



MONTSERRAT

CHAPTER 1.06
PUBLIC SERVICE ACT
and Subsidiary Legislation

Revised Edition
showing the law as at 1 January 2013

This is a revised edition 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—

PUBLIC SERVICE ACT¹

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Act 8 of 1960 .. in force 1 January 1960

Amended by Acts: 23 of 1961

2 of 1967

17 of 1968

13 of 1971

15 of 1975

25 of 1980

4 of 2003

10 of 2011 .. in force 27 September 2011 (S.R.O.44/2011)

PUBLIC SERVICE REGULATIONS – Section 3

7

S.R.O. 37/1980 .. in force 23 July 1980

Amended by S.R.O.s.: 27/1984

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CHAPTER 1.06

PUBLIC SERVICE ACT

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
 2. Interpretation
 3. Regulations regarding Public Service Commission
 4. Reports and statements or other communications of the Commission to be privileged
 5. Protection of members from legal proceedings
 6. Improper influence
 7. Wilfully supplying false information to Commission
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CHAPTER 1.06

PUBLIC SERVICE ACT

*(Acts 8 of 1960, 23 of 1961, 2 of 1967, 17 of 1968,
13 of 1971, 15 of 1975, 25 of 1980, 4 of 2003 and 10 of 2011)*

Commencement

[1 January 1960]

Short title

1. This Act may be cited as the Public Service Act. *(Substituted by Act 10 of 2011)*

Interpretation

2. (1) In this Act—

“**Commission**” means the Public Service Commission established under section 82 of the Constitution;

“**Constitution**” means the Montserrat Constitution Order 2010;

“**Deputy Governor**” means the person appointed as such under section 23 of the Constitution;

“**public service**” has the same meaning as defined in the section 107(1) of the Constitution;

(2) For the purposes of this Act, “**public office**” does not include office as a member of any board, panel, committee or other similar body (whether incorporated or not) established by any law for the time being in force in Montserrat.

(Amended by Acts 2 of 1967, 17 of 1968 and 10 of 2011)

Regulations

3. (1) The Governor may make regulations not inconsistent with the Constitution in general, and sections 24, 39, 84, 85, 109, 111 and 112 in particular—

- (a) respecting the functions and operation of the Office of the Deputy Governor in accordance with sections 24 and 84 of the Constitution;
- (b) respecting the functions and operations of the Commission in accordance with section 83 of the Constitution; and
- (c) respecting the public service, including regulations in accordance with section 84(3) and 85(3) of the Constitution.

(2) Regulations made under this Act may be made—

- (a) so as to apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any person whether—
 - (i) wholly or partially or as amended by the regulations;
 - (ii) as formulated, issued, prescribed or published at the time the regulations are made or at any time before then; or
 - (iii) as formulated, issued, prescribed or published from time to time; and
- (b) so as to impose a penalty not exceeding a fine of \$20,000 or imprisonment for two years for a contravention of the regulations.

(Inserted by Act 10 of 2011)

Reports and statements or other communications of the Commission to be privileged

4. Except with the consent of the Governor signified in writing, no person shall in any legal proceedings produce or be permitted to give secondary evidence as to the contents or nature of any letter, statement, report or other document or any oral information addressed, made or given—

- (a) to the Commission by or on behalf of the Governor or the Head of any Government Department for the purpose of enabling the Commission to discharge any of their duties under this Act; or
- (b) by the Commission to the Governor or the Head of any Government Department in relation to any matter concerning or arising out of the duties of the Commission.

Protection of members from legal proceedings

5. The Chairman and any other member of the Commission shall have such and the like protection and privileges in case of any action or suit brought against him for any act done or omitted to be done or words spoken in the execution of his duty as is by law given to any Judge of the High Court in the exercise of his judicial office.

(Amended by Act 17 of 1968)

Improper influence

6. Any person who otherwise than in the course of his duty directly or indirectly by himself or by any other person in any manner whatsoever influences or attempts to influence any decision of the Commission or of the Chairman or of any other member of the Commission shall be guilty of an offence against this Act and upon summary conviction shall be liable to a fine of \$7,500 or to imprisonment for a term of six months:

Provided that, nothing in this section shall prohibit any person who may properly do so from giving a certificate or testimonial to any applicant or candidate for any public office or from supplying any information or assistance upon formal request by the Commission.

