



CHAPTER 1.01

CONSTITUTION OF MONTSERRAT and Related Legislation

Consolidation

showing the law as at 1 January 2008

This is a consolidation of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

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STATUTORY INSTRUMENTS

1989 No. 2401

CARIBBEAN AND NORTH ATLANTIC TERRITORIES

The Montserrat Constitution Order 1989

<i>Made</i>	<i>19th December 1989</i>
<i>Laid before Parliament</i>	<i>8th January 1990</i>
<i>Coming into force</i>	<i>On a day to be appointed under section 1(2)</i>

At the Court at Buckingham Palace, the 19th day of December 1989

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 5 and 7 of the West Indies Act 1962 and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

Citation and commencement

1. (1) This Order may be cited as the Montserrat Constitution Order 1989.

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

Interpretation

2. (1) In this Order—

“**the appointed day**” means the day appointed by the Governor under section 1(2) of this Order;

“**the Constitution**” means the Constitution set out in Schedule 2 to this Order.

(2) The provisions of section 68 of the Constitution shall apply for the purposes of interpreting sections 1 to 8 of this Order and otherwise in

relation thereto as they apply for the purposes of interpreting and in relation to the Constitution.

Revocations

3. The instruments and enactments specified in Schedule 1 to this Order are revoked with effect from the appointed day.

Establishment of Constitution

4. Schedule 2 to this Order shall have effect as the Constitution of Montserrat on the appointed day.

Existing Laws

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

(2) The Governor may, by regulations published in the *Gazette*, at any time within twelve months of the appointed day make such modifications or adaptations to any existing law as appear to him to be necessary or expedient for bringing that law into conformity with the provisions of the Constitution or otherwise for giving effect or enabling effect to be given to those provisions; and any existing law shall have effect accordingly from such day (not being earlier than the appointed day) as may be specified in any such regulations.

(3) Regulations made under this section may be amended or revoked in relation to any law affected thereby by any authority competent to amend or revoke that law.

(4) 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 or any instrument made thereunder or any instrument or enactment revoked by this Order.

Existing officers

6. (1) Any office established by or under the Montserrat offices Letters Patent 1959 and existing immediately and before the appointed day shall on and after that day, so far as consistent with the provisions of the Constitution, continue as if it had been established by or under the Constitution.

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

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

Legislative Council

7. (1) Any person who immediately before the appointed day is a member of the Legislative Council established by the Constitution and Elections Ordinance shall on that day become a member of the Legislative Council established by the Constitution and shall be deemed to have complied with section 39 of the Constitution and shall hold his seat in the Council in accordance with the provisions of the Constitution.

(2) The persons who immediately before the appointed day hold the offices of Speaker and Deputy Speaker in accordance with the Constitution and Elections Ordinance shall, on and after that day, continue to hold those offices in accordance with the provisions of the Constitution.

(3) The Standing Orders of the Legislative Council as in force immediately before the appointed day shall, except as may be otherwise provided under section 46 of the Constitution, have effect on and after that day as if they had been made under that section but shall be read and construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the provisions of the Constitution.

Power reserved to Her Majesty

8. 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.

SCHEDULE 1 TO THE ORDER

(Section 3)

REVOCATIONS

(1) <i>Instrument or enactment revoked</i>	(2) <i>Reference</i>
The Montserrat Letters Patent 1959	1959 II, p. 3386
The Montserrat Letters Patent (Amendment) Order 1971	S.I. 1971/873
The Montserrat (Governor) Order 1971	S.I. 1971/1740
Part II of the Constitution and Elections Ordinance	Laws of Montserrat, Cap. 153

SCHEDULE 2 TO THE ORDER

(Sections 2(1) and 4)

THE CONSTITUTION OF MONTSERRAT

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CHAPTER 1.01

THE CONSTITUTION OF MONTSEERRAT

PART I

THE GOVERNOR

The Governor

1. (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 upon him 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 and, subject to the provisions of this Constitution and, in the case of functions conferred upon him by or under any other law, subject to the provisions of that law, shall perform all such functions (including functions which are expressed by this Constitution to be exercisable in his discretion) according to such instructions, if any, as may be given to him by Her Majesty: Provided that the question whether or not the Governor has in any matter complied with any such instructions shall not be enquired into by any court.

(3) A person appointed to the office of Governor shall, before entering upon 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 to this Constitution.

Acting Governor

2. (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 his office those functions shall, during Her Majesty's pleasure, be assumed and performed by—

- (a)* such person as Her Majesty may designate in that behalf by instructions given under Her Sign Manual and Signet or through a Secretary of State; or
- (b)* if there is no person in Montserrat so designated and able to perform those functions, the person who, if he were not directed by this section to perform the functions of the office of Governor, would for the time being be performing the functions of the office of Attorney General.

(2) Before assuming the functions of the office of Governor, any such person as aforesaid shall make the oaths or affirmations directed by section 1(3) of this Constitution to be made by the Governor.

(3) Any such person as aforesaid shall not continue to perform the functions of the office of Governor after the Governor or some other person having a prior right to perform those functions has notified him that he is about to assume or resume those functions.

(4) For the purposes of this section the Governor shall not be regarded as absent from Montserrat or as unable to perform the functions of his office—

- (a) by reason that he is in passage from one part of Montserrat to another; or
- (b) at any time when there is a subsisting appointment of a deputy under section 3 of this Constitution.

Deputy to Governor

3. (1) Whenever the Governor—

- (a) has occasion to be absent from the seat of Government but not from Montserrat; or
- (b) has occasion to be absent from Montserrat for a period which he has reason to believe will be of short duration; or
- (c) is suffering from an illness which he has reason to believe will be of short duration,

he may, acting in his discretion, by instrument under the public seal, appoint any person in Montserrat to be his deputy during such absence or illness and in that capacity to perform on his behalf such of the functions of the office of Governor as may be specified in that instrument.

(2) The power and authority of the Governor shall not be abridged, altered or in any way affected by the appointment of a deputy under this section, and a deputy shall conform to and observe all instructions that the Governor, acting in his discretion, may from time to time address to him: Provided that the question whether or not a deputy has conformed to and observed any such instructions shall not be enquired into by any court.

(3) A person appointed as a deputy under this section shall hold that appointment for such period as may be specified in the instrument by which he is appointed, and his appointment may be revoked at any time by Her Majesty by instructions given through a Secretary of State or by the Governor, acting in his discretion.

(4) In this section “**the Governor**” does not include a deputy appointed under this section.

Exercise of Governor's functions

4. (1) In the exercise of his functions the Governor shall, subject to the following provisions of this section, obtain and act in accordance with the advice of the Executive Council, except—

- (a) when acting under instructions given to him by Her Majesty through a Secretary of State;
- (b) when exercising any function conferred upon him by this Constitution which is expressed to be exercisable by him in his discretion or in accordance with the advice of, or after consultation with, any person or authority other than the Executive Council;
- (c) when exercising any function conferred upon him by any other law in terms which authorise him to exercise that function without obtaining the advice of the Executive Council; or
- (d) in any case which, in his judgment, involves a matter for which he is responsible under section 16(1)(e) of this Constitution.

(2) The Governor shall not be required to obtain the advice of the Executive Council in any case in which, in his judgment, the urgency of the matter requires him to act before the Council can be consulted or the question for decision is too unimportant to require their advice; but in any such case of urgency he shall, as soon as is practicable, communicate to the Council the measures that he has adopted and the reasons therefor.

(3) The Governor shall not be obliged to act in accordance with the advice of the Executive Council in any case which, in his judgment, involves a matter for which he is responsible under section 16 of this Constitution.

(4) 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 Executive Council he shall not be obliged to exercise that function in accordance with the advice of that person or authority.

(5) 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 has so exercised that function shall not be enquired into by any court.

Powers to dispose land

5. Subject to the provisions of any law in force in Montserrat, the Governor or any person duly authorised by him in that behalf by writing under his 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 interest in such property that are vested in Her Majesty for the purposes of the Government of Montserrat.

Power to constitute offices and make appointments etc.

6. (1) Subject to subsection (2) of this section and any law in force in Montserrat, the Governor, in Her Majesty's name and on Her Majesty's behalf may—

- (a) constitute offices for Montserrat and make appointments (including acting appointments), to be held during Her Majesty's pleasure, thereto;
- (b) dismiss any person so appointed or take such other disciplinary action in relation to him as the Governor may think fit.

(2) Power to make appointments to the office of any magistrate or any registrar or other officer of the High Court who is required to possess legal qualifications, and power to exercise disciplinary control over or remove from office any person holding or acting in any such office, shall vest in the Governor, acting after consultation with the Chief Justice.

(3) The Governor shall consult with the Chief Minister before appointing any person to the office of permanent secretary.

Powers of pardon, etc.

7. (1) The Governor may, in Her Majesty's name and on Her Majesty's behalf—

- (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.

(2) In the exercise of his powers under this section the Governor shall act in his discretion but shall first consult the Executive Council unless in any particular case the matter is in his judgment too urgent to permit such consultation.

Public seal

8. The Governor shall keep and use the public seal for sealing all things whatsoever that shall pass the said seal.

PART II

THE EXECUTIVE

Executive authority

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

(2) Subject to the provisions of 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, but nothing in this section shall operate so as to prejudice the provisions of any law in force in Montserrat whereby functions are, or may be, conferred on persons or authorities other than the Governor.

Executive Council.

10. (1) There shall be an Executive Council in and for Montserrat which, subject to sections 11 and 14 of this Constitution, shall consist of a Chief Minister, three other Ministers and two *ex officio* members, namely the Attorney General and the Financial Secretary of Montserrat.

(2) Subject to the provisions of this Constitution, the Executive Council shall have the general direction and control of the Government of Montserrat and shall be collectively responsible therefor to the Legislative Council.

Appointment of members

11. (1) The Governor, acting in his discretion, shall appoint as the Chief Minister the elected member of the Legislative Council who, in his judgment, is most likely to command the confidence of a majority of the elected members of the Legislative Council.

(2) The other Ministers shall be appointed by the Governor in accordance with the advice of the Chief Minister from among the elected members of the Legislative Council. (*Amended by S.I. 2000 No. 1339*)

(3) If occasion arises for making an appointment under subsection (2) of this section while the Legislative Council is dissolved a person who was an elected member of the Legislative Council immediately before the dissolution may be appointed as if he were still a member of the Legislative Council. (*Amended by S.I. 2000 No. 1339*)

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

Tenure of office of members

12. (1) If a motion that the Legislative Council should declare a lack of confidence in the Government of Montserrat receives in the Legislative Council the affirmative votes of a majority of all the elected members

thereof the Governor shall, by instrument under the public seal, revoke the appointment of the Chief Minister:

Provided that before so revoking the Chief Minister's appointment the Governor shall consult with the Chief Minister and, if the Chief Minister so requests, the Governor, acting in his discretion, may dissolve the Legislative Council instead of revoking the appointment.

(2) A Minister or the member without portfolio shall vacate his office—

- (a) if he resigns it by writing under his hand addressed to and received by the Governor;
- (b) if he ceases to be a member of the Legislative Council for any reason other than a dissolution thereof;
- (c) if, by virtue of section 29(4) of this Constitution, he is required to cease to perform his functions as a member of the Legislative Council;
- (d) if he is absent from Montserrat without, in the case of the Chief Minister, having given the Governor prior notice of such absence or, in any other case, having obtained the permission of the Governor, acting in accordance with the advice of the Chief Minister.

(3) A Minister (other than the Chief Minister) and the member without portfolio shall also vacate his office—

- (a) whenever a Chief Minister is appointed; or
- (b) if his appointment is revoked by the Governor, acting in accordance with the advice of the Chief Minister, by instrument under the public seal.

