) for the purpose of preventing the spread of an infectious or contagious disease;
- (h) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his or her care or treatment or the protection of the community;
- (i) for the purpose of preventing the unlawful entry of that person into Montserrat or for the purpose of effecting the expulsion, extradition or other lawful removal from Montserrat of that person or the taking of proceedings relating thereto.

(2) Any person who is arrested or detained shall be informed promptly, in a language that he or she understands, of the reasons for his or her arrest or detention and of any charge against him or her.

(3) Any person who is arrested or detained shall have the right, at any stage and at his or her own expense, to retain and instruct without delay a legal representative of his or her own choice, and to hold private communication with him or her, and in the case of a minor he or she shall also be afforded a reasonable opportunity for communication with his or her parent or guardian; but when the person arrested or detained is unable to retain a legal representative of his or her own choice or be represented by a legal representative at the public expense, he or she may be represented, and hold private communication with, such person as a court may approve.

(4) Every person who is arrested shall be informed, in a language that he or she understands and as soon as possible after he or she is brought to a police station or other place of custody, of his or her rights under subsection (3); and that person shall also have the right, and shall be informed at the same time that he or she has the right, to remain silent and to have one person informed by the quickest practicable means of his or her arrest and whereabouts.

(5) Any person who is arrested or detained in such a case as is mentioned in subsection (1)(d) or (e) and who is not released shall be brought promptly before a judge or other officer authorised to exercise judicial power.

(6) If any person arrested or detained in such a case as is mentioned in subsection (1)(e) is not tried within a reasonable time he or she shall (without prejudice to any further proceedings that may be brought against him or her) be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he or she appears at a later date for trial or for proceedings preliminary to trial.

(7) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation in respect of it from that other person.

### **Provisions to secure protection of law**

7.—(1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence—

- (a) shall be presumed to be innocent until he or she is proved guilty according to law;
- (b) shall be informed promptly, in a language that he or she understands and in detail, of the nature and cause of the accusation against him or her;

- (c) shall be given adequate time and facilities for the preparation of his or her defence;
- (d) shall be permitted to defend himself or herself before the court in person or, at his or her own expense, by a legal representative of his or her own choice, or, when the interests of justice so require, by a legal representative at the public expense;
- (e) shall be afforded facilities to examine in person or by his or her legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his or her behalf before the court on the same conditions as those applying to witnesses for the prosecution;
- (f) shall be permitted to have without payment the assistance of an interpreter if he or she cannot understand or speak the language used at the trial of the charge; and
- (g) shall, when tried before the High Court, have the right to trial by jury except as otherwise provided for by Act of the Legislature;

and, except with his or her own consent, the trial shall not take place in his or her absence, unless he or she so behaves in the court as to render the continuance of the proceedings in his or her presence impracticable and the court has ordered him or her to be removed and the trial to proceed in his or her absence, or unless, having had reasonable notice of the hearing and of the nature of the offence charged, he or she is voluntarily absent from the proceedings.

(3) When a person is tried for any criminal offence, the accused person or any person authorised by him or her shall, if he or she so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he or she has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he or she could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if that person shows that he or she has been lawfully pardoned for that offence.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(8) Any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be determined fairly within a reasonable time.

(9) All proceedings instituted in any court for the determination of the existence or extent of any civil right or obligation or to try any criminal charge, including the announcement of the decision of the court, shall be held in public.

(10) Nothing in subsection (9) shall prevent the court from excluding from the proceedings persons other than the parties and their legal representatives to such extent as the court—

- (a) may be empowered by law so to do and may consider strictly necessary or expedient in circumstances where publicity would prejudice the interests of justice, in interlocutory proceedings, or in the interests of the welfare of minors or the private lives of persons concerned in the proceedings; or
- (b) may be empowered or required by law so to do in the interests of defence, public safety, public order or public morality.

(11) Nothing in any law or done under its authority shall be held to contravene—

- (a) subsection (2)(a) to the extent that the law in question imposes on any person charged with a criminal offence the burden of proving particular facts;
- (b) subsection (2)(e) to the extent that the law in question imposes conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds;
- (c) subsection (5) to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force; but any court so trying such a member and convicting him or her shall in sentencing him or her to any punishment take into account any punishment imposed on him or her under that disciplinary law.

(12) Every person convicted of a criminal offence by a court shall have the right to have his or her conviction or sentence reviewed by a higher court, and the exercise of this right, including the grounds on which it may be exercised, shall be governed by law.

(13) When a person has by a final decision been convicted of a criminal offence and when subsequently his or her conviction has been reversed, or he or she has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him or her.

#### **Protection of right of prisoners to humane treatment**

**8.—**(1) All persons deprived of their liberty (“prisoners”) have the right to be treated with humanity and with respect for the inherent dignity of the human person.

(2) Save where the interests of defence, public safety, public order, public morality, public health or the administration of justice otherwise require, unconvicted prisoners shall be segregated from convicted prisoners; and every unconvicted prisoner shall be entitled to be treated in a manner appropriate to his or her status as such.

(3) Juvenile prisoners shall be segregated from adult prisoners and every juvenile prisoner shall be treated in a manner appropriate to his or her age and legal status and, if he or she is an unconvicted prisoner and unless he or she is earlier released, be entitled to have any criminal proceedings against him or her pursued with the greatest possible expedition.

#### **Protection of private and family life and privacy of home and other property**

**9.—**(1) Every person has the right to respect for his or her private and family life, his or her home and his or her correspondence.

(2) Except with his or her consent, no person shall be subjected to the search of his or her person or property or the entry by others on his or her premises.

(3) Nothing in any law or done under its authority shall be held to contravene this section to the extent that it is reasonably justifiable in a democratic society—

- (a) in the interests of defence, public safety, public order, public morality, public health, town or country planning, the development of mineral resources, or the development or utilisation of any other property in such a manner as to promote the public benefit;
- (b) for the purpose of protecting the rights and freedoms of other persons;
- (c) for the prevention or detection of offences against the criminal law or the customs law;
- (d) to enable an officer or agent of the Government, a local government authority or a body corporate established by law for a public purpose to enter on the premises of any person in order to inspect those premises or anything on them for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to the Government or that authority or body corporate, as the case may be; or

- (e) to authorise, for the purpose of enforcing the judgment or order of a court, the search of any person or property by order of a court or the entry on such premises by such order.

### **Protection of right to marry**

**10.**—(1) Notwithstanding anything in section 16, every man and woman of marriageable age (as determined by or under any law) has the right to marry a person of the opposite sex and to found a family.

(2) No person shall be compelled to marry, that is to say, to do so without his or her free and full consent.

(3) Nothing in any law or done under its authority shall be held to contravene subsection (1) to the extent that it is reasonably justifiable in a democratic society—

- (a) in the interests of public order, public morality or public health;
- (b) for regulating, in the public interest, the procedures and modalities of marriage; or
- (c) for protecting the rights and freedoms of other persons.

(4) Spouses shall be entitled to equal rights and shall be subject to equal responsibilities as between themselves and as regards their children both during marriage and, if the marriage is dissolved, on and after dissolution, but this equality of rights and responsibilities shall be subject to such arrangements or measures as may be agreed, or as may be ordered by a court, in the interests of their children.

### **Protection of freedom of conscience and of religion**

**11.**—(1) Except with his or her consent, no person shall be hindered in the enjoyment of his or her freedom of conscience, and for the purposes of this section the said freedom includes freedom of thought and of religion, freedom to change one's religion or belief and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate one's religion or belief in worship, teaching, practice and observance.

(2) Except with his or her consent (or, in the case of a minor, the consent of his or her parent or guardian) no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance.

(3) No religious community or denomination shall be prevented from or hindered in providing religious instruction for persons of that community or denomination in the course of education provided by that community or denomination whether or not that community or denomination is in receipt of any government subsidy, grant or other form of financial assistance designed to meet, in whole or in part, the cost of such education.

(4) No person shall be compelled to take any oath which is contrary to his or her religion or belief or to take any oath in a manner which is contrary to his or her religion or belief.

(5) Nothing in any law or done under its authority shall be held to contravene this section to the extent that it is reasonably justifiable in a democratic society—

- (a) in the interests of defence, public safety, public order, public morality or public health; or
- (b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion or belief without the unsolicited interference of persons professing any other religion or belief.

(6) Every person who is a parent or legal guardian has the right to respect for his or her liberty to ensure the religious and moral education of his or her children in conformity with his or her own convictions.

(7) References in this section to a religion shall be construed as including references to a religious denomination, and cognate expressions shall be construed accordingly.

### **Protection of right to education**

**12.**—(1) This section is without prejudice to section 11.

(2) Every child of the appropriate age, as provided by law, shall be entitled to receive primary and secondary education which shall, subject to subsection (3), be free.

(3) Every person who is the parent or legal guardian of a child shall be entitled to have his or her child (of whatever age) educated, at his or her own expense unless a law otherwise provides, in a private school (that is to say, a school other than one established by a public authority) and, in such a school, to ensure the religious and moral education of his or her child in accordance with his or her own convictions.

(4) Nothing in any law or done under its authority shall be held to contravene subsection (3) to the extent that it is reasonably justifiable in a democratic society and to the extent that the law makes provision requiring private schools, as a condition of their being allowed to operate and on terms that are no more onerous than are applicable to schools established by a public authority, to satisfy—

- (a) such minimum educational standards (including standards relating to the qualifications of teaching staff and other staff) as may be prescribed by or under that or any other law; and
- (b) such minimum standards imposed in the interests of public order, public morality or public health as may be so prescribed.

### **Protection of freedom of expression**

**13.**—(1) Except with his or her consent, no person shall be hindered in the enjoyment of his or her freedom of expression, and for the purposes of this section the said freedom includes freedom to hold opinions and freedom to receive and impart ideas and information without interference, and freedom from interference with his or her correspondence and other means of communication.

(2) Nothing in any law or done under its authority shall be held to contravene this section to the extent that it is reasonably justifiable in a democratic society—

- (a) in the interests of defence, public safety, public order, public morality or public health;
- (b) for the purpose of protecting the rights, reputations and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, regulating telephony, telegraphy, posts, wireless broadcasting, television or other means of communication or regulating public exhibitions or public entertainments; or
- (c) for the imposition of restrictions on public officers or teachers that are reasonably required for the purpose of ensuring the proper performance of their functions.

(3) For the purposes of subsection (2)(c) in so far as it relates to public officers, “law” in subsection (2) includes directions in writing regarding the conduct of public officers generally or any class of public officer issued by the Government.

### **Protection of freedom of assembly and association**

**14.**—(1) Except with his or her consent, no person shall be hindered in the enjoyment of his or her freedom of peaceful assembly and association, that is to say, his or her right to assemble freely and associate with other persons and in particular to form or belong to political parties or to form or belong to trade unions or other associations for the promotion and protection of his or her interests.

(2) Nothing in any law or done under its authority shall be held to contravene this section to the extent that it is reasonably justifiable in a democratic society—

- (a) in the interests of defence, public safety, public order, public morality or public health;
- (b) for the purpose of protecting the rights and freedoms of other persons; or
- (c) for the imposition of restrictions on public officers that are reasonably required for the purpose of ensuring the proper performance of their functions.

(3) For the purposes of subsection (2)(c), “law” in subsection (2) includes directions in writing regarding the conduct of public officers generally or any class of public officer issued by the Government.

## Protection of freedom of movement

15.—(1) Except with his or her consent, no person shall be hindered in the enjoyment of his or her freedom of movement, that is to say, the right to move freely throughout Montserrat, the right to reside in any part of Montserrat, the right to enter or leave Montserrat and immunity from expulsion from Montserrat.

(2) Nothing in any law or done under its authority shall be held to contravene this section to the extent that the law in question makes provision—

- (a) for the removal of a person from Montserrat to be tried or punished in some other country for a criminal offence under the law of that country;
- (b) for the removal of a person from Montserrat to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence under the law of Montserrat of which he or she has been convicted;
- (c) for the imposition of restrictions on the movement or residence within Montserrat or the right to leave Montserrat of public officers that are reasonably required for the purpose of ensuring the proper performance of their functions;
- (d) for the imposition of restrictions on persons who are not Montserratians; but—
  - (i) no restriction may be imposed by virtue only of this paragraph on the right of any such person, so long as he or she is lawfully present in Montserrat, to move freely throughout Montserrat and to reside anywhere in Montserrat;
  - (ii) no restriction may be imposed by virtue only of this paragraph on the right of any such person to leave Montserrat; and
  - (iii) no such person shall be liable, by virtue only of this paragraph, to be expelled from Montserrat unless the requirements of subsection (4) are satisfied;
- (e) for the imposition of restrictions on the acquisition or use by any person of land or other property in Montserrat; or
- (f) for the imposition of restrictions, by order of a court, on the movement or residence within Montserrat of any person or on any person's right to leave Montserrat either in consequence of that person having been found guilty of a criminal offence under the law of Montserrat, or for the purpose of ensuring a fair trial or that he or she appears before a court at a later date for trial of such a criminal offence or for proceedings preliminary to trial or for proceedings relating to his or her extradition or lawful removal from Montserrat.