(Amended by Acts 4 of 2003 and 10 of 2011)

Wilfully supplying false information to Commission

7. Any person who, in connection with any matter upon which the Governor is empowered to act after consultation with the Commission, wilfully gives to the Commission or to any member thereof or to any person or authority (other than the Commission or any member thereof) with whom the Commission may lawfully consult, any information which is false by reason of the falsity of, or by reason of the omission of, a material particular, shall be guilty of an offence against this Act and upon summary conviction shall be liable to imprisonment for a term of one year or to a fine of \$10,000.

(Amended by Act 4 of 2003 and 10 of 2011)

PUBLIC SERVICE REGULATIONS

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Commencement

[23 July 1980]

PART 1

PRELIMINARY

Short title

1. These Regulations may be cited as the Public Service Regulations.
(Substituted by Act 10 of 2011)

Interpretation

2. In these Regulations, unless the context otherwise requires—

“**Act**” means the Public Service Act;

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

“**appointment**” means the conferment of an office of emolument in the public service upon a person;

“**authorised officer**” means an officer to whom powers of the Deputy Governor are delegated by the Governor under section 84 of the Constitution;

“**Chairman**” means the Chairman of the Commission and includes an Acting Chairman;

“**member**” means any person appointed to the Commission under section 32 of the Constitution;

“**officer**” means a person holding or acting in a public office;

“**pensions law**” has the same meaning as in section 88(2) of the Constitution;

“**Permanent Secretary**” shall include reference to the Financial Secretary;

“**prescribed form**” means the appropriate form as may from time to time be prescribed by the Deputy Governor;

“**public office**” has the same meaning as in section 107(1) of the Constitution;

“**regulation**” means one of these Regulations;

“**salary**” means basic salary;

“**Schedule**” means the Schedule to these Regulations;

“**Secretary**” means the chief executive officer of the Secretariat of the Commission.
(Amended by Act 10 of 2011)

Application

3. These Regulations shall apply in relation to all offices in the public service except—

- (a) an office mentioned in section 85 of the Constitution;
- (b) offices in a Naval, Military or Air Force constituted by or raised under any enactment;
- (c) an office in the Royal Montserrat Police Service.
(Amended by S.R.O. 27/1984 and Act 10 of 2011)

PART 2

THE PUBLIC SERVICE COMMISSION

Oath of Office

4. (1) The Chairman and other members of the Commission shall, as soon as possible after appointment, take the oath or make the affirmation set out in Form I of the Schedule.

(2) Every person appointed a member of the Secretariat of the Commission shall, as soon as possible after appointment, take the oath or make the affirmation set out in Form 2 of the Schedule. (Amended by Act 10 of 2011)

Allowances to members

5. The Chairman and members of the Commission shall be paid monthly allowances at such rate or rates as the Governor in his discretion may determine.

Meetings

6. (1) The Commission shall meet as often as may be necessary for the purpose of performing its functions and such meetings shall be held on such days and at such time and place as the Chairman shall determine.

(2) Where a member fails to attend at least three consecutive meetings without a reasonable excuse the Chairman shall make a report to the Governor.

Circulation of papers

7. (1) Subject to paragraph (2) of this regulation questions may be decided by the Commission without a meeting, by circulation of the relevant papers among the members and the expression of their views in writing and in such cases the decision shall be the view of the majority of members expressing a view. (Amended by Act 10 of 2011)

(2) If any member requires that a matter or question being dealt with by circulation of the relevant papers shall be reserved for consideration at the next following meeting of the Commission, no decision shall be made on the matter or question except at a meeting of the Commission.

Record of meetings and decisions

8. (1) The Secretary shall ensure that minutes of all meetings of the Commission and all decisions made under regulation 8 are recorded and that copies are presented for confirmation by the Commission as soon as practicable and thereafter forwarded to the Governor.