(4) For the purposes of subsection (2) of this section—

- (a) a person shall be deemed to have ceased to be a member of the Legislative Council for a reason other than a dissolution thereof when the Legislative Council first meets after any dissolution if he is not then a member of the Council; and
- (b) a person shall not be regarded as absent from Montserrat during his passage from one part of Montserrat to another.

(5) For the avoidance of doubt it is hereby declared that a person who has vacated his office as a Minister or the member without portfolio may, if qualified, again be appointed to that office from time to time.

Performance of functions of Chief Minister in certain events

13. (1) If the office of Chief Minister falls vacant while the Legislative Council is dissolved or the Chief Minister is unable, by reason of his illness or absence from Montserrat, to perform the functions of his office, the Governor may, by instrument under the public seal, authorise any other

Minister to perform the functions conferred on the Chief Minister by this Constitution (other than the functions conferred upon him by subsection (3) of this section).

(2) The Governor may, by instrument under the public seal, revoke any authority given under this section.

(3) The powers conferred upon the Governor by this section shall be exercised by him acting in his discretion if the office of Chief Minister is vacant or if, in his judgment, it is impracticable to obtain the Chief Minister's advice owing to his illness or absence, and in any other case shall be exercised in accordance with the advice of the Chief Minister.

Temporary members

14. (1) Whenever a Minister (other than the Chief Minister) or the member without portfolio is unable, by reason of his illness or absence from Montserrat, to perform the functions of his office, the Governor may, by instrument under the public seal, appoint a person who is an elected member of the Legislative Council (or, if the Council is dissolved, was such a member immediately before its dissolution) to be a temporary Minister or, as the case may be, a temporary member of the Executive Council without portfolio. *(Amended by S.I. 2000 No. 1339)*

(2) Subject to section 12 of this Constitution, a person appointed under this section shall hold office until he is notified by the Governor that the circumstances giving rise to the appointment have ceased to exist.

(3) The powers conferred upon the Governor by this section shall be exercised by him in accordance with the advice of the Chief Minister.

Assignment of responsibilities to Ministers

15. (1) Subject to the provisions of this Constitution, the Governor, acting in accordance with the advice of the Chief Minister, may, by directions in writing, charge any Minister with responsibility for any subject or any department of government and may amend or revoke any such directions by subsequent directions:

Provided that a Minister shall not be so charged with responsibility for any of the matters mentioned in section 16 of this Constitution, matters relating to the judiciary, or the audit of accounts of the Government of Montserrat or of the Courts or other authorities of Montserrat.

(2) Nothing in this section shall empower the Governor to confer on any Minister authority to exercise any power or discharge any duty that is conferred or imposed by this Constitution or any other law on the Governor or any person or authority other than that Minister.

(3) The Governor, acting in his discretion, may at any time call for any official papers or seek any official information or advice available to a Minister with respect to a subject or department with responsibility for which that Minister is charged under this section.

Governor's special responsibilities

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

- (a) defence;
- (b) external affairs;
- (c) international financial services or any directly related aspect of finance;
- (d) internal security, including the police force;
- (e) the appointment of any person to any public office, the suspension, termination of appointment, dismissal or retirement of any public officer, or the taking of any disciplinary action in respect of such an officer, 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, or the organisation of the public service in so far as it does not involve new financial provision:

Provided that the Governor, acting in his discretion, may assign to a member of the Executive Council responsibility for the conduct on behalf of the Governor of any business in the Legislative Council with respect to any of the said matters.

(2) The Governor, acting in his discretion, may by directions in writing delegate, with the prior approval of a Secretary of State, to the Chief Minister or any other Minister after consultation with the Chief Minister, such responsibility for matters relating to defence, external affairs, international financial services or internal security as the Governor may think fit upon such conditions as he may impose.

(3) Where the Governor, acting in his discretion, determines that the exercise of any function conferred upon any other person or authority (other than the Legislative Council) would involve or affect any matter mentioned in subsection (1) of this section, he may, acting in his 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.

(4) Before exercising any function with respect to any matter mentioned in subsection (1), paragraphs (a), (b), (c) and (d), the Governor shall consult the Executive Council but may, if he thinks it right to do so, act against any advice given to him by the Council. Provided that the Governor shall not be obliged to consult the Executive Council in any case in which, in his judgment, it is in the public interest that he should act without consulting the Council thereon, or the matters to be decided are too unimportant to require the advice of the Council thereon, or are too urgent

to admit his obtaining the advice of the Council by the time within which it may be necessary for him to act.

(5) The question of whether a matter falls within the scope of subsection (1) shall be determined by the Governor acting in his discretion, and the determination of the Governor therein shall not be enquired into in any Court.

Oaths and affirmations

17. Every member of the Executive Council appointed under section 11 or 14 of this Constitution shall, before entering upon the duties of his office, make before the Governor an oath or affirmation of allegiance in the form set out in the Schedule to this Constitution and an oath or affirmation for the due execution of that office in such form as may be prescribed by any law in force in Montserrat or, if no law in that behalf is for the time being in force, in the form set out in the Schedule to this Constitution.

Summoning of Executive Council

18. The Executive Council shall not be summoned except by the authority of the Governor, acting in his discretion:

Provided that the Governor shall summon the Council if the Chief Minister so requests.

Proceedings in Executive Council

19. (1) The Governor shall, so far as is practicable, attend and preside at meetings of the Executive Council.

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

(3) No business shall be transacted at any meeting of the Council if there are less than three members present.

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

Summoning of persons to Executive Council

20. The Governor, acting in his discretion, may summon any public officer to a meeting of the Executive Council whenever, in his opinion, the business before the Council renders the presence of that officer desirable.

Powers of Attorney General

21. (1) The Attorney General shall have power, in any case in which he considers it desirable so to do—

- (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 any other person or authority.

(2) The powers of the Attorney General under subsection (1) of this section may be exercised by him in person or by officers subordinate to him acting under and in accordance with his general or special instructions.

(3) The powers conferred upon the Attorney General by subsection (1)(b) and (c) of this section shall be vested in him to the exclusion of any other person or authority:

Provided that 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.

(4) 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.

(5) In the exercise of the powers conferred upon him by this section and section 48 of this Constitution the Attorney General shall not be subject to the direction or control of any other person or authority.

PART III

THE LEGISLATURE

Constitution of Legislature

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

The Legislative Council

23. The Legislative Council shall consist of nine elected members and two *ex officio* members, namely the Attorney General and the Financial Secretary. (*Amended by S.I. 2000 No. 1339*)

24. *Repealed by S.I. 2000 No. 1339.*

Elected members

25. The elected members of the Legislative Council shall be persons qualified for election in accordance with section 27 of this Constitution, and shall be elected in the manner provided by law.

Power to summon public officers to attend meetings of Legislative Council

26. (1) The Speaker, acting in his discretion, may summon to the Legislative Council any public officer, notwithstanding that such officer may not be a member of the Council, when in the opinion of the Speaker the business before the Council renders the presence of such officer desirable.

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

Qualifications for elected membership

27. Subject to section 28 of this Constitution, any person who—

- (a) is a Commonwealth citizen of the age of twenty-one years or upwards; and
- (b) has resided in Montserrat for a period of three years immediately preceding the date of his nomination for election, or is domiciled in Montserrat and is resident therein at the date aforesaid,

shall be qualified to be elected as an elected member of the Legislative Council, and no other person shall be qualified to be so elected or, having been so elected, shall sit or vote in the Council. (*Amended by S.I. 2000 No. 1339*)

Disqualifications for elected membership

28. (1) No person shall be qualified to be elected as a member of the Legislative Council who—

- (a) is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to a foreign power or state;

- (b) holds or is acting in any public office or in the office of a Judge of the High Court or of the Court of Appeal;
- (c) is a minister of religion;
- (d) has been adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth and has not been discharged;
- (e) 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 of Montserrat for or on account of the public service and—
 - (i) *repealed by S.I. 2000 No. 1339.*
 - (ii) has not within one month before the date of election published in the *Gazette* and in a newspaper circulating in the electoral district for which he seeks election a notice of setting out the nature of such contract and his interest, or the interest of such firm or company, therein;
- (f) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in Montserrat;
- (g) subject to subsection (2) of this section, is under sentence of death imposed on him by a court of law in any country, or is serving a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court, or is under such a sentence of imprisonment the execution of which has been suspended;
- (h) is disqualified for membership of the Council by virtue of any law in force in Montserrat relating to offences connected with elections; or
- (i) is disqualified for election by any law in force in Montserrat by reason of his 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.

(Amended by S.I. 2000 No. 1339)

(2) For the purposes of subsection (1)(g) of this section—

- (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.

Tenure of office of elected members

29. (1) *Repealed by S.I. 2000 No. 1339.*

(2) Every elected member of the Legislative Council shall vacate his seat therein at the next dissolution of the Council after his election.

(3) An elected member of the Legislative Council shall also vacate his seat therein—

- (a) if he resigns it by writing under his hand addressed to the Governor;
- (b) if he is absent from the sittings of the Council for such period and in such circumstances as may be prescribed in the Standing Orders of the Council;
- (c) if he ceases to be qualified in accordance with section 27 of this Constitution;
- (d) if any circumstances arise that, if he were not a member of the Council, would cause him to be disqualified for election as such by virtue of paragraphs (a), (b), (c), (d), (f), (h) or (i) of section 28(1) of this Constitution;
- (e) if he becomes a party to any contract with the Government of Montserrat for or on account of the public service, or if any firm in which he is a partner, or any company of which he is a director or manager, becomes a party to any such contract, or if he becomes a partner in a firm, or a director or manager of a company, which is a party to any such contract:

Provided that, if in the circumstances it appears to the Council to be just so to do, the Council may exempt any member from vacating his seat under the provisions of this paragraph if that member, before becoming a party to such contract as aforesaid, or before or as soon as practicable thereafter becoming otherwise interested in such contract (whether as a partner in a firm or as a director or manager of a company) discloses to the Council the nature of such contract and his interest, or the interest of such firm or company, therein.

- (4) (a) Subject to paragraph (b) of this subsection, if any elected member of the Legislative Council is sentenced by a court of law in any Commonwealth country to death or to imprisonment (by whatever name called) for a term exceeding twelve months, he shall forthwith cease to perform his functions as a member of the Council and his seat in the

Council shall become vacant at the expiration of a period of 30 days thereafter:

Provided that the Governor, acting in his discretion, may, at the request of the member, from time to time extend that period for further periods of thirty days to enable the member to pursue any appeal in respect of his conviction or sentence, save that extensions of time exceeding in the aggregate three hundred and thirty days shall not be given without the approval, signified by resolution, of the Council.

- (b) If at any time before the member vacates his seat he is granted a free pardon or his conviction is set aside or his sentence is reduced to a term of imprisonment of twelve months or less or a punishment other than imprisonment is substituted, his seat shall not become vacant under paragraph (a) of this subsection and he may resume the performance of his functions as a member.
- (c) For the purposes of this subsection—
 - (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 payment of a fine.

(Amended by S.I. 2000 No. 1339)

Validity of proceedings

30. Subject to section 40 of this Constitution, the Legislative Council shall not be disqualified for the transaction of business by reason of any vacancy in the membership thereof, and the validity of the transaction of business in the Council shall not be affected by reason only of the fact that some person who was not entitled so to do sat or voted in the Council or otherwise took part in the proceedings.

Determination of questions as to membership

31. (1) Any question whether—

- (a) any person has been validly elected as a member of the Legislative Council; or
- (b) any elected member of the Legislative Council has vacated his seat therein or is required by virtue of section 29(4) of this Constitution to cease to perform his functions as a member,

shall be referred to and determined by the High Court in accordance with any law in force in Montserrat in that behalf and, subject to any such law,

in accordance with any directions given in that behalf by the Chief Justice.
(Amended by S.I. 2000 No. 1339)

(2) (Repealed by S.I. 2000 No. 1339)

Filling of vacancies

32. (1) (Repealed by S.I. 2000 No. 1339)

(2) Whenever the seat of an elected member of the Legislative Council becomes vacant the vacancy shall be filled by election in accordance with any law in force in Montserrat in that behalf.