(3) For the purposes of subsection (2)(c), “law” in subsection (2) includes directions in writing regarding the conduct of public officers generally or any class of public officer issued by the Government.

(4) The requirements to be satisfied for the purposes of subsection (2)(d)(iii) (that is to say, before a person who is not a Montserratian may be expelled from Montserrat) are as follows—

- (a) the decision to expel him or her is taken by an authority, in a manner and on grounds prescribed by law;
- (b) he or she has the right, save where the interests of defence, public safety or public order otherwise require, to submit reasons against his or her expulsion to a competent authority prescribed by law;
- (c) he or she has the right, save as aforesaid, to have his or her case reviewed by a competent authority prescribed by law; and
- (d) he or she has the right, save as aforesaid, to be represented for the purposes of paragraphs (b) and (c) before the competent authority or some other person or authority designated by the competent authority.

(5) Nothing in any law or done under its authority shall be held to contravene this section to the extent that it is reasonably justifiable in a democratic society—

- (a) for the imposition of restrictions on the movement or residence within Montserrat or on the right to leave Montserrat of persons generally or any class of persons that are reasonably required—
    - (i) in the interests of defence, public safety, public order, public morality or public health; or
    - (ii) for the purpose of protecting the rights and freedoms of other persons; or
  - (b) for the imposition of restrictions on the right of any person to leave Montserrat that are reasonably required in order to secure the fulfilment of any obligation imposed by law.
- (6) Any restriction on a person’s freedom of movement which is involved in his or her lawful detention shall not be held to contravene this section.

**Protection from discrimination**

16.—(1) Subject to subsections (4) and (5), no law shall make any provision which is discriminatory either of itself or in its effect.

(2) Subject to subsections (4), (5) and (7), no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this section, the expression “discriminatory” means affording different treatment to different persons on any ground such as sex, sexual orientation, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

(4) Nothing in any law or done under its authority shall be held to contravene this section to the extent that it has an objective and reasonable justification and there is a reasonable proportion between the provision of law in question or, as the case may be, the thing done under it and the aim which that provision or thing done under it seeks to realise.

(5) Subsection (1) shall not apply to any law so far as that law makes provision—

- (a) for the appropriation of revenues or other funds of Montserrat or for the imposition of taxation (including the levying of fees for the grant of licences);
- (b) with respect to the entry into or exclusion from Montserrat, or the employment or engaging in any business or profession within Montserrat, of persons who are not Montserratians;
- (c) for the application, in the case of persons of any such description of grounds as is mentioned in subsection (3) (or of persons connected with such persons) of the law with respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters that is the personal law applicable to persons of that description; or
- (d) whereby persons of any such description of grounds as is mentioned in subsection (3) may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society;

and subsection (2) shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision of law.

(6) No person shall be treated in a discriminatory manner in respect of access to any place to which the general public has access.

(7) Nothing in subsection (2) shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution.

### **Protection from deprivation of property**

17.—(1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except in accordance with a law applicable to that taking of possession or acquisition and where the following conditions are satisfied, that is to say—

- (a) the taking of possession or acquisition is in the public interest; and
- (b) there is a reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property; and
- (c) provision is made by a law applicable to the taking of possession or acquisition—
  - (i) for the prompt payment of adequate compensation; and
  - (ii) securing to any person having an interest in or right over the property a right of access to the High Court, whether direct or on appeal from any other authority, for the determination of his or her interest or right, the legality of the taking of possession or acquisition and the amount of any compensation to which he or she is entitled, and for the purpose of obtaining prompt payment of that compensation.

(2) No person who is entitled to compensation under this section shall be prevented from remitting, within a reasonable time after he or she has received any amount of that compensation, the whole of that amount to any country of his or her choice outside Montserrat.

(3) Without prejudice to the generality of the expression “in the public interest” in subsection (1), nothing in any law or done under its authority shall be held to contravene this section to the extent that the law makes provision for the taking of possession or acquisition of any property, interest or right—

- (a) for the purpose of controlling its use in accordance with the general interest;
- (b) as a consequence of a breach of the law;
- (c) to secure the payment of taxes or other like impositions; or
- (d) for the administration or enforcement of the law regulating the civil rights and obligations of persons as between themselves in respect of property.

### **Provisions for periods of public emergency**

18.—(1) The Governor may, by proclamation published in the *Gazette*, declare that a period of public emergency exists.

(2) Without prejudice to the power of the Legislature to make laws under this Constitution, during a period of public emergency the Governor may make such regulations for Montserrat as appear to him or her to be necessary or expedient for securing the public safety, the defence of Montserrat or the maintenance of public order, or for maintaining supplies and services essential to the life of the community.

(3) Regulations made under subsection (2)—

- (a) shall have effect only prospectively;
- (b) shall have effect, subject to this section, notwithstanding the provisions of any other law in force in Montserrat or any rule of law having effect in Montserrat;
- (c) shall (unless previously revoked) expire at the end of the period of public emergency during which they were made unless provision for their continuance in force (with or without modification) is made by the Legislature;
- (d) shall be published as soon as possible in the *Gazette* or by such other means as the Governor may determine, acting in his or her discretion, and shall come into force upon first publication.

(4) Before exercising any function under subsection (1) or (2) or under any emergency law enacted by the Legislature, the Governor shall consult the National Advisory Council or, if that is not practicable in the circumstances, the Premier; but if in the judgement of the Governor it is

impracticable for him or her to consult the National Advisory Council or the Premier, the function shall be exercised by the Governor acting in his or her discretion.

(5) Where the Governor has consulted the National Advisory Council or the Premier under subsection (4), the Governor may, if he or she thinks it right to do so, act otherwise than in accordance with any advice given to him or her by the National Advisory Council or the Premier.

(6) Where any proclamation of emergency has been made by the Governor under subsection (1), a copy of the proclamation shall as soon as practicable be laid before the Legislative Assembly and if the Assembly is not due to meet within five days of the making of the proclamation it shall meet within that period or as soon as practicable thereafter.

(7) A proclamation of emergency shall, unless it is sooner revoked by the Governor, cease to be in force at the expiration of a period of fourteen days beginning on the date on which it was made or such longer period as may be provided under subsection (8), but without prejudice to the making of another proclamation of emergency at or before the end of that period.

(8) If at any time while a proclamation of emergency is in force (including any time while it is in force by virtue of this subsection) a resolution is passed by the Legislative Assembly approving its continuance in force for a further period not exceeding three months, beginning on the date on which it would otherwise expire, the proclamation shall, if not sooner revoked, continue in force for that further period; but the Assembly may abridge that period by a further resolution.

(9) Nothing in any law or done under its authority shall be held to contravene section 6, section 7 other than subsections (4), (5) and (6) thereof, or any provision of sections 8 to 17 (inclusive) to the extent that the law authorises during a period of public emergency the taking of measures that are reasonably justifiable for dealing with the situation that exists in Montserrat during that period.

#### **Protection of persons detained under emergency laws**

19.—(1) When a person is detained by virtue of any law in relation to a period of public emergency the following provisions shall apply—

- (a) notification shall, as soon as practicable and in any case not more than ten days after the commencement of his or her detention, be published in a public place (and thereafter as soon as possible in the *Gazette*) stating that he or she has been detained and giving particulars of the provision of law by virtue of which his or her detention is authorised;
- (b) he or she shall (if not sooner released), as soon as reasonably practicable and in any case not more than two days after the commencement of his or her detention, be informed, in a language that he or she understands, of the grounds on which he or she is detained and furnished with a written statement;
- (c) his or her case shall, as soon as practicable and in any case not more than 30 days after the commencement of his or her detention and thereafter during the detention at intervals of not more than three months, be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice;
- (d) he or she shall be afforded a reasonable opportunity to consult a legal representative of his or her own choice and to hold private communication with such legal representative; and
- (e) he or she shall, at the hearing of his or her case by the tribunal appointed for its review, be permitted to appear in person or by a legal representative of his or her own choice.

(2) For the purposes of subsection (1)(d) and (e), if the detained person is unable to retain a legal representative of his or her own choice, the tribunal may approve such person as it deems fit to make representations to it, provided that nothing in subsection (1)(d) or (e) shall be construed as entitling a detained person to legal representation at public expense.

(3) On any review by a tribunal of the case of a detained person under this section, the tribunal may make recommendations concerning the necessity or expediency of continuing his or her detention to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

## **Enforcement of fundamental rights**

**20.**—(1) If any person alleges that any of the foregoing provisions of this Part has been, is being or is likely to be contravened in relation to him or her, then, without prejudice to any other action with respect to the same matter which is lawfully available to him to her, that person may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction—

- (a) to hear and determine any application made by any person under subsection (1); and
- (b) to determine any question arising in the case of any person which is referred to it under subsection (3),

and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the foregoing provisions of this Part to the protection of which the person concerned is entitled.

(3) If, in any proceedings in any court established in Montserrat other than the High Court or the Court of Appeal, any question arises as to the contravention of any of the foregoing provisions of this Part, the court in which the question has arisen shall refer the question to the High Court unless, in its opinion, the raising of the question is merely frivolous or vexatious.

(4) An appeal shall lie as of right to the Court of Appeal from any final determination of any application or question by the High Court under this section, and an appeal shall lie as of right to Her Majesty in Council from the final determination by the Court of Appeal of the appeal in any such case; but no appeal shall lie from a determination by the High Court under this section dismissing an application on the ground that it is frivolous or vexatious.

(5) The Legislature may by law confer on the High Court such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling the Court more effectively to exercise the jurisdiction conferred on it by this section.

(6) Any such law may make, or provide for the making of, provision with respect to the practice and procedure—

- (a) of the High Court in relation to the jurisdiction and powers conferred on it by or under this section;
- (b) of the High Court or the Court of Appeal in relation to appeals under this section from determinations of the High Court or the Court of Appeal; and
- (c) of other courts in relation to references to the High Court under subsection (3),

including provision with respect to the time within which any application, reference or appeal shall or may be made or brought.

## **Interpretation of Part I**

**21.**—(1) In this Part, unless otherwise expressly provided or required by the context—

“contravene” in relation to any requirement includes fail to comply with that requirement, and cognate expressions shall be construed accordingly;

“court” means any court of law or tribunal having jurisdiction in Montserrat, including Her Majesty in Council, but excepting, save in section 5, a court established by or under disciplinary law;

“disciplinary law” means a law regulating the discipline of any disciplined force;

“disciplined force” means—

- (a) a naval, military or air force;
- (b) any police service or prison service in Montserrat;

“legal representative” means a person entitled to practise law in Montserrat;

“member” in relation to a disciplined force includes any person who, under the law regulating the discipline of that force, is subject to that discipline;

“minor” means a person who has not attained the age of eighteen years;

“period of public emergency” means any period during which—

(a) Her Majesty is at war; or

(b) there is in force in Montserrat a proclamation of emergency under section 18(1) or under any law made by the Legislature to like effect.

(2) In relation to any person who is a member of a disciplined force raised under the law of Montserrat, nothing in or done under the authority of the disciplinary law of that force shall be held to contravene the provisions of this Part other than sections 3, 4 and 5.

(3) In relation to any person who is a member of a disciplined force raised otherwise than as aforesaid and lawfully present in Montserrat, nothing in or done under the authority of the disciplinary law of that force shall be held to contravene any provisions of this Part.

## PART II

### THE GOVERNOR

#### **The Governor**

22.—(1) There shall be a Governor of Montserrat who shall be appointed by Her Majesty by Commission under Her Sign Manual and Signet and shall hold office during Her Majesty’s pleasure.

(2) The Governor shall, for the purpose of administering the government of Montserrat, have such functions as may be conferred on him or her by or under this Constitution or any other law and such other functions as Her Majesty may from time to time be pleased to assign to him or her.

(3) Subject to this Constitution and any law by which any functions are conferred on the Governor, the Governor shall perform all his or her functions (including functions which are expressed by this Constitution to be exercisable in his or her discretion or in his or her judgement) according to such instructions, if any, as may be given to him or her by Her Majesty; but the question whether or not the Governor has in any matter complied with any such instructions shall not be enquired into by any court.

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

#### **Deputy Governor**

23.—(1) There shall be a Deputy Governor for Montserrat who shall be a Montserratian.

(2) The Deputy Governor shall be appointed by the Governor in accordance with section 85, but any appointment shall require the prior approval of a Secretary of State.

(3) If the office of Deputy Governor is vacant or the person holding that office is acting in the office of Governor under section 25 or is for any reason unable to perform the functions of the office of Deputy Governor, then the Governor, acting in his or her discretion, may appoint a person who is a Montserratian to act as Deputy Governor and any such person shall continue to act until his or her appointment is revoked by the Governor, acting in his or her discretion.

#### **Functions of Deputy Governor**

24.—(1) The Deputy Governor shall assist the Governor in the exercise of his or her functions, and shall have such functions, not of a ministerial nature, as (subject to this Constitution and any other law) may be assigned to him or her by the Governor, acting in his or her discretion.

(2) Under the authority of the Governor, the Deputy Governor shall be responsible for—

- (a) in accordance with section 84, the appointment of persons to public offices, the suspension, termination of appointment, dismissal or retirement of public officers, and the taking of disciplinary action in respect of public officers;
- (b) the application to any public officer of the terms or conditions of employment of the public service (including salary scales, allowances, leave, passages or pensions) for which financial provision has been made; and
- (c) the leadership and management of the public service, and the organisation of the public service in so far as it does not involve new financial provision.