(2) Any member of the Commission who dissents from a decision may require that his dissent and reasons for dissenting be recorded in the minutes.

Consultation with other persons

9. The Commission in considering any matter or question may consult with any such public officer or other person as the Commission may consider proper and desirable and may require any public officer to attend for the purpose of assisting the Commission in its deliberations and producing official documents relating to such matter or question. (*Amended by Act 10 of 2011*)

Failure to comply with request from Commission

10. Any public officer who without reasonable cause or excuse fails to appear before the Commission when required to do so, or who fails to comply with any requirement of these Regulations shall be guilty of a breach of discipline.

Disclosures

11. No member of the Commission nor the Secretary nor any member of the Secretariat of the Commission nor any other person shall publish or disclose to any person otherwise than in the exercise of his official functions the contents of any document, communication or information whatsoever which has come to his notice in the course of his duties. (*Amended by Act 10 of 2011*)

Obligation to conform with Regulations

12. The Commission shall not discharge its functions in connection with dismissal, the disciplinary punishment or the termination of appointment of any officer in the public service except in accordance with the provisions of these Regulations.

Obligation to hear Permanent Secretary, Head of Department or authorised officer

13. The Commission, at the request of a Permanent Secretary or Head of Department or authorised officer shall hear the Permanent Secretary or Head of Department or authorised officer in connection with any recommendation made by him to the Commission.

Irregular representation

14. In carrying out its duties under the provisions of the Commission and these Regulations, the Commission shall not take into account any representations made to it otherwise than in accordance with these Regulations.

PART 3

APPOINTMENTS AND PROMOTIONS

Functions of the Commission with regard to appointments and promotions

15. (1) The Commission or authorised officer shall make recommendations to the Deputy Governor with respect to—

- (a) appointments and promotions of suitable officers;
- (b) the confirmation of individual officers in their appointments and the passing of promotional or efficiency bars.

(2) The Commission shall not make any such recommendation in relation to any function if it has been assigned to an authorised officer.

(Amended by Act 10 of 2011)

Supervision of selection of persons for training

16. In order to perform its functions under regulation 15, the Commission or authorised officer shall supervise the selection of persons for admission to the public service, for the grant of study leave and for the award of scholarships for special training in the public service.

Reporting of vacancies

17. (1) When a vacancy occurs or it is known that a vacancy will occur in any public office in a Department or Ministry the fact shall be reported to the Deputy Governor by the Head of Department, in the case of a vacancy in a Department or by the Permanent Secretary in other cases, provided that, if the report is made by a Head of Department it shall be forwarded through the Permanent Secretary of his Ministry.
(Amended by Act 10 of 2011)

(2) The Permanent Secretary or Head of Department may recommend that either—

- (a) the vacancy should be filled by the promotion of an officer serving in that Department or Ministry, and if the promotion of that officer would involve the supercession of any senior officer in the Department or Ministry, he will state the reasons for the supercession of such officer; or
- (b) applications to fill the vacancy should be invited from serving officers or from both serving officers and suitably qualified persons from outside the public service. In this event he will attach to his report a draft advertisement setting out details of the vacant post and its duties and the qualifications for appointment.

(3) The Deputy Governor will verify the details of the vacancy and will forward the report of the Permanent Secretary or Head of Department with his own comments thereon to the Governor. If the Governor approves the filling of the vacancy, the Deputy Governor will forward the report to the Secretary, or the authorised officer to whom the matter is assigned together with particulars of any serving officers whom he considers eligible to fill the vacancy. (*Amended by Act 10 of 2011*)

Advertisement of vacancies

18. (1) The Deputy Governor shall, by circular or by publication on the radio and in a newspaper, give notice of vacancies and any officer may make application for appointment to any such vacancy. Such application shall be forwarded to the Deputy Governor through the Head of Department and Permanent Secretary under whose authority the applicant is serving. (*Amended by Act 10 of 2011*)

(2) Where the Commission or authorised officer considers either that there is no suitable candidate already in the public service available for the filling of any vacancy or that having regard to qualifications, experience and merit it would be advantageous and in the best interest of the public service that the service of a person not already in the service be secured, the Commission shall take such steps (including advertisement of the existence of such vacancy) as it may think necessary for the filling of such vacancy:

Provided that, no vacancy shall be advertised outside of the service without the agreement of the Governor.