Temporary members

33. (1) Whenever—

(a) one of the *ex officio* members is absent from Montserrat or is performing the functions of the office of Governor;

(b) (Repealed by S.I. 2000 No. 1339)

a person may be appointed by the Governor, by instrument under the public seal, to be a temporary member of the Legislative Council.

(2) Where an appointment is made under this section in circumstances mentioned in subsection (1)(a)—

(a) the person appointed shall be a person holding a public office;

(b) subject to the provisions of this section, he shall hold his appointment during Her Majesty's pleasure; and

(c) so long as his appointment shall subsist the provision of this Constitution shall, subject as aforesaid, apply to him as if he were an *ex officio* member of the Council.

(3) (Repealed by S.I. 2000 No. 1339)

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

(5) 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.

(6) In the exercise of the powers conferred upon him by this section the Governor shall act in his discretion. (Amended by S.I. 2000 No. 1339)

34. (Repealed by S.I. 2000 No. 1339)

Sessions of Legislative Council

¹35. (1) Subject to subsection (2) of this section, the sessions of the Legislative Council shall be held at such times and places as the Speaker may appoint by proclamation published in the *Gazette*.

(2) There shall be a session of the Legislative Council from time to time so that a period of three months does not intervene between the last sitting in one session and the first sitting in the next session.

Speaker and Deputy Speaker

36. (1) When the Legislative Council first meets after any general election (or as soon as practicable thereafter) and before it proceeds to the despatch of any other business, it shall proceed to elect a person to be the Speaker of the Council, and if the office of Speaker falls vacant for any reason other than a dissolution of the Council, the Council shall, as soon as practicable, elect another person to that office.

(2) The Speaker shall be elected from among persons who are not members of the Legislative Council, and no person shall be elected as Speaker if—

- (a) he is not qualified in accordance with section 27 of this Constitution;
- (b) he is a person disqualified for election as an elected member of the Council by virtue of any provision of section 28(1) of this Constitution other than paragraph (e).

(3) When the Legislative Council 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 Legislative Council who is not a member of the Executive Council to be Deputy Speaker of the Legislative Council; and if the office of Deputy Speaker falls vacant for any reason other than a dissolution of the Council, the Council shall, as soon as practicable, elect another such member to that office.

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

- (a) on a dissolution of the Legislative Council;
- (b) if he announces the resignation from his office to the Legislative Council or if by writing under his hand addressed to the Council and received by the Clerk of the Council he resigns that office;
- (c) in the case of the Speaker—

¹ By Proclamation of 19th January 2007, the Speaker appointed the Auditorium at the Cultural Centre, Little Bay as a place for the sitting of the Legislative Council (S.R.O. 7/2007)

- (i) if he ceases to be qualified in accordance with section 27 of this Constitution;
 - (ii) if any circumstances arise that would cause him to be disqualified for election as an elected member of the Council by virtue of any provision of section 28(1) of this Constitution other than paragraph (e);
 - (iii) on the expiration of a period of thirty days from the date of his election if he 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 of Montserrat for or on account of the public service and if, before the expiration of that period, he has not disclosed to the Council the nature of such contract and his interest, or the interest of such firm or company, therein, and the Council has not exempted him from vacating his office under this sub-paragraph; or
 - (iv) if any circumstances arise that, if he were an elected member, would cause him to vacate his seat under paragraph (e) of section 28(1) of this Constitution;
- (d) in the case of the Deputy Speaker, if he ceases to be a member of the Council for any reason other than a dissolution of the Council or if he is appointed to be a member of the Executive Council.

Presiding in Legislative Council

37. (1) The Speaker or, in his absence, the Deputy Speaker or, if they are both absent, a member of the Legislative Council (not being a member of the Executive Council) elected by the Legislative Council for that sitting shall preside at each sitting of the Legislative Council.

(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.

Governor's right to address Legislative Council

38. The Governor, acting in his discretion, shall have the right of addressing the Legislative Council at any time when he shall think fit.

Oath or affirmation of allegiance

39. No member of the Legislative Council shall be permitted to take part in the proceedings of the Council (other than proceedings necessary for the purposes of this section) until he has made and subscribed before the Council an oath or affirmation of allegiance in the form set out in the Schedule to this Constitution:

Provided that the election of a Speaker and Deputy Speaker may take place before the members of the Council have made such oath or affirmation.

Quorum

40. (1) If at any sitting of the Legislative Council 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 the Standing Orders of the Council, the person presiding at the sitting ascertains that a quorum of the Council is still not present the Council shall be adjourned.

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

Voting

41. (1) Subject to the provisions of this section, all questions proposed for decision in the Legislative Council shall be determined by a majority of the votes of the members present and voting.

(2) Notwithstanding subsection (1) of this section, only the elected members of the Legislative Council shall be entitled to vote on a motion that the Legislative Council should declare a lack of confidence in the Government of Montserrat.

(3) The person presiding shall not vote unless on any question the votes are equally divided, in which case he shall have and may exercise a casting vote:

Provided that where the motion before the Council is one to which subsection (2) of this section applies the person presiding shall not have a casting vote unless he is an elected member.

(4) For the avoidance of doubt it is hereby declared that the Speaker shall be deemed not to be an elected member of the Legislative Council for the purposes of this section.

Prorogation and dissolution

42. (1) The Governor, acting in accordance with the advice of the Chief Minister, may at any time, by proclamation published in the *Gazette*, prorogue the Legislative Council.

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

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

General elections

43. A general election for the elected members of the Legislative Council shall be held at such time within three months after every dissolution of the Legislative Council as the Governor shall appoint by proclamation published in the *Gazette*.

Introduction of Bills etc.

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

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

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

Power to make laws

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

Standing Orders

46. Subject to the provisions of this Constitution, the Legislative Council 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, intituling and numbering of Bills and the presentation of the same to the Governor for assent.

Penalties for unauthorised persons sitting or voting

47. (1) Any person who sits or votes in the Legislative Council knowing or having reasonable grounds for knowing that he is not entitled so to do shall be liable to a penalty not exceeding two hundred Eastern Caribbean dollars for every day upon which he so sits or votes.

(2) The said penalty shall be recoverable by action in the High Court at the suit of the Attorney General.

Assent to Bills

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

- (a) the Governor has assented thereto in Her Majesty's name and on Her Majesty's behalf and has signed the same in token of such assent; or
- (b) Her Majesty has given Her assent thereto 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 he shall declare that he assents or refuses to assent thereto or that he reserves the Bill for the signification of Her Majesty's pleasure:

Provided that, unless he has been authorised by a Secretary of State to assent thereto, the Governor shall reserve for the signification of Her Majesty's pleasure any Bill—

- (a) which appears to him, acting in his discretion—
 - (i) to be inconsistent with any obligation of Her Majesty's Government in the United Kingdom towards any other state or power or any international organisation;
 - (ii) to be likely to prejudice the Royal prerogative, or the efficiency of the judiciary, or to affect any of the matters mentioned in section 16 of this Constitution; or
- (b) which is in any way repugnant to or inconsistent with the provisions of this Constitution.

(3) A law assented to by the Governor shall come into operation 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 operation on some other date, in which case it shall come into operation on that date.

(4) A Bill reserved for the signification of Her Majesty's pleasure shall become a law so soon as Her Majesty has given her assent thereto, through a Secretary of State, and such assent has been signified by proclamation published in the *Gazette*. Every such law shall come into operation 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 operation on some other date, in which case it shall come into operation on that date.

Words of enactment

49. 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 Council of Montserrat, and by the authority of the same as follows:—”.

Disallowance of laws

50. (1) Any law assented to by the Governor may be disallowed by Her Majesty through a Secretary of State.

(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 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 by or in pursuance of that law shall have effect as from the date of the annulment as if that law had not been made.

Privileges etc. of Legislative Council

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

PART IV

FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

Whereas the realisation of the right of 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, whatever his race, place of origin, political opinions, colour creed or sex, 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;
- (b) freedom of conscience, of expression and of assembly and association; and
- (c) protection of the privacy of his home and other property and from deprivation of property without compensation.

Fundamental rights and freedoms of the individual

52. The subsequent provisions of this Part shall have effect for the purpose of affording protection to the aforesaid 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 rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

Protection of right to life

53. (1) No person shall be deprived intentionally of his life save in execution of the sentence of a court in respect of a criminal offence of which he has been convicted.

(2) A person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably justifiable—

- (a) for the defence of any person from violence or for the defence of property;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) for the purpose of suppressing a riot, insurrection or mutiny; or
- (d) in order to prevent the commission by that person of a criminal offence,

or if he dies as a result of a lawful act of war.

Protection from inhuman treatment

54. (1) No person shall be subjected to torture or to inhuman or degrading treatment or punishment.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the infliction of any description of punishment that was lawful in Montserrat immediately before the commencement of this Constitution.

Protection from slavery and forced labour

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

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

(3) For the purposes of this section, “**forced 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 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 any person while he 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 is detained; or
- (d) any labour required during a period of public emergency or in the event of any other emergency or calamity that threatens the life or well-being of the community, to the extent that the requiring of such labour is reasonably justifiable, in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation.

Protection from arbitrary arrest or detention

56. (1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases—

- (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 has been convicted or in consequence of his unfitness to plead to a criminal charge;
- (b) in execution of the order of a court punishing him for contempt of that court or of another court or tribunal;
- (c) in execution of the order of a court made in order to secure the fulfilment of any obligation imposed upon him by law;
- (d) for the purpose of bringing him before a court in execution of the order of a court;
- (e) upon reasonable suspicion that he has committed, is committing or is about to commit a criminal offence;
- (f) in the case of a person who has not attained the age of twenty-one years, under the order of a court or with the consent of his parent or guardian, for the purpose of his education or welfare;
- (g) for the purpose of preventing the spread of an infectious or contagious disease or 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 care or treatment or the protection of the community;

(h) 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 as soon as is reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained in such a case as is mentioned in subsection (1)(d) or (e) of this section and who is not released shall be brought without undue delay before a court; and if any person arrested or detained in such a case as is mentioned in subsection (1)(e) of this section is not tried within a reasonable time he shall (without prejudice to any further proceedings, that may be brought against him) be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person.

Provisions to secure protection of law

57. (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 is proved or has pleaded guilty;
- (b) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged;
- (c) shall be given adequate time and facilities for the preparation of his defence;
- (d) shall be permitted to defend himself before the court in person or, at his own expense, by a legal representative of his own choice, or, where so provided by any law, by a legal representative at the public expense;
- (e) shall be afforded facilities to examine in person or by his 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 behalf before the court on the same conditions as those applying to witnesses called by the prosecution;

(f) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge; and

(g) shall when charged on information in the High Court, have the right to trial by jury;

and, except with his own consent, the trial shall not take place in his absence, unless he so conducts himself in the court as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence, or unless, having had reasonable notice of the hearing and of the nature of the offence charged, he 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 in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgement 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 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 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 he shows that he has been pardoned for that offence under section 7 of this Constitution.

(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, including the announcement of the decision of the court, shall be held in public.

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

- (a) may be empowered by law so to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice, or in interlocutory proceedings or in the interests of public morality, the welfare of persons under the age of eighteen years or the protection of commercial confidence 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 or public order.

(11) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of—

- (a) subsection (2)(a) of this section to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;
- (b) subsection (2)(e) of this section 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) of this section 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, save that any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.

(12) In this section, “**legal representative**” means a person entitled to practise in Montserrat as an attorney.