(3) The Governor, acting in his or her discretion, may give directions to the Deputy Governor as to the exercise of the responsibilities referred to in subsection (2)(b) and (c), and the Deputy Governor shall comply with any such directions.

### **Acting Governor**

**25.**—(1) During any period when the office of Governor is vacant or the Governor is absent from Montserrat or is for any other reason unable to perform the functions of that office, those functions shall, during Her Majesty’s pleasure, be assumed and performed by—

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

(2) On each occasion before assuming the functions of the office of Governor, the Deputy Governor or the person designated shall make the oaths or affirmations directed by section 22(4) to be made by the Governor.

(3) The Deputy Governor shall cease to perform the functions of the office of Governor after the Governor has notified him or her that he or she is about to assume or resume those functions, and the person designated shall cease to perform those functions after the Governor or the Deputy Governor has so notified him or her.

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

### **Exercise of Governor’s functions**

**26.**—(1) In the exercise of his or her functions the Governor shall, subject to the following provisions of this section and to section 39(7), obtain and act in accordance with the advice of the Cabinet, except—

- (a) when acting under instructions given to him or her by Her Majesty through a Secretary of State;
- (b) when exercising any function conferred on the Governor by this Constitution which is expressed to be exercisable by the Governor in his or her discretion or in his or her judgement or in accordance with the advice of, or after consultation with, any person or authority other than the Cabinet;
- (c) when exercising any function conferred on the Governor by any other law in terms which authorise him or her to exercise that function without obtaining the advice of the Cabinet; or
- (d) in any case which, in the Governor’s judgement, involves a matter for which the Deputy Governor is responsible under section 24(2) or the Governor is responsible under section 39(1)(e).

(2) The Governor shall not be obliged to act in accordance with the advice of the Cabinet in any case which, in his or her judgement, involves a matter for which he or she is responsible under section 39.

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

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

### **Power to dispose of land**

27. Subject to any law in force in Montserrat, the Governor or any person duly authorised by the Governor by writing under his or her hand, in Her Majesty's name and on Her Majesty's behalf, may, under the public seal, make grants and dispositions of land or other immovable property in Montserrat or interests in such property that are vested in Her Majesty for the purposes of the Government.

### **Power to constitute offices**

28. Subject to this Constitution and any other law in force in Montserrat, the Governor, in Her Majesty's name and on Her Majesty's behalf, may constitute offices for Montserrat.

### **Power of pardon**

29.—(1) There is hereby established a Mercy Committee comprising the Governor, the Attorney General and four other members appointed by the Governor, acting after consultation with the Cabinet; and any appointment may be revoked by the Governor, acting after consultation with the Cabinet.

(2) The Governor may, in Her Majesty's name and on Her Majesty's behalf, subject to subsection (3)—

- (a) grant to any person concerned in or convicted of any offence against any law in force in Montserrat a pardon, either free or subject to lawful conditions;
- (b) grant to any person a respite, either indefinite or for a specified period, from the execution of any sentence passed on that person for such an offence;
- (c) substitute a less severe form of punishment for that imposed by any sentence for such an offence; or
- (d) remit the whole or any part of any sentence passed for such an offence or any penalty or forfeiture otherwise due to Her Majesty on account of such an offence.

(3) The Governor shall exercise the powers conferred on him or her by subsection (2) after consultation with the Mercy Committee unless in any particular case the matter is in his or her judgement too urgent to permit such consultation, in which case the Governor may act in his or her judgement.

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

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

(6) The Mercy Committee shall not be disqualified for the transaction of business by reason of any vacancy in its membership, and the validity of the transaction of any business by the Committee shall not be affected by reason only of the fact that some person who was not entitled to do so took part in the proceedings.

(7) Subject to this section the Mercy Committee may regulate its own procedure.

### **Public seal**

30. The Governor shall keep and use the public seal for sealing all things that should be sealed.

## PART III

### THE EXECUTIVE

#### **Executive authority**

31.—(1) The executive authority of Montserrat is vested in Her Majesty.

(2) Subject to this Constitution, the executive authority of Montserrat may be exercised on behalf of Her Majesty by the Governor, either directly or through officers subordinate to him or her.

(3) Nothing in this section shall operate so as to prejudice any law in force in Montserrat whereby functions are, or may be, conferred on persons or authorities other than the Governor.

#### **Cabinet**

32.—(1) There shall be a Cabinet in and for Montserrat which shall consist of a Premier, three other Ministers and two *ex officio* members, namely the Attorney-General and the Financial Secretary.

(2) The number of Ministers referred to in subsection (1) may be increased by a law made in pursuance of section 48(2) which increases the number of elected members of the Legislative Assembly; but in no circumstances may the number of such Ministers be increased so that the total number of Ministers exceeds a number arrived at by subtracting one from the total number of elected members of the Legislative Assembly and then dividing by two.

(3) Subject to this Constitution, the Cabinet shall have the general direction and control of the government of Montserrat and shall be collectively responsible for it to the Legislative Assembly.

(4) The Deputy Governor shall have the right to attend and take part in any meeting of the Cabinet, but shall not have the right to vote in the Cabinet.

#### **Appointment of Ministers**

33.—(1) The Governor shall appoint as the Premier the elected member of the Legislative Assembly who demonstrates to the satisfaction of the Governor that he or she commands the confidence of a majority of the elected members of the Assembly.

(2) The other Ministers shall be appointed by the Governor in accordance with the advice of the Premier from among the elected members of the Legislative Assembly, and one of them shall be appointed as Deputy Premier.

(3) If occasion arises for making an appointment under subsection (2) while the Legislative Assembly is dissolved, a person who was an elected member of the Assembly immediately before the dissolution may be appointed as if he or she were still a member of the Assembly.

(4) Appointments under this section shall be made by instrument under the public seal.

#### **Tenure of office of Ministers**

34.—(1) If a motion that the Legislative Assembly should declare a lack of confidence in the Government receives in the Assembly the affirmative votes of a majority of all the elected members of the Assembly, the Governor shall, by instrument under the public seal, revoke the appointment of the Premier and appoint another person as Premier in accordance with section 33(1); but before so revoking the Premier's appointment the Governor shall consult the Premier and may, acting in his or her discretion, dissolve the Legislative Assembly instead of revoking the appointment.

(2) A Minister shall vacate his or her office if—

- (a) he or she resigns it by writing under his or her hand addressed to and received by the Governor;

- (b) he or she ceases to be a member of the Legislative Assembly for any reason other than a dissolution of the Assembly;
  - (c) he or she is required by virtue of section 53(4) to cease to perform his or her functions as a member of the Legislative Assembly; or
  - (d) he or she is not an elected member of the Legislative Assembly on the date of its first sitting after a general election.
- (3) A Minister (other than the Premier) shall also vacate his or her office—
- (a) whenever a Premier is appointed; or
  - (b) if his or her appointment is revoked by the Governor, acting in accordance with the advice of the Premier, by instrument under the public seal.
- (4) Upon a dissolution of the Legislative Assembly the Premier and other Ministers in office at the time of such dissolution shall remain in office and discharge their functions until a general election is held and a Premier is appointed in accordance with section 33(1) following such election; but such functions may not be exercised, save in the event of a public emergency, to commit or bind the next successor Government to public funding or liability except in the ordinary course of the day to day affairs of Montserrat.

#### **Absence of Ministers from Montserrat**

35. The Premier shall give notice to the Governor before being absent from Montserrat, and any other Minister shall obtain the permission of the Premier before being absent from Montserrat.

#### **Acting Premier**

36.—(1) During any period when the office of Premier is vacant or the Premier is absent from Montserrat or otherwise unable to perform the functions of his or her office, the Governor shall authorise the Deputy Premier to perform those functions; and if the office of Deputy Premier is vacant or the Deputy Premier is absent from Montserrat or otherwise unable to perform those functions, the Governor shall authorise another Minister to perform those functions, acting in accordance with the advice of the Premier or, if the office of Premier is vacant or it is impracticable to obtain the advice of the Premier, acting in his or her discretion.

(2) Any authorisation under subsection (1) shall be given by the Governor by instrument under the public seal and shall be revoked in like manner as soon as the circumstances giving rise to the authorisation have ceased to exist.

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

#### **Temporary Ministers**

37.—(1) Whenever a Minister (other than the Premier) is absent from Montserrat or otherwise unable to perform the functions of his or her office, the Governor may, by instrument under the public seal, appoint a person who is an elected member of the Legislative Assembly (or, if the Assembly is dissolved, was such a member immediately before the dissolution) to be a temporary Minister.

(2) Subject to section 34, a person appointed under this section shall hold office until he or she is notified by the Governor that the circumstances giving rise to the appointment have ceased to exist.

(3) The powers conferred on the Governor by this section shall be exercised by him or her in accordance with the advice of the Premier.

#### **Assignment of responsibilities to Ministers**

38.—(1) Subject to this Constitution, the Governor, acting in accordance with the advice of the Premier, shall, by directions in writing, charge any Minister with responsibility for the conduct

(subject to this Constitution and any other law) of any business of the Government, including responsibility for the administration of any department of government.

(2) A Minister shall not be charged with responsibility under this section for any of the matters mentioned in section 39, matters relating to the judiciary, or the audit of accounts which are the responsibility of the Auditor-General under section 103.

(3) Authority to exercise any function that is conferred or imposed by this Constitution or any other law on any person or authority other than a Minister shall not be conferred by the Governor on a Minister.

(4) A Minister charged with responsibility for any matter under this section shall exercise his or her responsibility in accordance with the policies of the Government as determined by the Cabinet and in accordance with the collective responsibility of the members of the Cabinet for the policies and decisions of the Government.

(5) Where a Minister has been charged under this section with responsibility for the administration of any department of government, the Minister shall (subject to this Constitution and any other law) exercise general direction and control over that department, and, subject to such direction and control, the department shall be under the supervision of a permanent secretary who shall be a public officer; but two or more departments of government may be placed under the supervision of one permanent secretary.

(6) The Governor, acting in his or her discretion, may at any time and upon notifying the relevant Minister call for any official papers or seek any official information or advice available to a Minister with respect to a matter or department with responsibility for which that Minister is charged under this section.

#### **Governor's special responsibilities**

**39.—**(1) The Governor, acting in his or her discretion, shall be responsible for the conduct, subject to this Constitution, of any business of the Government with respect to the following matters—

- (a) defence;
- (b) external affairs;
- (c) the regulation of international financial services;
- (d) internal security, including the police service;
- (e) the functions conferred on the Governor by this Constitution or any other law in relation to the public service;

and the Governor shall keep the Premier fully informed concerning the general conduct of these matters, and the Premier may request information in respect of any particular matter.

(2) The Governor, acting after consultation with the Premier, may assign to a member of the Cabinet responsibility for the conduct on behalf of the Governor of any business in the Legislative Assembly with respect to any of the matters mentioned in subsection (1); but in the absence of such assignment the Deputy Governor shall conduct any such business on behalf of the Governor in the Assembly.

(3) The Governor, acting in his or her discretion, may by directions in writing delegate, with the prior approval of a Secretary of State, to the Premier or any other Minister designated by the Premier, such responsibility for any matter mentioned in subsection (1)(a), (b), (c) and (d) as the Governor may think fit on such conditions as he or she may impose.

(4) Notwithstanding subsection (3), and without prejudice to any authority previously granted by or on behalf of a Secretary of State, the Governor shall by directions in writing delegate to a Minister responsibility for the conduct within Caribbean regional organisations of external affairs affecting Montserrat, and other Caribbean regional affairs of interest to or affecting Montserrat, on the terms and conditions set out in those directions.

(5) In the event of any disagreement regarding the exercise of any delegated responsibility under subsection (4) or regarding the terms and conditions referred to in that subsection, the matter shall

be referred to a Secretary of State whose decision on the matter shall be final and whose directions shall be complied with.

(6) Where the Governor, acting in his or her discretion, determines that the exercise of any function conferred on any other person or authority (other than the Legislative Assembly) would involve or affect any matter mentioned in subsection (1), the Governor may, acting in his or her discretion, give directions as to the exercise of that function, and the person or authority concerned shall exercise the function in accordance with those directions.

(7) Before exercising any function with respect to any matter mentioned in subsection (1)(a), (b), (c) and (d), the Governor shall consult the Cabinet but may act against any advice given to him or her by the Cabinet; but the Governor shall not be obliged to consult the Cabinet in any case in which, in his or her judgement—

- (a) it is in the public interest that he or she should act without consulting the Cabinet;
- (b) the matters to be decided are too trivial to require the advice of the Cabinet; or
- (c) the matters to be decided are too urgent to admit the Governor obtaining the advice of the Cabinet by the time within which it may be necessary for him or her to act.

(8) The question of whether a matter falls within the scope of subsection (1) shall be determined by the Governor acting in his or her discretion.

### **Oaths or affirmations**

40. Every member of the Cabinet appointed under section 33 or 37 shall, before assuming the functions of his or her office, make before the Governor oaths or affirmations of allegiance and for the due execution of that office in the forms set out in the Schedule.