Principles of selection for promotion

19. (1) In considering the eligibility of officers for promotion, the Commission or authorised officer shall take into account the seniority, experience, educational qualifications, merit and ability, together with relative efficiency of such officers and, in the event of an equality of efficiency, merit and ability of two or more officers, may give consideration to the relative seniority of the officers available for promotion to the vacancy.

(2) In the performance of its functions under paragraph (1) of this regulation the Commission or authorised officer shall take into account in deciding his suitability for promotion the following considerations—

- (a) any special qualifications he may have;
- (b) any special course of training that he may have undergone (whether at the expense of the Government or otherwise);
- (c) his devotion to duty;
- (d) the evaluation of his overall performance as reflected in annual confidential reports by any Permanent Secretary, Head of Department or other senior officer under whom the officer has worked during his service;
- (e) any letters of commendation or special reports in respect of any special work done by the officer;

- (f) the duties of which he has had knowledge;
- (g) the duties of the office for which he is a candidate;
- (h) the position of his name on the seniority list;
- (i) any specific recommendation of the Deputy Governor, Permanent Secretary and Head of Department for filling the particular post;
- (j) any previous employment of his in the public service or otherwise;
- (k) any special reports for which the Commission may call.

(3) In addition to the requirements prescribed in paragraphs (1) and (2) the Commission shall consider any specifications that may be required from time to time for appointment to the particular post.

(Amended by Act 10 of 2011)

Seniority lists

20. (1) The Secretary shall keep up to date seniority lists of all officers holding offices in the several grades of the public service.

(2) The seniority of an officer shall be determined by the date of his appointment to the particular grade within the range in which he is serving. The seniority of officers promoted to the same grade on the same date shall be determined by their seniority in their former grade.

(3) The seniority of an officer who resigns voluntarily from the public service and is subsequently reappointed shall be determined by the date of his reappointment.

Commencing salary

21. The Commission or authorised officer may recommend payment to an officer of a commencing salary at an incremental point higher than the minimum in the scale attaching to the office to which he is appointed or promoted.

Principles of selection for an acting appointment as a prelude to appointment

22. (1) A Permanent Secretary or Head of Department and the Deputy Governor shall ensure that any recommendations made in relation to an acting appointment shall be based on the principles prescribed in regulation 19. *(Amended by Act 10 of 2011)*

(2) Where, in the exigencies of the public service, it has not been practicable to apply the principles prescribed in regulation 19, an officer selected for an acting appointment in consequence of a recommendation made under paragraph (1) shall not thereby have any special claim to the substantive appointment.

(3) In considering the claims of eligible candidates for substantive appointment, the Commission or authorised officer shall take into account the claims of all eligible officers.

Principles of selection for an acting appointment not as a prelude to appointment

23. (1) Where an acting appointment fails to be made otherwise than as a prelude to a substantive appointment, the officer appointed shall—

- (a) as a general rule to be the senior officer in the Ministry or Department eligible for such acting appointment;
- (b) assume and discharge the duties and responsibilities of the office in which he is appointed to act.

(2) In submitting any recommendations for an acting appointment, the Commission or authorised officer shall examine whether the exigencies of the service would best be served by transferring an officer from another Ministry or Department next in line of seniority to act when there is an officer in the Ministry or Department who is capable of performing the duties of the higher grade.

Procedure for appointments

24. (1) The Deputy Governor shall be responsible for the form and manner in which applications are to be made for appointments to public offices. The Commission or the authorised officer shall be responsible for the conduct of any examinations for recruitment to such offices, and shall determine whether any candidate has the necessary qualifications for appointment to such offices. *(Inserted by Act 10 of 2011)*

(2) The Commission or authorised officer may interview candidates for appointment and shall consider in respect of each candidate—

- (a) his educational qualifications;
- (b) any previous employment of his in the public service or otherwise; and
- (c) any reports for which the Commission may call from persons such as the principal, headmaster or headmistress of a candidate's university, college or school or any referees named by the candidate.