Protection of privacy of home and other property

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

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

- (a) that is reasonably required—
 - (i) in the interests of defence, public safety, public order, public morality, public health, town and 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;
 - (ii) for the purpose of protecting the rights and freedoms of other persons; or

- (iii) for the prevention or detection of offences against the criminal law or the customs law;
- (b) 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 thereon 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
- (c) 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 upon any premises by such order,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Protection of freedom of conscience

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

(2) Except with his consent (or, if he is a person who has not attained the age of twenty-one years, the consent of his 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 if that instruction, ceremony or observance relates to a religion other than his own.

(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 any 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 course of education.

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

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the

extent that the law in question makes provision which is reasonably required—

- (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,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Protection of freedom of expression

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

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

- (a) that is 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, 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 telephone, telegraphy, posts, wireless broadcasting, television or other means of communication or regulating public exhibitions or public entertainments; or
- (b) that imposes restrictions upon public officers or teachers, except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(3) For the purposes of subsection (2)(b) of this section 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 associations

61. (1) Except with his consent, no person shall be hindered in the enjoyment of his freedom of peaceful assembly and association, that is to say, of his 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 protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(a) that is reasonably required—

- (i) in the interests of defence, public safety, public order, public morality or public health;
- (ii) for the purpose of protecting the rights and freedoms of other persons; or

(b) that imposes restrictions upon public officers, except so far as that provisions or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(3) For the purposes of subsection (2)(b) of this section, “**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

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

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(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;

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society;

- (b) 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 or 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 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 the movement or residence within Montserrat of any person who does not belong to Montserrat or the exclusion or expulsion therefrom of any such person;
- (e) for the imposition of restrictions on the acquisition or use by any person of land or other property in Montserrat;
- (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 his 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 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 extradition or lawful removal from Montserrat; or
- (g) 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, except so far as the provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(3) For the purposes of subsection (2)(c) of this section, “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) Any restriction on a person's freedom of movement which is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(5) For the purpose of this section, a person shall be deemed to belong to Montserrat if he has, under the law in force in Montserrat regulating immigration, the status of “Belonger”.

Protection from discrimination on grounds of race, etc.

63. (1) Subject to subsection (4), (5) and (8) of this section, no law shall make any provision which is discriminatory either of itself or in its effect.

(2) Subject to subsections (6), (8) and (9) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any law or in the performance of the functions of any public office or any public authority.

(3) In this section, “**discriminatory**” means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

(4) Subsection (1) of this section 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, or the employment, engaging in any business or profession, movement or residence within Montserrat of persons who do not belong to Montserrat for the purposes of section 62 of this Constitution;
- (c) for the application, in the case of persons of any such description as is mentioned in subsection (3) of this section (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 as is mentioned in subsection (3) of this section 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.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it requires a person to belong to Montserrat for the purposes of section 62 of this Constitution or to possess any other qualification (not being a qualification specifically relating to race, place of origin, political opinions, colour or creed) in order to be eligible for appointment to any office in the public service or in a disciplined force or any office in the service of a local government authority or of a body corporate established directly by any law for public purposes.

(6) Subsection (2) of this section shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (4) or (5) of this section.

(7) Subject to subsection (8) of this section, no person shall be treated in a discriminatory manner in respect of access to any of the following places to which the general public have access, namely, shops, hotels, restaurants, eating-houses, licensed premises, places of entertainment or places of resort.

(8) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 58, 59, 60, 61 and 62 of this Constitution, being such a restriction as is authorised by section 58(2)(a), 59(5), 60(2), 61(2) or 62(2)(a) as the case may be.

(9) Nothing in subsection (2) of this section 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 or any other law.

Protection from deprivation of property

64. (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 where the following conditions are satisfied, that is to say—

- (a) the taking of possession or acquisition is necessary or expedient in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilisation of any property in such manner as to promote the public benefit or the economic well-being of the community; and
- (b) there is 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 that 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 interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to

which he is entitled, and for the purpose of obtaining prompt payment of that compensation; and

- (iii) giving to any party to proceedings in the High Court relating to such a claim the same rights of appeal as are accorded generally to parties to civil proceedings in that Court sitting as a court of original jurisdiction.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section—

- (a) to the extent that the law in question makes provision for the taking of possession or acquisition of any property, interest or right—
 - (i) in satisfaction of any tax, rate or due;
 - (ii) by way of penalty for breach of any law or forfeiture in consequence of a breach of any law;
 - (iii) as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;
 - (iv) by way of the taking of a sample for the purposes of any law;
 - (v) where the property consists of an animal upon its being found trespassing or straying;
 - (vi) in the execution of judgements or orders of a court;
 - (vii) by reason of its being in a dilapidated or dangerous state or injurious to the health of human beings, animals or plants;
 - (viii) in consequence of any law with respect to prescription or the limitation of actions; or
 - (ix) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry, or, in the case of land, for the purposes of carrying out thereon work of reclamation, drainage, soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement (being work relating to such development or improvement that the owner or occupier of the land has been required, and has, without reasonable and lawful excuse, refused or failed, to carry out), except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society; or
- (b) to the extent that the law in question makes provision for the taking possession or acquisition of any of the following

property (including an interest in or right over property), that is to say—

- (i) enemy property;
- (ii) property of a deceased person, a person of unsound mind or a person who has not attained the age of twenty-one years, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein;
- (iii) property of a person adjudged bankrupt or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the bankrupt or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property; or
- (iv) property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that the law in question makes provision for the compulsory taking of possession in the public interest of any property, or the compulsory acquisition in the public interest of any interest in or right by law for public purposes in which no moneys have been invested other than moneys provided from public funds.

Provisions for periods of public emergency

65. (1) Nothing contained in or done under the authority of any regulation made under the Emergency Powers Orders in Council 1939 to 1973 or under the Leeward Islands (Emergency Powers) Order in Council, 1959 shall be held to be inconsistent with or in contravention of section 57, section 58 other than subsections (4) and (6) thereof or any provision of sections 59-64 (inclusive) of this Constitution to the extent that the regulation in question makes in relation to any period of public emergency provision, or authorises the doing during any such period of anything, that is reasonably justifiable in the circumstances of any situation arising or existing during that period for the purpose of dealing with that situation.

(2) Where any person who is lawfully detained in pursuance of such a regulation as is referred to in subsection (1) of this section so requests at any time during the period of that detention (but if he has already made such a request during that period not earlier than six months after he last made such a request during that period), his case shall within one month of making the request be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice.

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

Enforcement of fundamental rights

66. (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, then, without prejudice to any other action with respect to the same matter which is lawfully available, 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 in pursuance of subsection (1) of this section; and
- (b) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (3) of this section,

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:

Provided that the High Court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress are or have been available to the person concerned under any other law.

(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; Provided that 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) A law made under section 45 of this Constitution may confer upon 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 upon it by this section.

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

- (a) of the High Court in relation to the jurisdiction and powers conferred upon 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) of this section,

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

Interpretation of Part IV

67. (1) In this Part, unless it is otherwise expressly provided or required by the context—

“**contravention**” in relation to any requirement includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

“**court**” means any court of law having jurisdiction in Montserrat, including Her Majesty in Council, but excepting, save in sections 53 and 55 of this Constitution, a court constituted 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 force or prison service of 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;

“**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 the Emergency Powers Orders in Council 1939 to 1973 or under the Leeward Islands (Emergency Powers) Order in Council, 1959.

(2) In relation to any person who is a member of a disciplined force raised under the law of Montserrat, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of the provisions of this Part other than sections 54, 55 and 56.

(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 contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any provisions of this Part.

PART V

INTERPRETATION

Interpretation

- 68. (1)** In this Constitution, unless the context otherwise requires—
- “**Chief Justice**” means the Chief Justice referred to in the Supreme Court Order;
- “**Chief Minister**” means the person appointed as such under section 11(1) of this Constitution;
- “**Court of Appeal**” means the Court of Appeal established by the Supreme Court Order;
- “**Deputy Speaker**” means the member of the Legislative Council elected by the Council in accordance with section 36(3) of this Constitution;
- “**functions**” includes powers and duties;
- “**Gazette**” means the official *Gazette* of Montserrat;
- “**High Court**” means the High Court established by the Supreme Court Order;
- “**judiciary**” means any Court having jurisdiction in Montserrat and includes any member or officer thereof;
- “**law**” includes any subsidiary instrument;
- “**meeting**” means any sitting or sittings of the Legislative Council commencing when the Council first meets after being summoned at any time and terminating when the Council is adjourned *sine die* or at the conclusion of a session;
- “**Minister**” means a person appointed as Chief Minister or other Minister under section 11 of this Constitution;
- “**minister of religion**” means any person in holy orders and any other person the functions of whose principal occupation include teaching or preaching in any congregation for religious worship;
- “**public office**” means, subject to subsection (2) of this section, an office of emolument in the public service;

“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, but does not include service as a Judge of the Supreme Court;

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

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

“Speaker” means the person elected as Speaker by the Legislative Council in accordance with section 36(1) and (2) of this Constitution;

“Standing Orders” means the Standing Orders of the Legislative Council made under section 46 of this Constitution;

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

“Supreme Court Order” means the West Indies Associated States Supreme Court Order 1967.

(2) 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—

- (a) is in receipt of any remuneration or allowance as a Minister or member of the Executive Council or as a member of the Legislative Council or the Public Service 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,

and if it is provided by any law in force in Montserrat that an office (not being an office constituted by this Constitution or the office of member of the Judicial and Legal Service Commission) shall not be a public office for the purposes of this Constitution, this Constitution shall have effect accordingly as if that provision of that law were enacted herein.

(3) Any person who has vacated his seat in the Legislative Council or has vacated any office constituted by or under this Constitution may, if qualified, again be appointed or elected as a member of that body or to that office, as the case may be, from time to time.

(4) Except where the context otherwise requires, a reference in this Constitution to the holder of an office by the term designating his office shall be construed as a reference to any person for the time being lawfully performing the functions of that office.

(5) 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 thereto; 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 thereof.

(6) 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 thereof 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.

(7) In this Constitution, unless it is otherwise provided or the context otherwise requires—

- (a) 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 thereof is absent from Montserrat or is for any other reason unable to perform the functions thereof;
- (b) 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.

(8) 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.

(9) 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.

THE SCHEDULE TO THE CONSTITUTION

(Sections 1(3), 2(2), 17 and 39)

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, 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, in the office of (here insert the description of the office).

MONTSERRAT ROYAL INSTRUCTIONS 1989

(Gazette Notice 79/1999)

Dated: 13th January 1990.

ELIZABETH, R.

INSTRUCTIONS to Our Governor of the Colony of Montserrat or other officer for the time being performing the functions of that Office.

We do hereby direct and enjoin and declare Our Will and Pleasure as follows—

Citation, commencement and revocation

1. (1) These Instructions may be cited as the Montserrat Royal Instructions, 1989.

(2) These Instructions shall come into operation on the day that the Montserrat Constitution Order 1989 enters into force in accordance with section 1(2) thereof.

(3) The Montserrat Royal Instructions, 1959 are hereby revoked.

Interpretation

2. Expressions used in these Instructions shall, except where it is otherwise provided or required by the context, have the same respective meanings for the purpose of interpreting these Instructions as for the purpose of interpreting the Montserrat Constitution Order 1989.

Instructions to be observed by deputy

3. (1) These Instructions, so far as they are applicable to any functions to be performed by a deputy to the Governor appointed under section 3 of the Montserrat Constitution, shall be deemed to be addressed to and shall be observed by such deputy.

(2) Any such deputy may, if he thinks fit, apply to Us through a Secretary of State, for instructions in any matter; but he shall forthwith transmit to the Governor a copy of every despatch or other communication by which he applies for any such instructions.

Leave of absence for Governor

4. Except in circumstances in which he is not regarded as absent from Montserrat for the purposes of section 2 of the Montserrat Constitution, the Governor shall not leave Montserrat without first having obtained Our permission through a Secretary of State.