### **Summoning of Cabinet**

41. The Cabinet shall not be summoned except by the authority of the Governor, acting in his or her discretion; but the Governor shall summon the Cabinet if the Premier so requests.

### **Proceedings in Cabinet**

42.—(1) The Governor shall, so far as is practicable, attend and preside at meetings of the Cabinet.

(2) In the absence of the Governor there shall preside at any meeting of the Cabinet either the Premier or, in the absence of the Premier, such other Minister as the Governor, acting after consultation with the Premier, may appoint.

(3) No business shall be transacted at any meeting of the Cabinet unless there are at least three members present, of whom two are Ministers.

(4) Subject to subsection (3), the Cabinet shall not be disqualified for the transaction of business by reason of any vacancy in its membership, and the validity of the transaction of business in the Cabinet shall not be affected by reason only of the fact that some person who was not entitled to do so took part in its proceedings.

### **Summoning of persons to Cabinet**

43. The Governor, acting after consultation with the Premier, may summon any person to a meeting of the Cabinet whenever, in his or her opinion, the business before the Cabinet renders the presence of that person desirable.

### **Parliamentary Secretaries**

44.—(1) The Governor, acting in accordance with the advice of the Premier, may appoint by instrument under the public seal up to two Parliamentary Secretaries from among the elected members of the Legislative Assembly, to provide assistance to the Ministers.

- (2) A Parliamentary Secretary shall vacate his or her office—
- (a) if he or she resigns it by writing under his or her hand addressed to and received by the Governor;
  - (b) if he or she ceases to be a member of the Legislative Assembly for any reason other than a dissolution of the Assembly;
  - (c) if he or she is required by virtue of section 53(4) to cease perform his or her functions as a member of the Legislative Assembly;
  - (d) if he or she is not an elected member of the Legislative Assembly on the date of its first sitting after a general election;
  - (e) whenever a Premier is appointed; or
  - (f) if his or her appointment is revoked by the Governor, acting in accordance with the advice of the Premier, by instrument under the public seal.

### **National Advisory Council**

**45.**—(1) There shall be a National Advisory Council for Montserrat (“the Council”), which shall consist of—

- (a) the Governor, as Chairman;
- (b) the Premier;
- (c) one other Minister appointed in writing by the Governor, acting in accordance with the advice of the Premier;
- (d) the Attorney-General;
- (e) the Financial Secretary; and
- (f) subject to section 61(6), the Leader of the Opposition.

(2) The quorum for any meeting of the Council shall consist of at least three members and shall include the Chairman and at least one Minister.

(3) A Minister appointed under subsection (1)(c) shall vacate his or her seat on the Council if—

- (a) his or her office becomes vacant under section 34; or
- (b) the Governor so directs in writing, acting in accordance with the advice of the Premier.

(4) The purpose of the Council is to make recommendations to, or advise, the Governor on—

- (a) the matters mentioned in section 39(1)(a), (b) and (d); and
- (b) the exercise of the Governor’s functions and powers during a period of public emergency as defined in section 21(1);

but the Governor shall not be obliged to act in accordance with the recommendations or advice of the Council.

(5) The Governor, acting in his or her discretion, may summon a meeting of the Council whenever he or she considers it desirable to do so, and shall summon such a meeting whenever the Premier or the Cabinet so requests.

(6) The Council may consult with persons or authorities other than members of the Council, and may invite any Minister or summon any other person to any of its meetings, whenever the business before the Council renders such consultation or the presence of that Minister or other person desirable.

(7) Subject to this section, the Council may regulate its own procedure.

### **Director of Public Prosecutions**

**46.**—(1) There shall be a Director of Public Prosecutions for Montserrat, whose office shall be a public office.

(2) The Director of Public Prosecutions shall have power, in any case in which he or she considers it desirable to do so—

- (a) to institute and undertake criminal proceedings against any person before any court in respect of any offence against any law in force in Montserrat;
- (b) to take over and continue any such criminal proceedings that have been instituted by any other person or authority; and
- (c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or herself or by any other person or authority.

(3) The powers of the Director of Public Prosecutions under subsection (2) may be exercised by him or her in person or by officers subordinate to him or her acting under and in accordance with his or her general or special instructions.

(4) The powers conferred on the Director of Public Prosecutions by subsection (2)(b) and (c) shall be vested in him or her to the exclusion of any other person or authority; but where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority at any stage before the person against whom the proceedings have been instituted has been charged before the court.

(5) For the purposes of this section, any appeal from any determination in any criminal proceedings before any court, or any case stated or question of law reserved for the purpose of any such proceedings, to any other court or to Her Majesty in Council shall be deemed to be part of those proceedings.

(6) In the exercise of the powers conferred on him or her by this section and section 73(2) the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority.

(7) During any period when the office of Director of Public Prosecutions is vacant, the Attorney-General shall perform the functions of that office.

## PART IV

### THE LEGISLATURE

#### **Constitution of Legislature**

47. There shall be a Legislature in and for Montserrat, which shall consist of Her Majesty and a Legislative Assembly.

#### **The Legislative Assembly**

48.—(1) The Legislative Assembly shall consist of nine elected members and two *ex officio* members, namely the Attorney-General and the Financial Secretary.

(2) The Legislature may by law increase the number of elected members of the Legislative Assembly; but no such law shall come into force—

- (a) if the additional member or members are not to be elected from an existing electoral district or districts, unless a Bill providing for the electoral districts and their boundaries to take account of the additional member or members in accordance with section 79 has been passed; and
- (b) until the dissolution of the Legislative Assembly next following the enactment of such law.

#### **Elected members**

49. The elected members of the Legislative Assembly shall be persons qualified for election in accordance with section 51, and shall be elected in the manner provided by law.

### **Attendance by Deputy Governor and other public officers at meetings of Legislative Assembly**

**50.**—(1) The Deputy Governor may attend and take part in the proceedings of the Legislative Assembly but shall not thereby become a member of the Assembly and shall not have the right to vote in the Assembly.

(2) The Speaker, acting in his or her discretion, may summon to the Legislative Assembly any other public officer when in the opinion of the Speaker the business before the Assembly renders the presence of such officer desirable.

(3) Any public officer so summoned shall be entitled to take part in the proceedings of the Legislative Assembly relating to the matter in respect of which he or she was summoned, but he or she shall not thereby become a member of the Assembly and shall not have the right to vote in the Assembly.

### **Qualifications for elected membership**

**51.**—(1) Subject to section 52, only a person described in subsection (2) is qualified to be elected as an elected member of the Legislative Assembly providing the requirements of subsection (3) are satisfied.

(2) The person referred to in subsection (1) is a person—

- (a) who is a Montserratian by virtue of section 107(2)(a) or 107(2)(b)(ii); and
- (b) who was born of a father or mother who at the time of the birth was a Montserratian by virtue of section 107(2)(a) or 107(2)(b)(ii).

(3) The requirements referred to in subsection (1) are that the person must—

- (a) have attained the age of 21 years;
- (b) be a registered voter; and
- (c) have been in Montserrat for at least twelve months during the five years immediately preceding the date of his or her nomination for election.

### **Disqualifications for elected membership**

**52.**—(1) No person shall be qualified to be elected as a member of the Legislative Assembly who—

- (a) is, by virtue of his or her own act, under any acknowledgement of allegiance, obedience or adherence to a foreign power or state and has not formally renounced it before the expiration of ten days after his or her nomination for election;
- (b) holds or is acting in any public office, in the office of a judge of the High Court or of the Court of Appeal, or in the office of Magistrate;
- (c) has been adjudged or otherwise declared bankrupt under any law in force in any country and has not been discharged;
- (d) is a party to, or a partner in a firm or a director or manager of a company which is a party to, any contract with the Government and has not before the expiration of ten days after his or her nomination for election delivered a notice to the Electoral Commission setting out the nature of such contract and his or her interest, or the interest of such firm or company, in it;
- (e) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in Montserrat;
- (f) subject to subsection (2), is serving a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him or her by a court of law in any country or substituted by competent authority for some other sentence imposed on him or her by such a court, or is under such a sentence of imprisonment the execution of which has been suspended;

- (g) is disqualified for membership of the Assembly by virtue of any law in force in Montserrat relating to offences connected with elections; or
  - (h) is disqualified for election by any law in force in Montserrat by reason of his or her holding, or acting in, any office the functions of which involve—
    - (i) any responsibility for, or in connection with, the conduct of any election; or
    - (ii) any responsibility for the compilation or revision of any electoral register for the purpose of any election.
- (2) For the purposes of subsection (1)(f)—
- (a) two or more sentences of imprisonment that are required to be served consecutively shall be regarded as separate sentences if none of those sentences exceeds twelve months, but if any one of such sentences exceeds that term they shall be regarded as one sentence; and
  - (b) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.
- (3) The Electoral Commission shall forthwith publish any notice delivered to it under subsection (1)(d) in such manner as it considers effective for the purpose of informing the electorate before the date of election.

### **Tenure of office of elected members**

**53.**—(1) Every elected member of the Legislative Assembly shall vacate his or her seat in the Assembly at the next dissolution of the Assembly after his or her election.

(2) Notwithstanding that a member of the Legislative Assembly has vacated his or her seat by virtue of subsection (1), every such member shall be entitled to continue receiving the benefits and privileges of a member until the polling day for election to a new Legislative Assembly, but such benefits and privileges shall cease if the member fails to win a seat at the general election.

(3) An elected member of the Legislative Assembly shall also vacate his or her seat in the Assembly—

- (a) if he or she resigns it by writing under his or her hand addressed to and received by the Governor;
- (b) if he or she is absent from the sittings of the Assembly for such period and in such circumstances as may be prescribed in Standing Orders;
- (c) if he or she ceases to be qualified in accordance with section 51;
- (d) if any circumstances arise that, if he or she were not a member of the Assembly, would cause him or her to be disqualified for election as such by virtue of section 52(1)(a), (b), (c), (e), (g) or (h); or
- (e) if he or she becomes a party to any contract with the Government, or if any firm in which he or she is a partner, or any company of which he or she is a director or manager, becomes a party to any such contract, or if he or she becomes a partner in a firm, or a director or manager of a company, which is a party to any such contract, and he or she has not disclosed to the Assembly within ten days the nature of such contract and his or her interest, or the interest of such firm or company, in it.

(4) Subject to subsection (6), if any elected member of the Legislative Assembly is sentenced by a court of law in any country to imprisonment (by whatever name called) for a term exceeding twelve months, he or she shall forthwith cease to perform his or her functions as a member of the Assembly and his or her seat in the Assembly shall become vacant at the expiration of a period of 30 days thereafter.

(5) The Governor, acting in his or her discretion, may, at the request of the member, from time to time extend the period of 30 days referred to in subsection (4) for further periods of 30 days to enable the member to pursue any appeal in respect of his or her conviction or sentence; but extensions of time exceeding in the aggregate 330 days shall not be given without the approval, signified by resolution, of the Legislative Assembly.

(6) If at any time before the member vacates his or her seat under subsection (4) he or she is granted a free pardon or his or her conviction is set aside or his or her sentence is reduced to a term of imprisonment of twelve months or less or a punishment other than imprisonment is substituted, the seat of that member shall not become vacant under subsection (4) and he or she may resume the performance of his or her functions as a member.

(7) For the purposes of subsections (4) and (6)—

- (i) where a person is sentenced to two or more terms of imprisonment that are required to be served consecutively each of those terms shall be regarded as a separate term of imprisonment; and
- (ii) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

### **Validity of proceedings**

54. Subject to section 65, the Legislative Assembly shall not be disqualified for the transaction of business by reason of any vacancy in its membership, and the validity of the transaction of business in the Assembly shall not be affected by reason only of the fact that some person who was not entitled to do so sat or voted in the Assembly or otherwise took part in its proceedings.

### **Determination of questions as to membership**

55. Any question whether—

- (a) any person has been validly elected as a member of the Legislative Assembly; or
- (b) any elected member of the Assembly has vacated his or her seat in the Assembly or is required by virtue of section 53(4) to cease to perform his or her functions as a member,

shall be referred to and determined by the High Court in accordance with any law in force in Montserrat and, subject to any such law, in accordance with any directions given by the Chief Justice.

### **Filling of vacancies**

56. Whenever the seat of an elected member of the Legislative Assembly becomes vacant the vacancy shall be filled by election in the manner provided by law.

### **Temporary members**

57.—(1) Whenever one of the *ex officio* members of the Legislative Assembly is absent from Montserrat or is performing the functions of the office of Governor, a person may be appointed by the Governor, by instrument under the public seal, to be a temporary member of the Assembly.

(2) Where an appointment is made under this section—

- (a) the person appointed shall be a person holding a public office;
- (b) subject to subsection (4), he or she shall hold his or her appointment during Her Majesty's pleasure; and
- (c) so long as his or her appointment shall subsist this Constitution shall, subject to subsection (4), apply to him or her as if he or she were an *ex officio* member of the Legislative Assembly.

(3) The Governor shall forthwith report to Her Majesty through a Secretary of State every appointment made under this section.