Selection Boards

25. (1) The Deputy Governor, after consultation with the Commission, may from time to time appoint one or more Selection Boards to assist in the filling of vacancies in the public service or for the award of scholarships in discharge of its functions under regulation 16 and the composition of any such Board and the form in which its reports are to be submitted shall be in the discretion of the Deputy Governor.

(2) On consideration of any report of a Selection Board, the Commission may, in its discretion, summon for interview any of the candidates recommended by such Board.

(Amended by Act 10 of 2011)

Selection for scholarships and courses

26. The principles of selection for promotion shall be followed where it is desired to select an officer for a scholarship or a special course of training which is designed to fit him for a higher post or which may enhance his qualifications for promotion.

Confidential reports to assist Commission

27. In order to assist the Commission in performing its functions, Permanent Secretaries and Heads of Departments shall, in each year on or before the last day of February, furnish to the Deputy Governor confidential reports in respect of officers serving in their Ministries or Departments. Such reports shall relate to the twelve months ended on the preceding 31 December. (*Amended by Act 10 of 2011*)

PART 4

PROBATIONARY APPOINTMENTS

Probationary service

28. (1) On first appointment to the public service an officer will be required to serve a probationary period of two years unless a shorter term is specified.

(2) At any time during the period of probation the Commission or authorised officer may recommend the termination of employment of an officer.

(3) At the end of the first twelve months during the probationary period, Permanent Secretaries or Heads of Departments shall submit to the Deputy Governor a report on every officer so appointed on probation in their Ministries or Departments. Two months before the end of the probationary period, Permanent Secretaries or Heads of Departments shall submit a further report and recommendation—

- (a) that the officer be confirmed in the appointment; or
- (b) that the probationary period be extended; or
- (c) that the officer's service be terminated.

(Amended by Act 10 of 2011)

(4) If, after consideration of the final report of the Permanent Secretary or Head of Department, the Commission or authorised officer is satisfied that the service of an officer on probation has been satisfactory, the Commission or authorised officer shall recommend that he be confirmed in his appointment with effect from the date of appointment.

(5) If the Commission or authorised officer is not satisfied that the service of an officer on probation has been satisfactory, the Commission or authorised officer may recommend either the extension of the period of probation for a further period or termination of the appointment.

Incremental date where period of probation is extended

29. Where the period of probation of an officer has been extended and he is subsequently confirmed in his appointment, the Commission or authorised officer may recommend that the officer's increment be paid—

- (a) with effect from the date on which it was due; or

- (b) with effect from the first day of the month following the date on which the extended period of probation expired without change in the incremental date; or
- (c) with effect from the first day of the month following the date on which the extended period of probation expired, which would then become his incremental date.

PART 5

DETERMINATION OF APPOINTMENTS

Abandonment of office

30. (1) An officer who is absent from duty without leave for a continuous period of one month, unless declared otherwise by the Deputy Governor, shall be deemed to have resigned his office and thereupon the office becomes vacant and the officer ceases to be an officer. (*Amended by Act 10 of 2011*)

(2) An officer who is absent from Montserrat without permission shall be liable to summary dismissal.

Reasons for termination of appointment

31. The services of an officer may be terminated only for the reasons stated hereafter—

- (a) where the officer is confirmed in a permanent appointment—
 - (i) on dismissal or removal in consequence of disciplinary proceedings;
 - (ii) on compulsory retirement;
 - (iii) on voluntary retirement;
 - (iv) on retirement for medical reasons;
 - (v) on being retired in the public interest;
 - (vi) on resignation;
 - (vii) on abolition of office;
- (b) where the officer holds appointment on probation—
 - (i) on the termination of appointment;
 - (ii) on dismissal or removal as a consequence of disciplinary proceedings;
 - (iii) on medical grounds;
- (c) where the officer is on contract his services may be terminated in accordance with the terms of the contract.