Ordinances and reserved Bills to be forwarded

5. (1) When any Ordinance has been enacted, the Governor shall forthwith transmit to Us, through a Secretary of State, for the signification of Our pleasure, a transcript in duplicate of the Ordinance, duly authenticated under the public seal and by his own signature, together with an explanation of the reasons and occasion for the passing of the Ordinance.

(2) Whenever any Bill has been reserved for the signification of Our pleasure the Governor shall forthwith transmit to Us, through a Secretary of State a transcript in duplicate of the Bill, duly authenticated under the public seal and by his own signature, together with an explanation of the reasons and occasion for the passing of the Bill.

Ordinances to be published

6. As soon as practicable after the commencement of each year, the Governor shall cause a complete collection of all Ordinances enacted in Montserrat during the preceding year to be published for general information.

Disposition of public land

7. (1) Before disposing of any land or other immovable property belonging to Us in Montserrat the Governor shall cause such reservations to be made therefrom as he may think necessary for any public purpose.

(2) The Governor shall not, directly or indirectly, purchase for himself any land or buildings in Montserrat without Our special permission given through a Secretary of State.

Power of pardon in capital cases

8. (1) Whenever any person has been condemned by the sentence of any court to suffer death in respect of any offence to which section 7 of the Montserrat Constitution applies, the Governor shall call upon the judge who presided at the trial to make to him a written report of the case of such offender and shall cause such report, together with such other information derived from the record of the case or elsewhere as the Governor may require, to be taken into consideration at a meeting of the Executive Council.

(2) (a) The Governor shall not pardon or reprieve any such offender unless it shall appear expedient to him so to do upon receiving the advice of the Executive Council thereon; but he is to decide either to extend or to withhold a pardon or reprieve according to his own deliberate judgement, whether the members of the Executive Council concur therein or otherwise.

(b) Whenever he shall decide any such question in opposition to the judgement of the majority of the members thereof, he

shall enter his reasons at length in the minutes of the Council.

Governor may require public officers to take oath of allegiance

9. The Governor may, whenever he thinks fit, require any person holding public office to take an oath or affirmation of allegiance in the form set out in the Schedule to the Montserrat Constitution, and shall either administer the oath or affirmation or cause it to be administered by some other person holding public office.

Given at Our Court at St. James's this thirteenth day of January in the thirty-ninth year of Our Reign.

LEGISLATIVE COUNCIL STANDING ORDERS

ARRANGEMENT OF SECTIONS

SECTION

1. Short title

Meetings

2. Notice of meetings and business to be dealt with
3. Adjournment
4. Absence of members

Duties of the Clerk of the Council

5. Order book
6. Minutes of proceedings
7. Business paper
8. Attendance of clerk upon Select Committee
9. Custody of papers

Order of Business

10. Order of business
11. Confirmation of minutes
12. Messages from the Governor
13. Personal explanations
14. Other business
15. Adjournment on matter of urgent public importance

Papers

16. Presentation of papers

Petitions

17. Form of petitions
18. Presentation of petition

Notices

19. Notice of questions and motions
20. Notice of Bills
21. Notice of petition

22. Motions without notice

Questions

23. Questions to members
24. Form of questions
25. Replies
26. Supplementary questions
27. Disallowance of question

Motions

28. Power to move
29. Withdrawal of motions
30. Re-introduction of motions

Amendments

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LEGISLATIVE COUNCIL STANDING ORDERS

(S.R.O.s 6/1972, 35/1975, 20/1988 and 43/2006)

Commencement

[8 March 1972]

Short title

1. These Orders may be cited as the Legislative Council Standing Orders.

Meetings

Notice of meetings and business to be dealt with

2. (1) The Council shall meet on such days as the Speaker shall determine. Provided, however, that the meetings of Council shall be held at least once in every two months.

(2) Not less than seven days before the date of a meeting the Clerk of the Council shall post or otherwise despatch a notice of the meeting and of the business to be dealt with, addressed to each member at his usual place of abode or such address as a member may have registered with the Clerk of the Council as that to which he wishes such notice to be sent. The notice shall set out the subjects for discussion as enumerated in the Order Book at the time of sending such notice: Provided that in the case of any emergency, of which the Governor shall be the sole judge, a meeting may be summoned on such shorter notices he may determine, and such notice may be given to members by such means as the urgency of the case permits.

(3) The hour of the meeting shall be 10 o'clock of the forenoon unless some other hour shall have been fixed by the Speaker.

(4) When the Council has adjourned to a special date no further notice shall be necessary, unless such date shall be more than seven days after the adjourned meeting.

(5) Notwithstanding (1) above the Council shall not meet in the month of August except in the case of an emergency of which the Governor shall be the sole Judge.

(Substituted by S.R.O. 20/1988)

Adjournment

3. (1) A meeting of the Council may be adjourned at any time by the Speaker, or by a vote of the majority of the members present.

(2) The Speaker may at any time suspend a meeting.

(3) All matters under discussion and business not disposed of at the time of any adjournment shall stand as an Order of the Day for the next meeting of the Council.

Absence of members

4. (1) Any member unable to attend a meeting of the Council to which he has been summoned shall acquaint the Clerk as early as possible of his inability to attend.

(2) No member shall leave the Council or a Committee of the Council except with the consent of the Speaker or the Chairman of the Committee.

*Duties of the Clerk of the Council***Order book**

5. (1) The Clerk shall keep an Order Book in which he shall enter and number in succession the subjects intended to be brought under discussion at each meeting.

(2) The Order Book shall be open to the inspection of members at all reasonable hours.

Minutes of proceedings

6. (1) The Clerk shall keep the minutes of the proceedings of the Council, and of Committees of the whole Council, and shall circulate to members a copy of such minutes as soon as practicable after the conclusion of each meeting.

(2) The minutes shall consist of particulars of the proceedings and shall record—

(a) the names of all members present at the assembling of the Council, and in case any other member shall take his seat subsequently at such meeting or shall leave the Council before the rising of the Council the Clerk shall note the fact at the proper place;

(b) all decisions of the Council, whether made formally or informally.

Business paper

7. The Clerk shall send to each member, two clear days at least before each meeting, a copy of the Business Paper for such meeting, unless the Council shall have adjourned for a period of less than three days.

Attendance of clerk upon Select Committee

8. The Clerk shall attend upon any Select Committee of the Council if required to do so.

Custody of papers

9. The Clerk shall be responsible for the custody of votes, records, Bills, and other documents laid before the Council, which shall be open to inspection by members of the Council at all reasonable times, and by other persons under such arrangements as may be sanctioned by the Speaker.

Order of Business

Order of business

10. Unless the Council shall otherwise direct, the order of business shall be as follows—

- (i) Prayers;
- (ii) Oath of Allegiance to new members;
- (iii) Confirmation of minutes;
- (iv) Announcements by direction of the Speaker;
- (v) Papers;
- (vi) Reports from Committees;
- (vii) Petitions;
- (viii) Government Notices;
- (ix) Unofficial Notices;
- (x) Questions;
- (xi) Motions;
- (xii) Other Business.

Confirmation of minutes

11. Prayers shall be said, and oaths of Allegiance, if any, administered, whereupon the Clerk shall read the minutes of the previous meeting, unless such minutes have been previously circulated. The Speaker shall put the question that the minutes as read or as circulated be confirmed. No debate shall be allowed thereupon except as to any proposed amendment or as to the accuracy of the minutes.

Messages from the Governor

12. A message or minute from the Governor may be brought up at any time during a meeting, and shall be considered during the course of that meeting.

Personal explanations

13. By the leave of the Council, a member may, before the Council proceeds to Other Business, make a personal explanation, although there is no question before the Council; but no debatable matter may be brought forward, or debate arise upon the explanation.

Other business

14. (1) Unless the Council shall otherwise direct, the order of Other Business shall be as follows—

- (i) Government Business;

- (ii) Private Bills;
- (iii) Other Orders of the Day.

(2) Government Business shall be set down in such order as the Government think fit.

(3) Other matters shall be submitted to the Council in the order in which they stand in the Order Book.

Adjournment on matter of urgent public importance

15. (1) A motion for the adjournment of the Council shall not be made until Other Business has been entered upon, except it be made on behalf of the Government, or unless a member rise in his place at the end of Questions, and ask leave to move the adjournment of the Council for the purpose of discussing a definite matter of urgent public importance.

(2) Such motion shall not be made unless—

(a) the Speaker is satisfied—

- (i) that the motion does not anticipate a matter which has been previously appointed for consideration by the Council or with reference to which a notice of motion has previously been given;
- (ii) that no opportunity for the discussion of the question raised by the motion will arise in the ordinary course of the meeting; and
- (iii) that the motion is definite, and that the matter is urgent and of public importance, and

(b) the leave of the majority of the Council be obtained for the motion.

(3) If the Speaker is satisfied that the motion may properly be made, and the leave of the Council in that behalf is granted, the motion shall be considered forthwith.

(4) Not more than one such motion shall be made at the same sitting; and not more than one matter shall be discussed on the same motion.

Papers

Presentation of papers

16. (1) (a) All papers shall be presented by a member of the Executive Council and their presentation shall be entered upon the Minutes.

(b) A member presenting a paper may make a short explanatory statement of its contents.

(c) All papers shall be ordered to lie upon the Table without question put and any Motion for the printing thereof shall be determined without amendment or debate.

(2) All Rules, Regulations and Orders made by the Governor in Council under the authority of an Act which do not require the approval of the Legislative Council shall be laid on the Table as soon as may be after being made.

Petitions

Form of petitions

17. Every petition intended to be presented to the Council must—
- (a) be addressed to the Council;
 - (b) conclude with a prayer setting forth the general object of the petitioners;
 - (c) bear the signatures of the petitioners, or their marks duly witnessed; and
 - (d) be endorsed by the person presenting the same to the effect that in his opinion it is properly and respectfully worded.

Presentation of petition

18. (1) A petition must be presented by a member who shall be responsible for compliance with the requirements of the preceding Rule.
- (2) A member may not present a petition for himself.
- (3) The member presenting a petition may state concisely the purport of the petition, and may move that it do lie on the Table or be read or printed or referred to a Select Committee, and any such motion shall specify the number of members which shall form a quorum of the committee.
- (4) No debate shall be permitted on such motion nor shall any other member speak upon or in relation to such petition except to second such motion formally.
- (5) When any petition is referred to a Select Committee, individuals whose rights are peculiarly affected by any proposed action or legislation to which the petition relates may be heard by the Committee or, at its discretion by the Council.

Notices

Notice of questions and motions

19. Except as hereinafter provided, no member shall ask a question or make a motion unless he shall have given notice in writing of such question or motion either at some previous sitting of the Council, or to the Clerk not less than seven days previous to the hour of sitting of the Council at which such question is to be asked or such motion to be made: Provided nevertheless that the Speaker may allow a question to be asked without notice if it is of an urgent character.

(Amended by S.R.O.43/2006)

Notice of Bills

20. A printed or cyclostyled copy of every Bill shall, in so far as possible, be sent to each member one week at least before it is proposed to read it a first time.

Notice of petition

21. A copy of any petition shall be sent to the Clerk at least two days before its presentation.

Motions without notice

22. The following motions may be made without notice—

- (i) A motion for the confirmation or amendment of the minutes of the Council, or for the adoption, modification or rejection of the report of any committee;
- (ii) A motion that a petition or other paper do lie on the table or be printed or be rejected;
- (iii) A motion for the reference of any matter to a committee;
- (iv) A motion made when Council is in committee;
- (v) A motion by way of amendment to any motion being debated in Council;
- (vi) A motion for the adjournment of the Council or of any debate;
- (vii) A motion for the withdrawal of a Bill;
- (viii) A motion for the withdrawal of strangers;
- (ix) A motion relating to a matter of privilege;
- (x) A motion for the suspension of a member;
- (xi) A motion for the suspension of the Standing Orders of the Council;
- (xii) A motion that the question be now put.