(4) An appointment made under this section may be revoked by the Governor by instrument under the public seal and shall in any case cease to have effect if the person appointed is notified by the Governor that the circumstances giving rise to the appointment have ceased to exist.

(5) In the exercise of the powers conferred on him or her by this section the Governor shall act in his or her discretion.

## **Sessions and meetings of Legislative Assembly**

**58.**—(1) The sessions of the Legislative Assembly shall be held at such times and places as the Speaker may appoint by proclamation published in the *Gazette*; but there shall be at least one session in every year, and a session shall be held within one month after every general election at such time and place as the Governor may appoint by proclamation so published.

(2) When the Legislative Assembly is in session, the Speaker may call meetings of the Assembly from time to time and, if no meeting has been called sooner, shall call a meeting within two months of the previous meeting except during the month designated by the Assembly by resolution as the recess.

## **Speaker and Deputy Speaker**

**59.**—(1) When the Legislative Assembly first meets after any general election and before it proceeds to the despatch of any other business, it shall elect a person to be the Speaker of the Assembly.

(2) If the office of Speaker falls vacant for any reason other than a dissolution of the Legislative Assembly, the Assembly shall, as soon as practicable, elect another person to that office.

(3) The Speaker shall be elected from among the elected members of the Legislative Assembly who are not members of the Cabinet, or from among persons who are not members of the Assembly; but no person shall be elected as Speaker if—

- (a) he or she is not qualified in accordance with section 51; or
- (b) he or she is a person disqualified for election as an elected member of the Assembly by virtue of any provision of section 52(1) other than paragraph (d).

(4) When the Legislative Assembly first meets after any general election and before it proceeds to the despatch of any other business except the election of the Speaker, it shall elect a member of the Assembly who is not a member of the Cabinet to be Deputy Speaker of the Assembly.

(5) If the office of Deputy Speaker falls vacant for any reason other than a dissolution of the Legislative Assembly, the Assembly shall, as soon as practicable, elect another such member to that office.

(6) A person shall vacate the office of Speaker or Deputy Speaker—

- (a) on a dissolution of the Legislative Assembly; but a person so vacating the office of Speaker shall be entitled to continue receiving the benefits and privileges of that office until another person is elected to that office;
- (b) if he or she announces his or her resignation from his or her office to the Assembly or if by writing under his or her hand addressed to the Assembly and received by the Clerk of the Assembly he or she resigns that office; or
- (c) if he or she becomes a member of the Cabinet.

(7) A person shall also vacate the office of Speaker—

- (a) if he or she ceases to be qualified in accordance with section 51;
- (b) if any circumstances arise that would cause him or her to be disqualified for election as an elected member of the Legislative Assembly by virtue of any provision of section 52(1) other than paragraph (d);
- (c) on the expiration of a period of 30 days from the date of his or her election if he or she was at that date a party to, or a partner in a firm or a director or manager of a company which is a party to, any contract with the Government and if, before the expiration of that period, he or she has not disclosed to the Assembly the nature of such contract and his or her interest, or the interest of such firm or company, in it, and the Assembly has not exempted him or her from vacating his or her office under this paragraph;
- (d) if any circumstances arise that, if he or she is or were an elected member, would cause him or her to vacate his or her seat under section 53(3)(e); or

(e) if a motion of no confidence in the Speaker receives in the Legislative Assembly the votes of at least two-thirds of all the elected members of the Assembly.

(8) A person shall also vacate the office of Deputy Speaker if he or she ceases to be a member of the Legislative Assembly for any reason other than a dissolution of the Assembly.

### **Presiding in Legislative Assembly**

**60.**—(1) The Speaker or, in his or her absence, the Deputy Speaker or, if they are both absent, a member of the Legislative Assembly (not being a member of the Cabinet) elected by the Assembly for that sitting shall preside at each sitting of the Assembly.

(2) References in this section to circumstances in which the Speaker or Deputy Speaker is absent include references to circumstances in which the office of Speaker or Deputy Speaker is vacant.

### **Leader of the Opposition**

**61.**—(1) There shall be a Leader of the Opposition who shall be appointed by the Governor by instrument under the public seal.

(2) The Governor shall appoint as Leader of the Opposition the member of the Legislative Assembly who in the judgement of the Governor is best able to command the support of the members of the Assembly in opposition to the Government.

(3) If at any time between the polling in a general election and the next following dissolution of the Legislative Assembly the Governor is satisfied that, if the office of the Leader of the Opposition were then vacant, he or she would in accordance with subsection (2) appoint to that office a person other than the person then holding it, the Governor shall revoke the appointment of the Leader of the Opposition.

(4) The office of the Leader of the Opposition shall also become vacant—

- (a) if for any reason other than a dissolution of the Legislative Assembly the holder of that office ceases to be a member of the Assembly; or
- (b) if the holder of that office is appointed as a Minister.

(5) In the exercise of the functions conferred on him or her by this section the Governor shall act in his or her discretion.

(6) If at any time the Governor is unable to appoint a person as Leader of the Opposition in accordance with this section, then, during any period while there is no Leader of the Opposition—

- (a) the Governor may exercise in his or her discretion any function which this Constitution requires the Governor to exercise in accordance with the advice of, or after consultation with, the Leader of the Opposition; and
- (b) the National Advisory Council shall be deemed to be validly constituted notwithstanding the absence of a Leader of the Opposition.

### **Governor's right to address Legislative Assembly**

**62.** The Governor shall have the right to address the Legislative Assembly.

### **Standing Committees**

**63.**—(1) The Legislative Assembly shall establish at least two Standing Committees of the Assembly, each of which shall be charged with responsibility for monitoring the conduct of business of the Government for which responsibility has been assigned to a Minister under section 38; and one such Committee shall be charged with responsibility for monitoring the public accounts and shall be called the Public Accounts Committee.

(2) Each Standing Committee shall consist of members of the Legislative Assembly who are not members of the Cabinet, and at least one Committee shall be presided over by a member of the Assembly in opposition to the Government (if there is any such member).

- (3) Each Standing Committee shall have power—
- (a) to summon any Minister, or any public officer of a department of government for which a Minister is responsible, to appear before it;
  - (b) subject to any law in force in Montserrat or to Standing Orders, to require any person so summoned to answer questions and provide information about the conduct of business of the Government by the Minister or department concerned.
- (4) Each Standing Committee shall report on its activities to the Legislative Assembly as often as may be deemed necessary but at least annually.
- (5) The Legislative Assembly shall publish reports submitted to it under subsection (4).
- (6) Subject to this section, Standing Orders shall provide for the composition and functions of, and proceedings and conduct of business before, Standing Committees.

### **Oaths or affirmations of members**

64. No member of the Legislative Assembly shall be permitted to take part in the proceedings of the Assembly (other than proceedings necessary for the purpose of this section) until he or she has made and subscribed before the Assembly oaths or affirmations of allegiance and for the due execution of his or her office in the forms set out in the Schedule; but the election of the Speaker and Deputy Speaker may take place before the members of the Assembly have made such oaths or affirmations.

### **Quorum**

65.—(1) If at any sitting of the Legislative Assembly any member who is present draws the attention of the person presiding at the sitting to the absence of a quorum and, after such interval as may be prescribed in Standing Orders, the person presiding at the sitting ascertains that a quorum of the Assembly is still not present the Assembly shall be adjourned.

(2) A quorum of the Legislative Assembly shall consist of six members besides the person presiding at the sitting.

### **Voting**

66.—(1) Subject to subsection (2) and to sections 34(1), 59(7)(e) and 114(2), all questions proposed for decision in the Legislative Assembly shall be determined by a majority of the votes of the members present and voting.

(2) The person presiding shall not vote unless on any question the votes are equally divided, in which case he or she shall have and may exercise a casting vote; but where the motion before the Legislative Assembly is that it should declare a lack of confidence in the Government, the Speaker shall not have a casting vote.

### **Prorogation and dissolution**

67.—(1) The Governor, acting in accordance with the advice of the Premier, may at any time, by proclamation published in the *Gazette*, prorogue the Legislative Assembly.

(2) The Governor, acting after consultation with the Premier, may at any time, by proclamation published in the *Gazette*, dissolve the Legislative Assembly.

(3) The Governor shall dissolve the Legislative Assembly at the expiration of five years from the date of the first sitting of the Assembly after any general election unless it has been sooner dissolved.

### **Recalling dissolved Legislative Assembly in case of emergency**

68. If, between a dissolution of the Legislative Assembly and the next ensuing general election, an emergency arises of such a nature that, in the opinion of the Governor, it is necessary for the

Assembly to be recalled, the Governor may, acting after consultation with the Premier, summon the Assembly that has been dissolved, and that Assembly shall thereupon be deemed (except for the purposes of section 69) not to have been dissolved, but shall be deemed (except as aforesaid) to be dissolved on the date on which the next ensuing general election is held.

### **General elections**

69. A general election for the elected members of the Legislative Assembly shall be held at such time within three months, but not less than 21 days, after every dissolution of the Assembly as the Governor shall appoint by proclamation published in the *Gazette*.

### **Introduction of Bills, motions and petitions**

70.—(1) Subject to this Constitution and to Standing Orders, any member of the Legislative Assembly may introduce any Bill or propose any motion for debate in, or may present any petition to, the Assembly, and the same shall be debated and disposed of according to Standing Orders.

(2) Except with the approval of the Cabinet signified by a Minister, the Legislative Assembly shall not—

- (a) proceed on any Bill (including any amendment to a Bill) which, in the opinion of the person presiding in the Assembly, would dispose of or charge any public revenue or public funds of Montserrat or alter any disposition of them or charge on them or impose, alter or repeal any rate, tax or duty;
- (b) proceed on any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding in the Assembly, is that provision should be made for any of those purposes; or
- (c) receive any petition which, in the opinion of the person presiding in the Assembly, requests that provision be made for any of those purposes.

### **Power to make laws**

71. Subject to this Constitution, the Legislature shall have power to make laws for the peace, order and good government of Montserrat.

### **Standing Orders**

72. Subject to this Constitution, the Legislative Assembly may make, amend and revoke Standing Orders for the regulation and orderly conduct of its own proceedings and the despatch of business, and the passing, entitling and numbering of Bills and their presentation to the Governor for assent.

### **Penalty for unauthorised persons sitting or voting**

73.—(1) Any person who sits or votes in the Legislative Assembly knowing or having reasonable grounds for knowing that he or she is not entitled to do so shall be liable to a penalty which shall be prescribed by law.

(2) The said penalty shall be recoverable by action in the High Court at the suit of the Director of Public Prosecutions.

### **Assent to Bills**

74.—(1) A Bill shall not become a law until either—

- (a) the Governor has assented to it in Her Majesty's name and on Her Majesty's behalf and has signed it in token of such assent; or
- (b) Her Majesty has given Her assent to it through a Secretary of State and the Governor has signified such assent by proclamation published in the *Gazette*.

(2) When a Bill is presented to the Governor for assent the Governor shall declare that he or she assents or refuses to assent to it or that he or she reserves the Bill for the signification of Her Majesty's pleasure; but, unless he or she has been authorised by a Secretary of State to assent to it, the Governor shall reserve for the signification of Her Majesty's pleasure any Bill which appears to him or her, acting in his or her discretion—

- (a) to be inconsistent with any international obligation of Her Majesty's Government in the United Kingdom;
- (b) to be likely to prejudice the Royal prerogative, or the efficiency of the judiciary, or to affect any of the matters mentioned in section 39; or
- (c) to be in any way repugnant to or inconsistent with this Constitution.

(3) A law assented to by the Governor shall come into force on the date on which such assent shall be given, unless it shall be enacted either in such law or in some other enactment that it shall come into force on some other date, in which case it shall come into force on that date.

(4) A Bill reserved for the signification of Her Majesty's pleasure shall become a law as soon as Her Majesty has given Her assent to it, through a Secretary of State, and such assent has been signified by proclamation published in the *Gazette*; and every such law shall come into force on the date of such proclamation, unless it shall be enacted either in such law or in some other enactment that it shall come into force on some other date, in which case it shall come into force on that date.

#### **Words of enactment**

75. In every Bill presented to the Governor for assent the words of enactment shall be as follows—

“Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Montserrat, and by the authority of the same as follows:—”.

#### **Disallowance of laws**

76.—(1) Any law assented to by the Governor may be disallowed by Her Majesty through a Secretary of State; but no law shall be disallowed until the expiration of a period notified by a Secretary of State to the Governor, who shall advise the Speaker of that period, in order to give the Legislative Assembly an opportunity to reconsider the law in question.

(2) Whenever any law has been disallowed by Her Majesty the Governor shall, as soon as practicable, cause notice of such disallowance to be published in the *Gazette* and the law shall be annulled with effect from the date of publication of that notice.

(3) Section 16(1) of the Interpretation Act 1978(a) shall apply to the annulment of any law under this section as it applies to the repeal of an Act of Parliament, save that any enactment repealed or amended in pursuance of that law shall have effect as from the date of the annulment as if that law had not been made.

#### **Privileges, immunities and powers of Legislative Assembly**

77. The Legislature may by law determine and regulate the privileges, immunities and powers of the Legislative Assembly and its members, but no such privileges, immunities or powers shall exceed those of the Commons House of Parliament of the United Kingdom or of its members.