Questions

Questions to members

23. Questions may be put to members of the Executive Council relative to public affairs with which they are officially connected, proceedings pending in Council, or any matter of administration for which such members are responsible.

Form of questions

24. (1) A question shall not contain arguments, inferences, opinions, imputations, epithets, ironical expressions or hypothetical cases; nor shall a question refer to debates or answers to questions in the current session.

(2) A question shall not include the names of persons, or statements, not strictly necessary to render the question intelligible, nor contain charges which the member, who asks the question, is not prepared to substantiate.

(3) A question must not be asked for the purpose of obtaining an expression of opinion, the solution of an abstract legal case, or the answer to a hypothetical proposition.

(4) A question must not refer to any debate that has occurred or answer that has been given in the current session, nor should a question fully answered be asked again during the same session.

(5) A question must not be asked about proceedings in Committee which have not been placed before the Council by a report of the Committee.

(6) A question may not be asked as to the character or conduct of any person except in his official or public capacity.

(7) A question reflecting on the character or conduct of any person whose conduct can only be challenged on a substantive motion may not be asked.

(8) A question making or implying a charge of a personal character may be disallowed.

Replies

25. (1) A written reply to each question shall be read by the member to whom the question is put, and a copy of the reply shall be handed to the member putting the question: provided that with the consent of the Council such written reply may be taken as read.

(2) A reply shall be confined to the points contained in the question, with such explanation only as will render the reply intelligible.

Supplementary questions

26. The reply to any question shall be conclusive and no speech or debate on the reply shall be allowed, but any member may, with the permission of the Speaker, put a supplementary question for the purpose of further elucidating any matter of fact not made clear to him by the reply; but a supplementary question must not be used to introduce matter not included in the original question.

Disallowance of question

27. The Speaker shall be the sole judge of the propriety or admissibility of a question and he may disallow any question which in his opinion is an abuse of the right to ask questions.

Motions

Power to move

28. Any member, upon due notice being given, may propose any resolution:

Provided, however, that except with the consent of the Governor signified by a member of the Executive Council, no member may move a resolution or motion which in the opinion of the Speaker or other person presiding would impose a tax or dispose of or charge any part of the public revenue, or would revoke or vary any disposition of or charge on the public revenue:

And provided further that no motion the object or effect of which may be to suspend any of the Standing Orders of the Council shall be proposed except by or with the consent of the Speaker or other person presiding.

Withdrawal of motions

29. A motion may be withdrawn with the leave of the Council, but if so withdrawn may be made at some other meeting of the Council.

Re-introduction of motions

30. No motion shall be proposed which is the same in substance as any motion which during the previous six months shall have been resolved in the affirmative or negative.

Amendments

Rules as to amendments

- 31.**
- (a) The Speaker may require the mover of an amendment which has been seconded to put the amendment into writing and deliver it to the Clerk.
 - (b) An amendment must be relevant to the question to which it is proposed.
 - (c) An amendment must not raise any question which can be raised only by a distinct motion after notice.
 - (d) After a decision has been given on an amendment to any part of a question an earlier part cannot be amended.
 - (e) Where an amendment of any part of a question has been proposed, an earlier part cannot be amended unless the amendment so proposed is withdrawn.
 - (f) An amendment to a question must not be inconsistent with a previous decision on the same question given at the same stage of any Bill or matter.
 - (g) An amendment must not be substantially identical with an amendment moved by another member.
 - (h) An amendment must not be substantially a direct negative of the original proposition or of any amendment thereto.
 - (i) An amendment may be moved to any amendment.

Order in which amendments taken on question being put

32. When any amendment to a question shall have been submitted, and when more amendments than one shall have been submitted, the Speaker at the close of the debate shall put the question for the decision of the Council in this wise; “That the words of the question stand as in the original motion” which if it be decided in the affirmative will throw out all amendments; and he shall then put the original motion to be affirmed or negatived. If the first question which would preclude all amendments be negatived, then, in case only one amendment shall have been proposed and seconded, he shall put the question as it was proposed to be amended; but in case more amendments than one shall have been proposed and seconded, he shall put the questions of amendment seriatim and in the inverse order of their having been proposed; and when any one amendment is affirmed all other amendments shall be thereby negatived, and the Speaker shall then put the motion, as so amended, to be affirmed or negatived.

Admissibility

33. The Speaker shall be the sole judge of the admissibility of any amendment.

Rules of Debate

Mode of addressing Council

34. (1) A member desiring to speak shall rise in his place and address his observations to the Speaker or, if the Council is in Committee to the Chairman.

(2) If two or more members rise at the same time, the Speaker or Chairman shall call on the member who first catches his eye.

(3) A member shall not read his speech, but he may read extracts from written or printed papers in support of his argument, and may refresh his memory by reference to notes.

(4) A member must confine his observations to the subject under discussion.

(5) A member while speaking on a question must not—

(a) refer to any matter on which a judicial decision is pending, in such a way as may prejudice the interests of the parties thereto;

(b) impute improper motives to any other member;

(c) use the Queen’s name for the purpose of influencing the debate;

(d) utter treasonable or seditious words or use the Queen’s name irreverently; or

(e) use his right of speech for the purpose of obstructing the business of the Council.

Reference to other members

35. Any member who in discussing any motion wishes to allude to the speech or the opinion of any other member shall, if possible, avoid referring to such other member by name. Official members shall be described by reference to their official designations; elected members by reference to the electoral districts which they represent, or where an electoral district is represented by more than one member, by reference to the order of precedence as between such members; and nominated members by reference to the order of precedence as between such members.

Reflections upon the Crown or upon certain persons in authority

36. The conduct of Her Majesty, Members of the Royal Family, the Governor, the Speaker or Members of the Council, and Judges or other persons engaged in the administration of justice shall not be raised except upon a substantive motion; and in any amendment, question to a member or remarks in a debate on a motion dealing with any other subject any reference to the conduct of the persons aforesaid shall be out of order.

How often members may speak

37. (1) No member shall speak more than once to a motion except as hereinafter provided—

- (a) the mover of an original motion shall have the right of reply after all members who desire to speak shall have spoken but the mover of an amendment shall not have any right to reply.
- (b) any member who may second an original motion in the formal words “I second this motion” and no others, may reserve his speech until later in the debate.
- (c) when the Council is in Committee.

(2) A member may speak on the question before the Council and upon any amendment proposed thereto.

Motion or amendment to be seconded

38. After the mover of any motion or any amendment has spoken in support thereof, no debate shall be allowed until the motion or amendment has been duly seconded, unless the Council is in Committee when a motion or amendment may be put without being seconded.

Interruptions

39. No member shall interrupt another member who is speaking except by rising to a point of order. A member rising to a point of order shall simply direct attention to the point which he desires to bring to notice and submit to the Speaker for his decision.

Relevancy

40. (1) Debate must be relevant to the matter or question before the Council of the Committee, and where more than one question has been proposed from the Chair the debate must be relevant to the last question so proposed, until it has been disposed of.

(2) The Speaker after having called the attention of the Council to the conduct of a member who persists in irrelevance or in tedious repetition either of his own arguments or of the arguments used by other members in debate may direct the member to discontinue his speech.

Closure

41. (1) After a question has been proposed and seconded, a member rising in his place may claim to move, "That the question be now put," and unless it appears to the Speaker that the motion is an abuse of the rules of the Council, or an infringement of the rights of the minority, the question "That the question be now put" must be put forthwith.

(2) When the motion "That the question be now put," has been carried and the question consequent thereon has been decided, any further motion may be made (the assent of the Speaker as aforesaid not having being withheld) which may be requisite to bring to a decision any question already proposed from the chair.

(3) When a clause is under consideration a motion may be made (the assent of the Speaker as aforesaid not having been withheld) that the question that certain words of the clause defined in the motion stand part of the clause, or that the clause stand part of or be added to the Bill, be now put.

(4) Every motion made under this rule must be put forthwith and decided without amendment or debate.

Allocation of time for debate

42. Before or when a member rises to move a question which stands in his name, the Speaker, with the consent of the majority of the Council may fix the total time to be occupied in the debate thereon, and may adjourn the debate from time to time as he may think fit.

Procedure on question being put

43. After the question has been put by the Speaker no further discussion shall be allowed.

Responsibility for order

44. (1) The Speaker or other presiding member in the Council, and the Chairman in Committee shall be responsible for the observance of the rules of order in the Council and Committee respectively and their decision upon any point of order shall not be open to appeal and shall not be reviewed by the Council or by the Committee as the case may be except upon a substantive motion made after notice.

(2) When the Speaker or other presiding member or the Chairman rises, any member then speaking or wishing to speak shall immediately resume his seat and the Council, or the Committee, shall be silent.

Divisions

Voting

45. (1) At the conclusion of the debate upon any question the Speaker or other presiding member, or the Chairman as the case may be, shall put the question for the decision of the Council or of the Committee as the case may be, and shall collect the voices of the “ayes” and of the “noes”, after which no further debate may take place upon that question.

(2) The result shall be declared by the Speaker or other presiding member or by the Chairman, as the case may be, stating “I think the ayes have it” or “I think the noes have it” as the case may be, but any member may challenge the opinion of the Chair by claiming a division.

(3) A division may be taken by the Clerk calling each member’s name and asking each member separately how he desires to vote and recording the vote accordingly. The Clerk shall then announce the number of those who have voted for and of those who have voted against the proposal and the Speaker or other presiding member or the Chairman as the case may be, shall declare the result of the division, and if necessary, give his casting vote.

(4) Every member present shall, unless he expressly states that he declines to vote record his vote either for the “ayes” or the “noes”. The Clerk shall enter in the minutes of the proceedings the record of each member’s vote.

(5) If a member states that he voted in error or that his vote has been counted wrongly, he may claim to have his vote altered provided that such claim is made as soon as the Clerk has announced the numbers and before the Chair has declared the result of the division. Upon such claim being made the Speaker or other presiding member or the Chairman as the case may be, shall at his sole discretion either direct the Clerk to alter that member’s vote or direct that a fresh division be held.

(6) Any member voting in the minority who desires to have his reasons recorded for so voting shall state such desire forthwith, and his reasons shall be recorded either at that or the following meeting of the Council.

Disallowance of vote of member having direct personal pecuniary interest

46. A member shall not vote on any subject in which he has a direct personal pecuniary interest, but a motion to disallow a member’s vote on this ground shall be made only as soon as the result of the voting on the question shall have been declared. If the motion for the disallowance of a member’s vote shall be agreed to, the Speaker, or in Committee the Chairman, shall direct the clerk to correct the numbers voting in the division accordingly. In deciding whether a motion for the disallowance of a member’s vote shall be proposed from the chair the Speaker, or in any Committee of the Council the Chairman, shall have regard to the character of the question upon

which the division was taken and to the consideration whether the interest therein of the member whose vote is challenged is direct and pecuniary and not an interest in common with the rest of His Majesty's subjects and whether his vote was given on a matter of state policy.

Breaches of Order

Withdrawal of disorderly member

47. (1) The Speaker or Chairman shall order members whose conduct is grossly disorderly to withdraw immediately from the Council Chamber during the remainder of the day's sitting.

(2) If such direction to withdraw be not complied with at once or if on any occasion the Speaker deem that his powers under this Order are inadequate he may name such member or members in pursuance of Order 48 hereof.

Suspension of member named

48. (1) If a member show disregard for the authority of the Chair, or abuse the rules of the Council by persistently and wilfully obstructing the business of the Council, the Speaker shall direct the attention of the Council to the incident mentioning by name the member concerned. A motion may then be made upon which the Speaker shall forthwith put the question, no amendment, adjournment, or debate being allowed, "That such member be suspended from the service of the Council". If such an offence shall have been committed in a Committee of the whole Council, the Chairman shall forthwith suspend the proceedings of the Committee and report the circumstances to the Council; and the Speaker shall on a motion being made thereupon put the same question, without amendment, adjournment or debate, as if the offence had been committed in the Council itself.

(2) Not more than one member shall be named at the same time, unless several members present together have jointly disregarded the authority of the Chair.

(3) If a member be suspended from the service of the Council under the provisions of this Order his suspension shall continue and be effective during the remainder of the session unless sooner determined by the Council.

Enforcement of Speaker's directions

49. (1) Members who are directed to withdraw under Order 47 or are suspended under Order 48 shall forthwith withdraw from the precincts of the Council Chamber.

(2) The Speaker or Chairman whether acting under Order 47 or 48 may direct such steps to be taken as are required to enforce his order.

(3) Nothing in Order 48 shall be deemed to prevent the Council from proceeding against any member for any breach of order not specified therein or from proceeding in any other way it thinks fit in dealing with the breaches of order therein mentioned.

Progress of Bills

Constitutional requirements

50. The introduction of Bills shall be subject to the constitutional requirements laid down by section 44 of the Montserrat Constitution Order 1989.

Introduction and first reading of Bills

51. (1) No Bill shall be introduced until leave for its introduction shall have been applied for and granted.

(2) If the motion for leave is opposed the Speaker, after permitting (if he thinks fit) a brief explanatory statement from the member who moves and from a member who opposes the motion, may, without further debate, put the question thereon.

(3) If leave to introduce the Bill be granted, the Bill may be introduced, and shall be read a first time by the Clerk.

Publication of Bills

52. After having been read a first time a Bill shall, if it has not already been published in the *Gazette*, be so published when such publication is practicable, and shall in any event be made available for publication by both the local Press and the Radio.

Suspension of Standing Orders for further readings of Bill

53. Every Bill shall be read three times previously to its being passed and no Bill shall pass through more than two readings at any one sitting, unless this Order shall have been formally suspended for the purpose.

Second reading of Bills

54. The member moving the second reading of the Bill shall state the object of the Bill and the reasons for its introduction. When a motion for the second reading of a Bill has been made and seconded there may be a debate upon the general merits and principles of the Bill; and if such motion is carried the Bill shall stand referred to a Committee of the whole Council to consider the Bill clause by clause, and amend it as may be deemed necessary, unless at this stage of the proceedings the Council decides the Bill shall be referred to a Select Committee.

Procedure in committee

55. (1) When a Bill is under consideration in Committee, unless the Committee decides to have the Bill read in any other manner, the Clerk shall call the several clauses in order by reading the number of each clause and shall then refer to the schedules, if any, in order, next the preamble, if any, and lastly the title. If it is proposed to move any amendment of a clause or schedule when called, the Clerk shall put them in their proper order. If the clause (or schedule or the preamble or the title, as the case may be) is not amended, the Chairman shall without motion put the question "That this clause (or this schedule or the preamble or the title, as the case may be) do

stand part of the Bill". If the clause (or this schedule or the preamble or the title, as the case may be) is amended, he shall put the question. "That this clause (or this schedule or the preamble or the title, as the case may be) as amended, do stand part of the Bill".

(2) Notwithstanding the procedure laid down in paragraph (1) of this Order, the Chairman may call the Schedules before proceeding with the clauses of the Bill.

(3)(a) In settling a Bill in Committee any member may move an amendment, or, without making a formal motion, may suggest an amendment, or may ask for information respecting any part of the Bill or any proposed amendment;

(b) An amendment must be relevant to the subject matter of the Bill, and to the subject matter of the clause to which it relates;

(c) An amendment must not be inconsistent with any previous decision of the Committee;

(d) An amendment must not be such as to make the clause which it proposes to amend unintelligible or ungrammatical;

(e) If an amendment refers to, or is not intelligible without a subsequent amendment or a schedule, notice of the subsequent amendment or schedule must be given before, or when the first amendment is moved so as to make the series of amendments intelligible as a whole;

(f) An amendment which proposes to amend the whole substance of a clause for the purpose of inserting different provisions will as a general rule be irregular. The proper course will be to negative the clause and propose a new one in its place;

(g) The Chairman may refuse to put an amendment which is in his opinion frivolous.

(4) A Bill may be referred to a Select Committee at any time after it shall have passed its second reading.

(5) When a Bill has been referred to, and reported on by a Select Committee and it is certified by the Chairman of such a Committee that such Bill has been considered clause by clause in the presence of a quorum of the members of such Committee at least and that in the opinion of the Committee such Bill may be dealt with by the Council in the same manner as a Bill reported on by a Committee of the whole Council, such Bill may be dealt with accordingly if no member objects, but if any member objects the Bill shall be dealt with in usual manner.

(6) The consideration of a clause may, on motion made, be postponed, but the motion may not be made after the clause has been amended.

(7) New clauses shall be considered after the clauses in the Bill as printed have been disposed of and before the consideration of the schedules, if any. Notice of a proposed new clause shall be given previous to the sitting unless the Chairman considers that such notice may be dispensed with. The Chairman shall call on the member in whose name the new clause stands, and if that member moves the Clerk shall read the marginal note of the clause and it shall then be taken to have been read a first time. The question shall then be put "that this clause be read a second time." If

this be agreed to, amendments may be moved and after these (if any) have been disposed of the question shall be put “that this clause be read a second time.” If this be agreed to amendments may be moved and after these (if any) have been disposed of the question shall be “that this clause (or that this clause as amended) be added to the Bill as clause No..... and that the subsequent clauses be renumbered accordingly.”

(8) When a Bill shall have been settled in Committee the Council shall resume without question put; and the member having charge of the Bill shall thereupon report to the Council that the Bill has passed through the committee stage, with or without amendments, as the case may be, or that progress has been made therewith.

Third reading of Bills

56. Subject to the provisions of Order 53, on the resumption of the Council on the conclusion of the committee stage a Bill may, on motion made, be read the third time, either forthwith if no member objects or at some subsequent sitting. When the motion for the third reading of the Bill is to be put the question shall be “That the Bill be now read a third time and passed.”

Title only to be read

57. On the first and third readings of a Bill the Clerk shall read only the title.

Recommittal of Bills

58. (1) If on the third reading of a Bill any member desires to amend or delete any provision contained in the Bill or to introduce any new provision, he may move that the Bill be re-committed, and, if the motion be carried, the Council shall resolve itself into Committee and any alteration proposed may be discussed. The Council may then resume and the Bill be read a third time.

(2) Verbal amendments may be made previous to the Bill being read a third time without the Bill being recommitted.

Governor’s amendments

59. When the Governor requires that amendments be made to a Bill passed by the Council before the Bill becomes law, such Bill shall be recommitted for the consideration only of the amendments proposed. The Bill shall be re-submitted to the Governor with the amendments made therein, or with such of them as the Council shall approve.

Withdrawal of Bills

60. The member in charge of a Bill standing on the Order Book may make a motion without notice for its withdrawal either before the commencement of Other Business or on the Order of the Day for any stage of the Bill being read.

Bills on the same subject matter

61. More than one Bill of the same subject matter may be introduced but, when the second reading of a Bill has been agreed to or negatived, the question shall not be proposed for the second reading of another Bill of the same subject matter during the

same session. On the Order of the Day relating to such Bill being read the Speaker shall direct that the Bill be withdrawn.

Select Committees

Select Committees

62. (1) The Speaker may appoint any members to be a Select Committee for the purpose of examining and reporting on the clauses of any proposed Bill. The Speaker may also nominate the Chairman of such Select Committee.

(2) In the absence of any nomination by the Speaker a Select Committee shall elect its own Chairman. In the absence of the Chairman the senior member on the Committee shall act as Chairman.

(3) Unless the Speaker otherwise directs three members, or, if the number of the Select Committee does not exceed four, two members shall form a quorum.

Replacing members

63. (1) The Speaker may from time to time in case of the death or unavoidable absence of a member appoint another member to take the place of such member on the Committee.

(2) If the Speaker be the Chairman of a Select Committee he shall have a casting vote if the votes be equally divided, but shall not have an original vote. In the absence of the Speaker from the Chair the member presiding shall have an original vote, and a casting vote if the votes are equally divided.

Report of Select Committee

64. (1) Every Select Committee shall make a report to the Council upon the matters referred to them before the end of the session in which the Committee were appointed, but if a Committee find themselves unable to conclude their investigation before the end of the session, they may so report to the Council.

(2) A Select Committee shall have leave to make a special report relating to the powers, functions and proceedings of the Committee on any matter which they may think fit to bring to the notice of the Council.

(3) The report or special report together with the minutes of proceedings of a Select Committee and the minutes of any evidence taken before that Committee shall be signed by the Chairman thereof, or in his absence by the senior member present, and shall be presented to the Council by the Chairman or senior member as the case may be, and shall be ordered to lie upon the table and may be printed without question put.

(4) The minutes of proceedings of a Select Committee shall record all proceedings upon the consideration of any report or Bill in the Committee and upon every amendment proposed to such report or Bill together with a note of any division taken in the Committee and the names of members voting therein.

(5) Any member dissenting from the opinion of the majority of a Select Committee may put in a written statement of his reasons for such dissent, and such statement shall be appended to the report of the Committee.

(6) The report of a Select Committee may be taken into consideration on a motion “That the Report of the Select Committee on be adopted”.

Standing Committee

Public Accounts Committee

65. (1) At the first meeting of any session of the Council, or as soon thereafter as practicable, the Speaker shall appoint a Standing Committee to be styled The Public Accounts Committee for the consideration of the Public Accounts of Montserrat.

(2) The Public Accounts Committee shall consist of—

- (a) three members chosen by the Speaker from among the official and unofficial members of the Council; and
- (b) one member chosen by the Speaker from outside the Council from among persons with commercial or accounting experience: Provided that such Member shall not have the right to vote in proceedings of the Committee.

(3) The Speaker shall appoint as Chairman one of the members of the Committee appointed under the provisions of sub-paragraph (a) of paragraph (2) of this Order.

(4) The duties and powers of the Public Accounts Committee shall be as follows—

- (a) to ascertain that the authorised expenditure during each financial year, including supplementary expenditure, has been applied to the purposes prescribed by the Legislative Council;
- (b) to scrutinise the causes which may have led to any excess over authorised expenditure, and to verify applications of savings on other authorised items of expenditure;
- (c) to make an effective examination of public accounts kept in any Department of Government; and
- (d) to summon any public officer to give any information or any explanation, or to produce any records or documents which the committee may consider necessary in the performance of their duties.

(5) The Public Accounts Committee shall submit its reports to the Council from time to time.

Financial Procedure

Presentation of Appropriation Bill

66. (1) Any Bill containing the estimated financial requirements for expenditure on all the services of the Government for the current or succeeding year shall be known as an Appropriation Bill, and estimates containing the details of the said financial requirements shall be laid on the table when the Appropriation Bill is presented.

(2) After the Appropriation Bill has been introduced and read a first time, the motion for the second reading of the Bill shall be proposed forthwith, and the Minister of Finance shall make his annual financial statement, or budget speech.

(3) When the Minister of Finance has made his budget speech, the motion for the second reading of the Bill shall be seconded, and the debate thereon shall be adjourned to a time to be named by the Minister of Finance. The debate on the second reading of the Bill shall be confined to the financial and economic state of Montserrat and the general principles of Government policy and administration as indicated in the Bill and the estimates.

(4) On the conclusion of the debate the Appropriation Bill and the estimates shall stand referred to a Committee of the whole Council to be known as the Committee of Supply. The deliberations of the Committee of Supply shall be in public.

Procedure in Committee of Supply

67. (1) On the consideration of the Appropriation Bill in Committee of Supply the clauses of the Bill stand postponed until after consideration of the schedule or schedules.