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(a) 1978 c. 30.

## PART V

### ELECTORAL COMMISSION

#### **Establishment and functions of Electoral Commission**

- 78.**—(1) There shall be an Electoral Commission for Montserrat.
- (2) The Electoral Commission shall consist of—
- (a) a Chairman appointed by the Governor, acting in his or her discretion;
  - (b) a member appointed by the Governor, acting in accordance with the advice of the Premier;
  - (c) a member appointed by the Governor, acting in accordance with the advice of the Leader of the Opposition; and
  - (d) a member to represent the public interest appointed by the Governor, acting after consultation with such representatives of civil society as the Governor, acting in his or her discretion, thinks appropriate.
- (3) A person shall not be qualified to be appointed as a member of the Electoral Commission if he or she is a public officer.
- (4) The Chairman or other member of the Electoral Commission shall vacate his or her office—
- (a) at the expiration of five years from the date of his or her appointment;
  - (b) if he or she becomes a public officer; or
  - (c) if the Governor, acting in his or her discretion, directs that he or she shall be removed from office for inability to discharge the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.
- (5) The Electoral Commission may regulate its own procedure and, with the consent of the Governor, acting in his or her discretion, may confer functions on any public officer or on any authority of the Government for the purpose of the discharge of its functions.
- (6) The Electoral Commission may act notwithstanding any vacancy in its membership (including any vacancy not filled when appointments of members are first made) and its proceedings shall be valid even though some person who was not entitled to do so took part in them; but any decision of the Commission shall require the concurrence of not less than three of its members.
- (7) The Electoral Commission shall—
- (a) have the functions conferred on it by sections 52(3), 79, 96(2) and 114(1);
  - (b) supervise elections in Montserrat in accordance with any law regulating the conduct of elections; and
  - (c) have such other functions as may be prescribed by Act of the Legislature.
- (8) An Act of the Legislature may make further provision, subject to this Constitution, for the functions and procedures of the Electoral Commission, and for the protection, privileges and remuneration of members of the Commission.
- (9) In the exercise of its functions, the Electoral Commission shall not be subject to the direction or control of any other person or authority.

#### **Review and alteration of electoral districts**

- 79.**—(1) Whenever—
- (a) the Legislative Assembly, by resolution; or
  - (b) the Governor, acting after consultation with the Premier and the Leader of the Opposition,
- so requests, the Electoral Commission shall review the electoral district or, if there is more than one, the boundaries of the electoral districts into which Montserrat is divided and, taking into

account the changes or proposed changes, if any, in the number of electoral districts, shall submit a report to the Governor and the Legislative Assembly containing its recommendations for the establishment of, or any changes in, the boundaries of the electoral districts.

(2) In determining its recommendations in relation to more than one electoral district, the Electoral Commission shall seek to ensure that electoral districts contain, so far as is reasonably practicable, approximately equal numbers of persons qualified to be registered as electors under the law then in force in Montserrat; but the Commission may depart from this principle to such extent as it considers expedient in order to take into account—

- (a) the density of population and, in particular, the need to ensure adequate representation of sparsely populated areas;
- (b) the means of communication; and
- (c) geographical features and natural boundaries.

(3) As soon as may be after the Electoral Commission has submitted a report under this section, the Governor shall cause a Bill to be introduced into the Legislative Assembly for giving effect, whether with or without modifications, to the recommendations contained in the report; and such a Bill—

- (a) may contain provision for any matters which are incidental to or consequential on its principal provisions; and
- (b) shall include a provision for the coming into force of the measure when enacted for the determination of the electoral districts to which it relates upon the dissolution of the Legislative Assembly next following its enactment.

(4) Where any Bill introduced under this section proposes to give effect to the recommendations of the Electoral Commission with modifications, there shall be laid before the Legislative Assembly at the same time a statement of the reasons for the modifications.

## PART VI

### THE JUDICATURE

#### **Eastern Caribbean Supreme Court**

**80.** The Supreme Court Order 1967(a) shall continue to apply to Montserrat as it applied immediately before the commencement of this Constitution, and accordingly the High Court and the Court of Appeal of the Eastern Caribbean Supreme Court shall continue to have jurisdiction in Montserrat.

#### **Subordinate courts and tribunals**

**81.** There shall be such courts and tribunals in and for Montserrat subordinate to the Eastern Caribbean Supreme Court, and such courts and tribunals shall have such jurisdiction and powers, as may be prescribed by any law.

## PART VII

### THE PUBLIC SERVICE

#### **Public Service Commission**

**82.—**(1) There shall be a Public Service Commission for Montserrat, which shall consist of a Chairman and five other members.

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(a) S.I. 1967/223, amended by S.I. 1983/1108, 2000/3060.

(2) Of the members of the Public Service Commission—

- (a) the Chairman shall be appointed by the Governor, acting in his or her discretion;
- (b) one member shall be appointed by the Governor, acting in accordance with the advice of the Premier;
- (c) one member shall be appointed by the Governor, acting after consultation with the Premier;
- (d) one member shall be appointed by the Governor, acting in accordance with the advice of the Leader of the Opposition;
- (e) one member shall be appointed by the Governor, acting after consultation with the Leader of the Opposition; and
- (f) one member shall be appointed by the Governor, acting after consultation with the Civil Servants Association.

(3) The members of the Public Service Commission shall be appointed by instrument under the public seal for such period, not being less than two years nor more than four years, as may be specified in their respective instruments of appointment.

(4) No person shall be qualified to be appointed as a member of the Public Service Commission if he or she is or has been within the preceding three years—

- (a) an elected member of the Legislative Assembly;
- (b) the holder of any office in any political party; or
- (c) a public officer.

(5) The office of a member of the Public Service Commission shall become vacant—

- (a) at the expiration of the period specified in the instrument by which he or she was appointed;
- (b) if he or she resigns his or her office by writing under his or her hand addressed to the Governor;
- (c) if he or she becomes an elected member of the Legislative Assembly, the holder of any office in any political party, or a public officer; or
- (d) if the Governor, acting in his or her discretion, directs that he or she shall be removed from office for inability to discharge the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.

(6) Whenever the office of the Chairman of the Public Service Commission is vacant or the holder of that office is for any reason unable to perform the functions of that office, such one of the other members of the Commission as the Governor, acting in his or her discretion, may appoint shall act in the office of the Chairman; and any person so appointed shall, subject to subsection (5), continue so to act until he or she is notified by the Governor, acting in his or her discretion, that the circumstances giving rise to the appointment have ceased to exist.

(7) If the office of a member of the Public Service Commission other than the Chairman is vacant or the holder of that office is acting as the Chairman or is for any other reason unable to perform the functions of his or her office, the Governor, acting in the manner prescribed by subsection (2) for the appointment of that member, may appoint a person who is qualified for appointment as a member of the Commission to act as a member of the Commission; and any person so appointed shall, subject to subsection (5), continue so to act until he or she is notified by the Governor, acting in his or her discretion, that the circumstances giving rise to the appointment have ceased to exist.

(8) No business shall be transacted at any meeting of the Public Service Commission if there are less than four members of the Commission present including the Chairman.

(9) Any question proposed for decision at any meeting of the Public Service Commission shall be determined by a majority of the votes of the members of the Commission; and if on any question the votes are equally divided the Chairman shall have and exercise a casting vote.

(10) The Public Service Commission shall be served by a secretariat, the members of which shall be public officers.

(11) The Public Service Commission must be impartial and must exercise its functions without fear, favour or prejudice, in the interest of the maintenance of effective and efficient public administration and a high standard of professional ethics in the public service.

(12) Subject to subsection (8), the Public Service Commission may act notwithstanding any vacancy in its membership, and its proceedings shall be valid even though some person who was not entitled to do so took part in them.

### **Functions and operation of Public Service Commission**

**83.**—(1) The Public Service Commission shall have—

- (a) such advisory functions in relation to the appointment, discipline and removal of public officers; and
- (b) such oversight and other functions in relation to the public service,

as may be prescribed by law.

(2) The Legislature may by law make further provision for the Public Service Commission not inconsistent with this Constitution.

(3) No law, and nothing done by the Public Service Commission under any law, may in any way affect the powers conferred on the Governor by sections 84(3) and (4) and 85(3) and (4).

### **Appointment, discipline and removal of public officers**

**84.**—(1) Power to make appointments to public offices, and to remove or exercise disciplinary control over persons holding or acting in such offices, shall be exercised by the Deputy Governor in accordance with section 24 and subject to regulations made under this section.

(2) The Deputy Governor shall consult with the Premier before appointing any person to the office of permanent secretary.

(3) Regulations made by the Governor, acting in his or her discretion, may provide for the delegation to any other public officer, to such extent and subject to such conditions as may be prescribed in the regulations, of any of the powers conferred on the Deputy Governor by section 24(2)(a).

(4) Where the Governor, acting in his or her discretion, determines that the exercise of the powers conferred on the Deputy Governor by section 24(2)(a) or delegated to another public officer pursuant to subsection (3) would prejudice Her Majesty's service, the Governor shall give directions as to the exercise of those powers to the Deputy Governor or, as the case may be, the other public officer to whom powers have been delegated, and the Deputy Governor or, as the case may be, the other public officer shall comply with those directions.

(5) This section shall not apply to—

- (a) any office mentioned in section 85;
- (b) any office in the police service.

### **Particular offices**

**85.**—(1) Power to make appointments to the offices of Deputy Governor and Financial Secretary is vested in the Governor, acting after consultation with the Premier, and, subject to subsection (5), power to remove or exercise disciplinary control over persons holding or acting in either office is vested in the Governor, acting in his or her discretion.

(2) Power to make appointments to the offices of Attorney-General, Director of Public Prosecutions and Registrar of the High Court, and to any other office requiring legal qualifications as may be prescribed by law, and, subject to subsection (5), to remove or exercise disciplinary

control over any person holding or acting in any such office, is vested in the Governor, acting after consultation with the Chief Justice.

(3) If any law provides for the Public Service Commission to provide advice to the Governor in the exercise of his or her powers under subsections (1) and (2), the Governor shall act otherwise than in accordance with the advice of the Public Service Commission if the Governor, acting in his or her discretion, determines that compliance with that advice would prejudice Her Majesty's service.

(4) Power to make appointments to the office of Commissioner of Police, and to remove or exercise disciplinary control over any person holding or acting in that office, is vested in the Governor, acting after consultation with the Premier.

(5) A person holding the office of Deputy Governor, Attorney-General, Financial Secretary or Director of Public Prosecutions may be removed from office only for inability to discharge the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and with the prior approval of a Secretary of State.

### **Applicability of pensions law**

**86.**—(1) Subject to section 88, the law applicable to the grant and payment to any officer, or to his or her widow or widower, children, dependants or personal representatives, of any pension, gratuity or other like allowance (in this section and in sections 87 and 88 referred to as “an award”) in respect of the service of that officer in a public office shall be that in force on the relevant day or any later law not less favourable to the person concerned.

(2) For the purposes of this section the relevant day is—

- (a) in relation to an award granted before the appointed day, the day on which the award was granted;
- (b) in relation to an award granted or to be granted on or after the appointed day to or in respect of a person who was a public officer before that day, the day immediately before that day;
- (c) in relation to an award granted or to be granted to or in respect of a person who first becomes a public officer on or after the appointed day, the day on which he or she becomes a public officer.

(3) For the purposes of this section, in so far as the law applicable to an award depends on the option of the person to or in respect of whom it is granted or to be granted, the law for which he or she opts shall be taken to be more favourable to him or her than any other law for which he or she might have opted.

(4) In this section “the appointed day” means the date of commencement of this Constitution.

### **Pensions, gratuities and allowances charged on Consolidated Fund**

**87.** Awards granted under any law shall (except so far as they are a charge on some other fund and are duly paid out of that fund to the person to whom payment is due) be charged on and paid out of the Consolidated Fund.

### **Grant and withholding of pensions, gratuities and allowances**

**88.**—(1) The power to grant any award under any pensions law (other than an award to which, under that law, the person to whom it is payable is entitled as of right) and, in accordance with any provisions in that respect contained in any such law, to withhold, reduce in amount or suspend any award payable under any such law is vested in the Governor, acting after consultation with the Public Service Commission.

(2) In this section, “pensions law” means any law relating to the grant to any person, or to the widow or widower, children, dependants or personal representatives of that person, of an award in respect of the services of that person in a public office, and includes any instrument made under any such law.

## PART VIII

### FINANCE

#### **Taxation**

**89.**—(1) No tax, rate or other levy shall be imposed except under the authority of an Act of the Legislature.

(2) Where an Act of the Legislature confers powers on any person or authority to waive or vary a tax imposed by that law, that person or authority shall report to the Legislative Assembly on the exercise of those powers as often as shall be determined by law but not less than annually.

#### **Consolidated Fund**

**90.**—(1) There shall be a Consolidated Fund into which shall be paid all revenues or other moneys raised or received by and for the purposes of the Government.

(2) The revenues or other moneys referred to in subsection (1) shall not include revenues or other moneys—

- (a) that are payable by or under an Act of the Legislature into some other fund established for a specific purpose; or
- (b) that may, by or under an Act of the Legislature, be retained by the department of government that received them for the purpose of defraying the expenses of that department.