(2) On consideration of the schedules each head of expenditure shall be considered with the appropriate estimate, and any reference in these Standing Orders to a subhead or an item means a subhead or an item in the estimates for the head then under discussion.

(3) On the consideration of a schedule, the Chairman shall call the title of each head of expenditure in turn, and shall propose the question "That the sum of \$..... for head stand part of the schedule", and unless an amendment is proposed under the provisions of the next succeeding Standing Order, a debate may take place on that question. Any such debate shall be confined to the policy of the service for which the money is to be provided and shall not deal with the details of any item or subhead but may refer to the details of revenues or funds for which that service is responsible.

(4) When all the heads in a schedule have been disposed of, the Chairman shall put forthwith, without amendment or debate, the question "That the schedule (as amended) stand part of the Bill".

(5) When every schedule has been disposed of the Chairman shall call successively each clause of the Bill and shall forthwith propose the question "That the

clause stand part of the Bill” and, unless a consequential amendment is moved, that question shall be disposed of without amendment or debate.

(6) No amendment may be moved to any clause except an amendment consequential on an alteration in the total sum appropriated by any schedule. Any such consequential amendment shall be moved by a Member of the Executive Council only, and may be moved without notice and the question thereon shall be put forthwith without amendment or debate. When the question on the last of any such amendments to a clause has been decided the Chairman shall forthwith put the question “That the clause as amended stand part of the Bill” and that question shall then be decided without amendment or debate.

(7) When the question upon every clause of the Bill has been decided, the Chairman shall put the question to the Council that the Bill (as amended) be reported to the Council, which question shall be decided without amendment or debate. Upon such question being agreed to, the Council shall resume, and the member in charge of the Bill shall report it to the Council.

Amendments to heads of estimates in Committee of Supply

68. (1) An amendment to any head of expenditure to increase the sum allotted thereto whether in respect of any item or subhead or of the head itself may only be moved by a Member of the Executive Council who shall signify to the Committee the recommendation of the Governor to the increase in accordance with paragraph (a) of subsection (2) of section 44 of the Montserrat Constitution Order 1989. Every such amendment shall take the form of a motion “That head be increased by \$..... (in respect of subhead item) (subhead)”.

(2) An amendment to increase a head whether in respect of any item or subhead or of the head itself shall take precedence over an amendment to reduce the head in the same respect, and if it is carried no amendment to reduce the head in that respect shall be called.

(3) An amendment to any head of expenditure to reduce the sum allotted thereto in respect of any item therein may be moved by any member, and shall take the form of a motion “That head be reduced by \$..... in respect of (or by leaving out) subhead item item”.

(4) An amendment to reduce a head in respect of any subhead or by leaving out a subhead shall only be in order if the subhead is not itemized.

(5) An amendment to reduce a head without reference to a subhead therein shall only be in order if the head is not divided into subheads.

(6) An amendment to leave out a head shall not be in order and shall not be placed on the Order Paper.

(7) In the case of each head, amendments in respect of items or subheads in that head shall be placed upon the Order Paper and considered in the order in which the items or subheads to which they refer stand in the head of the estimates.

(8) When notice has been given of two or more amendments to reduce the same item, subhead, or head they shall be placed upon the Order Paper and considered in the order of the magnitude of the reductions proposed, the amendment proposing the largest reduction being placed first in each case.

(9) Debate on every amendment shall be confined to the item, subhead or head to which the amendment refers, and after an amendment to an item or subhead has been disposed of, no amendment or debate on a previous item or subhead of that head shall be permitted.

(10) When all amendments standing on the Order Paper in respect of any particular head of expenditure have been disposed of the Chairman shall again propose the question "That the sum of \$..... for head stand part of the Schedule", or shall propose the amended question "That the (increased) (reduced) sum of \$..... for head stand part of the schedule", as the case may require. The debate on any such question shall be subject to the same limitations as apply to a debate arising under paragraph (3) of Standing Order 67 (Procedure in Committee of Supply).

Third reading of Appropriation Bill

69. As soon as the Appropriation Bill has been reported to the Council, a member of the Executive Council shall move a motion that the Bill be read a third time and passed. Such motion shall not be required to be seconded and shall be decided without amendment or debate.

Supplementary Appropriation Bills

70. Where an Appropriation Bill is introduced in pursuance of the requirements of section 20 (2) of the Finance (Administration) Act or otherwise, the procedure set out in Standing Orders 66, 67, 68 and 69 shall be followed as far as it applies.

Private Rights and Private Bills

Private rights affected by Bill

71. In any case where individual rights or interests, or the property of any private person may be peculiarly affected by any public or private Bill, all parties interested may, upon petition for that purpose and on motion made, seconded and carried, be heard before the Council or any Committee thereof, either in person or by Counsel.

Examination of witnesses

72. When it is intended to examine any witnesses the person requiring such witnesses shall deliver to the Clerk a list containing the names, residences and occupations of such witnesses, at least two days before the day appointed for their examination. Any such witnesses may be examined, cross-examined and re-examined by Counsel in the same manner as witnesses in any action in the High Court, and may be questioned by any member of the Council or of any Committee thereof. The evidence of every such witness shall be taken down by the Clerk and signed by the witness.

Private Bills

73. Every Bill intended to affect or benefit some particular person, association or corporate body, shall contain a section saving the rights of Her Majesty, Her heirs and successors, all bodies politic and corporate, and all others, except such as are mentioned in the Bill and those claiming by, from or under them. No such Bill not being a Government measure, shall be introduced into the Legislative Council until due notice has been given by not less than three successive publications of the Bill in the *Gazette* at the expense of the promoters and in some newspaper circulating in Montserrat, if any, and where any particular premises are affected until after a copy of the Bill has been affixed to the police station nearest to such property for not less than three weeks. Proof that the requirements aforesaid have been complied with shall be made by solemn declaration to the satisfaction of and deposited with the Clerk.

Cost of private Bill

74. All Bills, other than public Bills, must be prepared and printed at the expense of the parties by whom or on whose behalf they may be introduced.

Supplemental

Strangers

75. (1) Strangers shall be admitted to debates in the Council Chamber under such rules as the Speaker may make from time to time for that purpose.

(2) If at any sitting of the Council any member shall move that strangers withdraw, the Speaker shall forthwith put the question "That strangers do withdraw" without permitting any debate or amendment

(3) The Speaker may, whenever he thinks fit, order the withdrawal of strangers from any part of the Council Chamber and its precincts and may order the doors of the Chamber to be closed.

(4) Strangers shall withdraw from the Chamber and its precincts when called upon so to do by the Speaker.

Press

76. The Speaker may grant a general permission to the representatives of any Journal to attend the sittings of the Council under such rules as he may make from time to time for that purpose. If such rules are contravened, such permission may be revoked.

Suspension of Standing Orders

77. Any one or more of these Standing Orders may, after notice, or with the leave of the Speaker, be suspended on a motion made by a member at any sitting.

Practice of Parliament

78. (1) In any matter not herein provided for, resort shall be had to the usage and practice of the Commons House of Parliament of the United Kingdom which shall be followed as far as the same may be applicable to the Council, and not inconsistent with these Standing Orders nor with the practice of the Council.

(2) In cases of doubt these Standing Orders shall be interpreted in the light of the relevant usage and practice of the House of Commons, out no restrictions which the House of Commons has introduced by Standing Order shall be deemed to extend to the Council or its members until the Council has provided by Standing Orders for such restrictions.

CERTIFICATES AND BADGES OF HONOUR PROCLAMATION

(S.R.O.s 23/1989 and 10/2006)

Commencement

[14 December 1989]

WHEREAS the Executive Council at its meeting held on June 2, 1987, resolved that the award of Certificates and Badges of Honour be introduced in Montserrat.

AND WHEREAS Her Majesty the Queen has been pleased to approve the Award under the following rules of Certificates and Badges of Honour to residents of Montserrat who have rendered or may hereinafter render loyal and valuable service worthy of special recognition or to persons who have by their loyalty and meritorious conduct being of exceptional benefit to the people of Montserrat.

NOW THEREFORE, I, CHRISTOPHER JOHN TURNER, O.B.E., with the approval of the Secretary of State for Foreign and Commonwealth Affairs do hereby proclaim that the rules of Certificates and Badges of Honour set out in the Schedule to this proclamation be published in the Official *Gazette* in Montserrat.

AND all Her Majesty's Officers and loving subjects in Montserrat and all those whom it may concern are hereby required to take due notice hereof and conduct themselves accordingly.

SCHEDULE

RULES OF CERTIFICATES AND BADGES OF HONOUR

Citation

1. These Rules may be cited as the Certificates and Badges of Honour Rules.

Certificates

2. The Certificates shall bear Her Majesty's portrait together with the name of the recipient and a brief account of the services which it commemorates and shall be signed by the Governor.

Governor to award

3. The Certificates shall be awarded by the Governor on such occasions as may be determined by him.

Number to be awarded

4. The maximum number of recipients of the Honour in anyone year shall be four.

Rights and Privileges of the holder of the Certificate

5. (a) The Certificate shall carry with it the right to wear a Badge which will be worn on the Breast on official occasions when full size medals are worn.
- (b) The Badge issued with the Certificate shall be known as the 'Badge of Honour' and be of silver gilt and bear on the obverse Her Majesty's crowned effigy with the Coat of Arms of Montserrat on the reverse.
- (c) The Badge ribbon shall be yellow.
- (d) Miniatures of the Badge may be worn when miniatures are worn.
- (e) The Badge of Honour is to be placed immediately after the Colonial Police Medal for meritorious service in the official order in which Orders, Decorations, and Medals are worn.

Eligibility

6. Persons eligible for the Certificate and Badges of Honour must be residents of Montserrat.

Names to be Gazetted

7. The names of the recipients of the Certificates shall be published in the *Gazette*.

Circumstances in which a person may be deprived of his award

8. If any person to whom a Certificate has been awarded is found to be conducting himself in a manner so as to bring disrepute to the Government, or is found to be guilty of misconduct or disloyalty to the Government, the Governor shall deprive such person of his award. A report of the circumstances in which the Governor exercised his power under this rule shall be forwarded to the Secretary of State for foreign and Commonwealth Affairs in every instance where such power is exercised.

Governor's power to restore award deprived

9. Where the Governor is of opinion that a person who has deprived of his award has repented and conducted himself thereafter in an exemplary manner, and that to restore his award would be just and reasonable in all the circumstances, he may restore such award from a date determined by him and such determination shall be published in the *Gazette*.

Badge to be returned on death

10. Upon the death of any recipient of a Certificate, the Badge shall be returned to the Governor by the next-of-kin as early as possible but in any case not later than one month of such death.

Offence

11. It shall be an offence for a person, not being the person to whom the Certificate of Badge of Honour has been awarded, to wear the badge in any public place, and a person guilty of this offence shall on conviction before a Magistrate be punished with a fine not exceeding \$500 or imprisonment for a term not exceeding 1 month or to both such fine and imprisonment.

Advisory Committee

12. There shall be a “National Advisory” Committee on Certificates and Badges of Honour (hereinafter referred to as ‘the Committee’) consisting of the holders for the time being of the following offices:—

- (a) Resident Tutor, University of the West Indies;
- (b) Permanent Secretary, Administration;
- (c) Chairman of the Council of Churches;
- (d) President of the Chamber of Commerce;
- (e) President of the Bar Association; and
- (f) a Chairman to be appointed by the Governor after consultation with the Chief Minister.

(Amended by S.R.O. 10/2006)

Function of Committee

13. The function of the Committee shall be to advise the Governor on the selection of persons to be honoured by such guidelines as the Governor may give from time to time. The Committee may invite any member of the public or any official of the Government, or any member of the legal profession to its meetings for such advice as may be required.