#### **Withdrawal from Consolidated Fund or other public funds**

**91.**—(1) No moneys shall be withdrawn from the Consolidated Fund except—

- (a) to meet expenditure charged on the Fund by this Constitution or by an Act of the Legislature; or
- (b) where the issue of those moneys has been authorised by an Appropriation Act, a Supplementary Appropriation Act, or as provided in subsection (3).

(2) No moneys shall be withdrawn from any public fund of Montserrat other than the Consolidated Fund unless the issue of those moneys has been authorised by law.

(3) If the Minister of Finance is satisfied that the Appropriation Act in respect of any financial year will not or has not come into force by the beginning of that financial year, that Minister may, subject to subsection (4), authorise the issue of moneys from the Consolidated Fund for the purpose of meeting expenditure necessary to carry on the services of the Government until the expiration of four months from the beginning of that financial year or the coming into force of the Appropriation Act, whichever is the earlier.

(4) Any sum issued in any financial year from the Consolidated Fund under subsection (3) in respect of any ongoing service of the Government—

- (a) shall not exceed one third of the amount approved for that service by the Legislature in an Appropriation Act or a Supplementary Appropriation Act for the previous financial year; and
- (b) shall be set off against the amount provided in respect of that service in the Appropriation Act for that financial year when that law comes into force.

#### **Financial year estimates**

**92.**—(1) The Minister of Finance shall cause to be prepared and laid before the Legislative Assembly before the beginning of each financial year estimates of revenues and expenditure of the Government for that financial year.

(2) At any time before the Legislative Assembly considers the estimates of revenues and expenditure laid before it by or on the authority of the Minister of Finance, an appropriate committee of the Assembly may discuss and review the estimates and make appropriate recommendations to the Assembly.

(3) Notwithstanding subsection (1) the Minister of Finance may cause to be prepared and laid before the Legislative Assembly—

- (a) fiscal and monetary programmes and plans for economic and social development covering periods exceeding one year;
- (b) estimates of revenue and expenditure covering periods exceeding one year; and
- (c) estimates of non-financial outputs.

(4) The Legislature shall enact laws giving effect to this section.

### **Appropriation Bill**

**93.**—(1) The heads of expenditure contained in the estimates, other than expenditure charged on the Consolidated Fund by this Constitution or any Act of the Legislature, shall be included in a Bill, to be known as an Appropriation Bill, which shall be introduced into the Legislative Assembly to provide for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified in the Bill.

(2) If in respect of any financial year it is found that the amount appropriated for any purpose under the Appropriation Act is insufficient or that a need has arisen for expenditure for a purpose for which no amount has been appropriated by that Act, a supplementary estimate showing the sums required shall be laid before the Legislative Assembly by the Minister of Finance; and the heads of expenditure contained in that estimate shall be included in a Bill, to be known as a Supplementary Appropriation Bill, which shall be introduced into the Legislative Assembly to provide for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified in the Bill.

### **Excess expenditure**

**94.**—(1) Where, in exceptional circumstances, at the close of accounts for any financial year it is found that moneys have been expended on any expenditure vote in excess of the amount appropriated for it by an Appropriation Act or a Supplementary Appropriation Act or for a purpose for which no moneys have been voted and appropriated, the amount of the excess expended, or not appropriated, as the case may be, shall be included in a statement of expenditure in excess which shall be laid before the Legislative Assembly and referred to the Public Accounts Committee of the Assembly.

(2) The Public Accounts Committee shall report to the Legislative Assembly on a statement of expenditure in excess referred to it under subsection (1) within six months after the statement is referred to it.

(3) Where on receiving any report of the Public Accounts Committee issued under subsection (2) the Legislative Assembly, by means of a resolution, allows the excess or the amount expended but not appropriated to stand charged to public funds, the sum required to meet that excess or such amount as shall be allowed shall be included in a Supplementary Appropriation Bill for appropriation.

### **Contingencies**

**95.**—(1) The Minister of Finance, if he or she is satisfied that there is an urgent and unforeseen need for expenditure for which no provision or insufficient provision has been made by an Appropriation Act or Supplementary Appropriation Act, may, by a Contingencies Warrant under his or her hand and in anticipation of the grant of an appropriation by the Legislature, authorise an advance from the Consolidated Fund to meet that need and shall forthwith report his or her action to the Cabinet.

(2) An advance made under subsection (1) shall be subject to any laws enacted by the Legislature, and to any restrictions imposed by the Legislative Assembly by resolution, from time to time.

### **Remuneration of Speaker and elected members of Legislative Assembly**

**96.**—(1) There shall be paid to the Speaker and the elected members of the Legislative Assembly such remuneration and allowances as may be prescribed by an Act of the Legislature.

(2) The Legislative Assembly shall not proceed on any Bill for an Act referred to in subsection (1) unless a report of the Electoral Commission recommending the appropriate levels of such remuneration and allowances has been laid before the Assembly and has been published; and no Act shall provide for levels of remuneration or allowances that exceed the levels recommended in such report.

(3) The remuneration and allowances payable to the Speaker and elected members of the Legislative Assembly shall be charged on and paid out of the Consolidated Fund.

### **Remuneration of certain officers**

**97.**—(1) There shall be paid to the holders of the offices to which this section applies such remuneration and allowances as may be prescribed by or under an Act of the Legislature.

(2) The remuneration and allowances payable to the holders of those offices shall be charged on and paid out of the Consolidated Fund.

(3) The remuneration prescribed in pursuance of this section in respect of the holder of any such office and his or her other terms of service (other than allowances that are not taken into account in computing, under any law in that respect, any pension payable in respect of his or her service in that office) shall not be altered to his or her disadvantage after his or her appointment.

(4) Where a person's remuneration or other terms of service depend upon his or her option, the remuneration or terms for which he or she opts shall, for the purposes of subsection (3), be deemed to be more advantageous to him or her than any others for which he or she might have opted.

(5) This section applies to the offices of Governor, Deputy Governor, Attorney-General, Director of Public Prosecutions, Magistrate, Chairman or other member of the Public Service Commission, the Electoral Commission, the Complaints Commission and the Integrity Commission.

(6) Nothing in this section shall preclude an Act of the Legislature that reduces the level of remuneration payable to the holder of any office to which this section applies where that Act makes equivalent reduction to the remuneration of all members of the public service.

### **Power of Government to borrow or lend**

**98.**—(1) Subject to this Constitution, the Government may borrow from any source.

(2) The Government shall not borrow, guarantee or raise a loan on behalf of itself or any other public institution, authority or person except—

- (a) as authorised by or under an Act of the Legislature; and
- (b) in accordance with any borrowing guidelines agreed with Her Majesty's Government in the United Kingdom.

(3) An Act of the Legislature made under subsection (2)(a) shall provide—

- (a) that the terms and conditions of the loan shall be laid before the Legislative Assembly and shall not come into force unless they have been approved by a resolution of the Assembly; and
- (b) that any moneys received in respect of that loan shall be paid into the Consolidated Fund and form part of that Fund or into some other public fund which is existing or is created for the purpose of the loan.

(4) The Minister of Finance shall, at such times as the Legislative Assembly may determine, cause to be presented to the Assembly such information concerning any loan as is necessary to show—

- (a) the extent of the total indebtedness by way of principal and accumulated interest;
- (b) the provision made for servicing or repayment of the loan; and
- (c) the utilisation and performance of the loan.

(5) The Legislative Assembly may, by resolution, authorise the Government to enter into an agreement for the giving of a loan or a grant out of any public fund or public account.

(6) An agreement entered into pursuant to subsection (5) shall be laid before the Legislative Assembly and shall not come into force unless it has been approved by the Assembly by resolution.

(7) For the purposes of this section, the expression “loan” includes any money lent or given to or by the Government on condition of return or repayment and any other form of borrowing or lending in respect of which—

- (a) moneys from the Consolidated Fund or any other public fund may be used for payment or repayment; or
- (b) moneys from any fund by whatever name called, established for the purpose of payment or repayment whether in whole or in part and whether directly or indirectly, may be used for payment or repayment.

(8) The Legislature may by law exempt any category of loan from subsections (2)(a) and (3), subject to such conditions as it may so prescribe.

### **Public Debt**

**99.**—(1) The Public Debt of Montserrat shall be charged on the Consolidated Fund and other public funds of Montserrat.

(2) For the purposes of this section, the Public Debt includes the interest on that debt, sinking fund payments in respect of that debt, and the costs, charges and expenses incidental to the management of that debt.

### **Financial control and accounts**

**100.**—(1) The Minister of Finance shall provide the Legislative Assembly with such reports, information and accounts as may be necessary to ensure that the Assembly is kept fully informed at all times of the state of the economy of Montserrat and the finances of the Government.

(2) The Legislature shall make provision by law for the regular publication of accounts of the Consolidated Fund and any other public funds and for the laying of such accounts and any reports on them before the Legislative Assembly.

### **Auditor-General**

**101.**—(1) There shall be an Auditor-General for Montserrat.

(2) Power to make appointments to the office of Auditor-General is vested in the Governor, acting after consultation with the Public Accounts Committee of the Legislative Assembly.

(3) Power to remove the Auditor-General from office is vested in the Governor, acting in accordance with subsections (4) to (6).

(4) The Governor shall remove the Auditor-General from office if—

- (a) the Auditor-General violates any law concerning the ethics of public leaders; or
- (b) the Auditor-General becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors, or otherwise makes an assignment of remuneration for the benefit of creditors.

(5) If the Legislative Assembly in a resolution addressed to the Governor resolves that the Auditor-General is unable to perform the functions of his or her office due to misconduct, incapacity or incompetence—

- (a) the Governor shall appoint a special tribunal which shall consist of a Chairman and not less than two other members; but the Chairman and at least half of the other members shall be persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in any part of the Commonwealth or Ireland or a court having jurisdiction in appeals from such a court;
- (b) the special tribunal shall inquire into the matter and report on the facts thereof to the Governor and recommend whether or not the Auditor-General should be removed from office.

(6) If the special tribunal appointed in accordance with subsection (5) recommends to the Governor that the Auditor-General should be removed from office then the Governor shall remove him or her from office.

(7) If the question of removing the Auditor-General from office has been referred to a special tribunal under subsection (5), the Governor, acting in his or her discretion, may suspend the Auditor-General from the exercise of the functions of that office and such suspension shall cease to have effect if the special tribunal recommends to the Governor that the Auditor-General should not be removed.

(8) The Auditor-General may resign his or her office by writing under his or her hand addressed to the Governor.

#### **Position and remuneration of Auditor-General**

**102.**—(1) The Auditor-General shall by virtue of his or her office be an officer of the Legislative Assembly.

(2) The terms and conditions of employment including the remuneration and allowances of the Auditor-General shall be set from time to time by a resolution of the Legislative Assembly proposed by the Chairman of the Public Accounts Committee of the Assembly; but any remuneration and allowances shall not be less than the average rate paid to the Financial Secretary.

(3) The remuneration and allowances of the Auditor-General shall be charged on and paid out of the Consolidated Fund.

#### **Functions of Auditor-General**

**103.**—(1) The Auditor-General shall audit and report on the public accounts of Montserrat and of all public offices, including the courts, the central and local government administrations, universities and higher education institutions, and any public corporations or other bodies or organisations established by an Act of the Legislature, and may conduct financial and value for money audits in respect of any project involving public funds.

(2) The Auditor-General shall submit to the Legislative Assembly annually a report of the accounts audited by him or her under subsection (1) for the immediately preceding financial year.

(3) For the purposes of subsection (1) the Auditor-General and any person authorised by him or her shall have a right of access at all reasonable times to all such documents as appear to him or her to be necessary for the purposes of the audit, and shall be entitled to require from any person holding or accountable for any such documents such information and explanation as he or she thinks necessary for those purposes.

(4) In the exercise of his or her functions, the Auditor-General shall not be subject to the direction or control of any other person or authority.

### **National Audit Office**

**104.**—(1) The Legislature shall by law make provision for the establishment of an independent National Audit Office headed by the Auditor-General.

(2) The budget for the National Audit Office shall be charged on and paid out of the Consolidated Fund, and must at all times be adequate to enable the full performance of the functions conferred on the Auditor-General by this Constitution or any other law.

(3) The accounts of the National Audit Office shall be audited and reported on by an auditor appointed by the Legislative Assembly.

## **PART IX**

### **PUBLIC STANDARDS**

### **Complaints Commission**

**105.**—(1) There shall be a Complaints Commission for Montserrat, the composition, functions, operation and procedure of which shall, subject to this section, be prescribed by or under an Act of the Legislature.

(2) The functions of the Complaints Commission shall include, without prejudice to the jurisdiction of any court of law, encouraging the resolution of human rights complaints, maladministration complaints and other complaints prescribed by law, and assisting in their resolution, by providing an independent, fair and accessible process for resolving them.

(3) In the exercise of its functions the Complaints Commission shall not be subject to the direction or control of any other person or authority, subject to subsection (4).

(4) The Governor may, in writing, direct the Complaints Commission to inquire into, and report to him or her in relation to, a matter that can be complained about in accordance with subsection (2), and the Complaints Commission must comply with any such direction.

(5) In this section—

“human rights complaint” means a complaint of breach or infringement of a right or freedom referred to in Part I of this Constitution; and

“maladministration complaint” means a complaint of maladministration in the government of Montserrat.

### **Standards in public life**

**106.**—(1) The Legislature shall maintain the highest standards in public life by enacting appropriate laws, which include sanctions that may accompany the failure to conform to such standards.

(2) In the exercise of their functions Ministers, members of the Legislative Assembly and public officers shall uphold and conform to the highest standards in public life, in accordance with the Integrity in Public Office Act 2010 (or any Act amending or replacing it) and the other laws in force in Montserrat.

## PART X

### MISCELLANEOUS

#### Interpretation

107.—(1) In this Constitution, unless the context otherwise requires—

“Chief Justice” means the Chief Justice referred to in the Supreme Court Order 1967(a);

“Court of Appeal” means the Court of Appeal established by the Supreme Court Order 1967;

“Deputy Speaker” means the member of the Legislative Assembly elected by the Assembly as Deputy Speaker under section 59;

“financial year” means the period of twelve months beginning on the first day of January in any year or such other day as the Legislature may prescribe by law;

“functions” includes powers and duties;

“*Gazette*” means the official *Gazette* of Montserrat;

“Government” means the Government of Montserrat;

“High Court” means the High Court established by the Supreme Court Order 1967;

“judiciary” means any court having jurisdiction in Montserrat and includes any member or officer of such court;

“law” includes any subsidiary instrument;

“Legislature” means the Legislature established by section 47;

“Leader of the Opposition” means the person appointed as such under section 61;

“meeting” means any sitting or sittings of the Legislative Assembly commencing when the Assembly first meets after being summoned at any time and terminating when the Assembly is adjourned *sine die* or at the conclusion of a session;

“Minister” means a person appointed as Premier or other Minister under section 33;

“Minister of Finance” means the Minister for the time being responsible for finance;

“misbehaviour” means behaviour that renders a person unfit to discharge his or her duties;

“political party” means an organisation that sponsors or supports, or that at any time sponsored or otherwise supported, a candidate for election to the Legislative Assembly;

“Premier” means the person appointed as such under section 33(1);

“public office” means, subject to section 108, an office of emolument in the public service, but does not include service as a judge of the High Court or the Court of Appeal or as a Magistrate;

“public officer” means the holder of any public office and includes any person appointed to act in any such office;

“public service” means the service of the Crown in a civil capacity in respect of the government of Montserrat;

“session” means the meetings of the Legislative Assembly commencing when the Assembly first meets after its prorogation or dissolution at any time, and terminating when the Assembly is next prorogued or is dissolved without having been prorogued;

“sitting” means a period during which the Legislative Assembly is sitting continuously without adjournment, and includes any period during which the Assembly is in Committee;

“Speaker” means the person elected as Speaker by the Legislative Assembly under section 59;

“Standing Orders” means the Standing Orders of the Legislative Assembly made under section 72;

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(a) S.I 1967/233, amended by S.I. 1983/1108, 2000/3060.

“subsidiary instrument” means any proclamation, regulation, order, rule or other like instrument having the force of law.

(2) For the purposes of this Constitution, a person shall be regarded as a Montserratian if that person—

- (a) is a British overseas territories citizen who was born in Montserrat; or
- (b) is a British overseas territories citizen who was born outside Montserrat and—
  - (i) who was lawfully adopted by a person who is regarded (or, if deceased, would if alive be regarded) as a Montserratian by virtue of this subsection; or
  - (ii) whose father or mother or any grandparent was born in Montserrat; or
  - (iii) whose father or mother or any grandparent became a citizen of the United Kingdom and Colonies, a British Dependent Territories citizen or a British overseas territories citizen by virtue of having been lawfully adopted by a person who is regarded (or, if deceased, would if alive be regarded) as a Montserratian by virtue of this subsection; or
  - (iv) who is ordinarily resident in Montserrat and whose father or mother or any grandparent by virtue of registration or naturalisation while resident in Montserrat became a citizen of the United Kingdom and Colonies, a British Dependent Territories citizen or a British overseas territories citizen; or
  - (v) who by virtue of registration or naturalisation while resident in Montserrat became a citizen of the United Kingdom and Colonies, a British Dependent Territories citizen or a British overseas territories citizen; or
- (c) was born in or outside Montserrat of a father or mother who was born in Montserrat and is regarded (or, if deceased, would if alive be regarded) as a Montserratian by virtue of this subsection; or
- (d) has been granted Montserratian status in accordance with any law; or
- (e) was immediately before the commencement of this Constitution deemed to belong to Montserrat by virtue of any law.

(3) Unless it is otherwise provided or the context otherwise requires, a reference in this Constitution to the holder of an office by the term designating his or her office shall be construed as a reference to any person for the time being lawfully performing the functions of that office.

### **References to public office**

**108.**—(1) For the purposes of this Constitution, a person shall not be considered as holding or acting in a public office by reason only that he or she—

- (a) is in receipt of any remuneration or allowance as a Minister or Parliamentary Secretary, as the Speaker, the Deputy Speaker or member of the Legislative Assembly, or as the Chairman or other member of the Public Service Commission, the Electoral Commission or the Complaints Commission;
- (b) is in receipt of a pension or other like allowance in respect of service under the Crown; or
- (c) is on leave of absence pending relinquishment of a public office.

(2) If it is provided by any law that an office (not being an office constituted by this Constitution) shall not be a public office for the purposes of section 52(1)(b), this Constitution shall have effect accordingly as if that provision of law were enacted in it.

### **Appointments**

**109.**—(1) In this Constitution, unless it is otherwise provided or the context otherwise requires, any reference to power to make appointments to any public office shall be construed as including a reference to power to make appointments on promotion and transfer, appointments on contract and appointments to act in an office during any period when it is vacant or the holder of the office is absent from Montserrat or is for any other reason unable to perform the functions of the office.

(2) Where the holder of any office constituted by or under this Constitution is on leave of absence pending the relinquishment of that office, the person or authority having power to make appointments to that office may appoint another person to that office; and where two or more persons concurrently hold the same office by virtue of an appointment made in pursuance of this subsection, the person last appointed shall, in respect of any function conferred on the holder of that office, be deemed to be the sole holder of the office.

(3) Where by this Constitution any person is directed, or power is conferred on any person or authority to appoint a person, to act in an office if the holder of the office is unable to perform the functions of that office, the validity of any performance of those functions by the person so directed or of any appointment made in exercise of that power shall not be called in question in any court on the ground that the holder of the office is not unable to perform the functions of the office.

### **Re-election or reappointment**

**110.** Any person who has vacated his or her seat in the Legislative Assembly or who has vacated any office constituted by or under this Constitution may, if qualified, again be elected to the Assembly or appointed to that office, as the case may be, from time to time.

### **Removal from office**

**111.** In this Constitution, unless it is otherwise provided or the context otherwise requires, any reference to power to remove a public officer from office shall be construed as including a reference to any power conferred by any law to require or permit that officer to retire from the public service and to any power or right to terminate a contract on which a person is employed as a public officer and to determine whether any such contract shall or shall not be renewed.

### **Resignations**

**112.** For the purposes of this Constitution, the resignation of the holder of any office that is required to be addressed to any person shall have effect from the time that it is received by that person.

### **Power to amend or revoke instruments**

**113.** Where any power is conferred by this Constitution to make any subsidiary instrument or to give any directions or instructions or make any designation, the power shall be construed as including a power exercisable in like manner to amend or revoke any such instrument, directions, instructions or designation.

### **Amendment**

**114.—(1)** The Electoral Commission shall keep under review the operation of this Constitution and report as it considers necessary to the Legislative Assembly.

(2) The Premier, if authorised by resolution of the Legislative Assembly adopted by a two-thirds majority of the elected members of the Assembly, shall request discussion of amendment of this Constitution with Her Majesty's Government in the United Kingdom.

### **Meaning of appointed day**

**115.** In sections 116 to 119, "the appointed day" means the day referred to in section 1(2) of this Order, that is to say the date of commencement of this Constitution.

### **Revocations and amendment**

**116.—(1)** The following instruments are revoked with effect from the appointed day—

- (a) the Montserrat Constitution Order 1989(a);
- (b) the Montserrat Constitution (Amendment) Order 2000(b); and
- (c) the Instructions issued under the Royal Sign Manual and Signet to the Governor of Montserrat on 13th January 1990.

(2) The Leeward Islands (Emergency Powers) Order in Council 1959(c) shall cease to apply to Montserrat with effect from the day on which section 18(1) to (8) of this Constitution comes into force; but any regulations made under that Order that are in force in Montserrat immediately before that day shall continue in force there until revoked by the Governor, acting in accordance with section 18 of this Constitution.

### **Existing laws**

**117.**—(1) Subject to this section, the existing laws shall have effect on and after the appointed day as if they had been made in pursuance of this Constitution and shall be read and construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Constitution.

(2) The Legislature may by law make such amendments to any existing law as appear to it to be necessary or expedient for bringing that law into conformity with this Constitution or otherwise for giving effect to this Constitution; and any existing law shall have effect accordingly from such day (not being earlier than the appointed day) as may be specified in the law made by the Legislature.

(3) In this section “existing law” means any law or instrument having effect as part of the law of Montserrat immediately before the appointed day but does not include any Act of the Parliament of the United Kingdom and any instrument made under such an Act.

### **Existing offices and officers**

**118.**—(1) Any office established by or under the existing Constitution and existing immediately before the appointed day shall on and after that day, so far as consistent with this Constitution, continue as if it had been established by or under this Constitution.

(2) Any person who immediately before the appointed day holds or is acting in any office continued by virtue of subsection (1) shall, on and after that day, continue to hold or act in that office as if he or she had been appointed to hold or act in it in accordance with or under this Constitution.

(3) Any person to whom subsection (2) applies who, before the appointed day, has made any oath or affirmation required to be made before assuming the functions of his or her office shall be deemed to have made any like oath or affirmation so required by this Constitution or any other law.

(4) Notwithstanding subsections (1) and (2), the Public Service Commission shall be reconstituted in accordance with section 82 and the Governor shall, as soon as practicable after the appointed day, make appointments to the Commission in accordance with that section.

(5) The person who, immediately before the appointed day, holds the office of Chief Minister under the existing Constitution shall, on and after that day, hold the office of Premier in accordance with this Constitution.

(6) In this section “the existing Constitution” means the Constitution set out in Schedule 2 to the Montserrat Constitution Order 1989.

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(a) S.I. 1989/2401.  
(b) S.I. 2000/1339.  
(c) S.I. 1959/2206.

### **Legislative Assembly**

**119.**—(1) Every person who immediately before the appointed day is a member of the Legislative Council shall on that day become a member of the Legislative Assembly and shall be deemed to have complied with section 64 and shall hold his or her seat in accordance with this Constitution.

(2) The Standing Orders of the Legislative Council as in force immediately before the appointed day shall, except as may be otherwise provided under section 72, have effect on and after that day as if they had been made under that section as Standing Orders of the Legislative Assembly but shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Constitution.

(3) The Governor shall dissolve the Legislative Assembly not later than the expiration of five years from the date of the first sitting of the Legislative Council after the last general election before the appointed day.

(4) In this section “Legislative Assembly” means the Legislative Assembly established by this Constitution, and “Legislative Council” means the Legislative Council established by the Constitution set out in Schedule 2 to the Montserrat Constitution Order 1989.

### **Transitional provision concerning Director of Public Prosecutions**

**120.** Until a person is appointed to the office of Director of Public Prosecutions in accordance with this Constitution, the Attorney-General shall perform the functions of that office.

### **Power reserved to Her Majesty**

**121.** Her Majesty reserves to Herself power, with the advice of Her Privy Council, to make laws for the peace, order and good government of Montserrat.

*Judith Simpson*  
Clerk of the Privy Council

## SCHEDULE

### FORMS OF OATHS AND AFFIRMATIONS

#### 1. Oath of allegiance

I.....do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law. So help me God.

#### 2. Affirmation of Allegiance

I.....do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law.

#### 3. Oath for due execution of office

I.....do swear that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, and the people of Montserrat in the office of (here insert the description of the office). So help me God.

#### 4. Affirmation for due execution of office

I.....do solemnly and sincerely affirm and declare that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, and the people of Montserrat in the office of (here insert the description of the office).

### EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order establishes a new Constitution for Montserrat, to replace the Constitution of 1989. The new Constitution sets out fundamental rights and freedoms of the individual and provisions for their enforcement. It provides for a Governor as Her Majesty's representative in Montserrat, and for a Premier and other Ministers who form a Cabinet together with the Financial Secretary and the Attorney-General. It provides for an elected Legislative Assembly, which together with Her Majesty forms the Legislature. The High Court and Court of Appeal of the Eastern Caribbean Supreme Court continue to have jurisdiction as superior courts in Montserrat, and provision is made for the establishment of subordinate courts. A new National Advisory Council is established to advise on some of the Governor's functions, and the office of Director of Public Prosecutions and an Electoral Commission are established for the first time. Provision is also made for the public service, public finance including the independent audit of public accounts, and for standards in public life including the establishment of a Complaints Commission.

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