Resignation

32. An officer who wishes to resign his appointment shall give due notice in writing of his intention to the Deputy Governor, or where an authorised officer is empowered to accept such notice, to such authorised officer. *(Amended by Act 10 of 2011)*

Retirement

33. Any officer may at any time after he has attained the minimum age specified in the pensions law for retirement, apply to the Deputy Governor for permission to retire and shall in his application state the grounds on which it is based. *(Amended by Act 10 of 2011)*

Retirement in the public interest

34. (1) Where it appears it is in the public interest that an officer should be retired from the public service, the Permanent Secretary or Head of Department (by letter forwarded through his Permanent Secretary) shall report the matter together with the reasons therefor to the Deputy Governor for consideration by the Commission or authorised officer and the Commission or authorised officer shall recommend to the Deputy Governor whether or not such officer should be called upon to retire.

(2) Any such officer shall be afforded an opportunity of submitting to the Commission or authorised officer any representations he may wish to make regarding his proposed retirement and such representations shall be forwarded to the Deputy Governor.

(Amended by Act 10 of 2011)

Termination of appointment on abolition of office or for facilitating improvement in the organisation of a Ministry or Department

35. (1) Where a post has been abolished but one or more than one of such posts remains, the Permanent Secretary or Head of Department shall—

- (a)* if the post is one in respect of which the power to appoint has been delegated to an authorised officer recommend to the authorised officer which substantive holder of such post shall have his appointment terminated; and
- (b)* in any other case submit to the Deputy Governor for consideration by the Commission, a report thereon containing his recommendations, with reasons therefor, as to which substantive holder of such post ought to have his appointment terminated; and the Commission shall make such recommendations thereon to the Deputy Governor as it may think proper (including if it thinks fit a recommendation that the officer concerned be transferred to another post not lower in status than that which has been abolished):

Provided that, where a report made under this paragraph is made by a Head of Department it shall be submitted through the Permanent Secretary of the Ministry.

(2) Where a post of Permanent Secretary has been abolished, but one or more than one of such posts remains, the Governor shall appoint a reporting officer who shall submit to the Deputy Governor, for consideration by the Commission, a report containing his recommendations, with reasons, as to which substantive holder of such post ought to have his appointment terminated; and the Commission shall make such recommendations to the Deputy Governor as it may think proper (including if it thinks fit a recommendation that the officer concerned be transferred to another post not lower in status than that which has been abolished).

(3) Paragraph (1) of this regulation shall apply in relation to the termination of appointments for the purpose of facilitating improvements in the organisation of a Ministry or Department in order to effect greater efficiency or economy.

(4) Where a Permanent Secretary or Head of Department makes any recommendation under this regulation, the Commission or authorised officer shall notify the officer concerned in writing, and such officer may, within seven days of the receipt of the notification, make representations thereon. Any such representations shall be forwarded in their original form to the Commission or authorised officer, through the Permanent Secretary of the Ministry concerned, together with such comments as the Permanent Secretary or Head of Department thinks fit.

(5) Paragraphs (3) and (4) shall apply, with such modifications as the circumstances require, where a reporting officer is appointed under paragraph (2).

(Amended by Act 10 of 2011 and S.R.O. 12/2012)

Pension

36. Where the appointment of an officer is terminated under regulation 34 or 36 his service shall terminate on such date as the Deputy Governor may determine. The question of pension shall be dealt with under the provisions of the pensions law.
(Amended by Act 10 of 2011)

PART 6

DISCIPLINE

Functions of the Commission with regard to discipline

37. (1) The Commission or authorised officer, as the case may be, shall discharge its functions in regard to disciplinary proceedings against officers in the light of reports from Permanent Secretaries and Heads of Departments.

(2) Subject to paragraph (3), where the Commission or authorised officer is of the opinion that disciplinary proceedings should be instituted against an officer, the Commission or authorised officer may instruct that such proceedings be instituted.

(3) Where an offence against any law appears to have been committed by an officer, the Deputy Governor shall obtain the advice of the Director of Public Prosecutions as to whether there are grounds for criminal proceedings being instituted against the officer concerned, and if the Director of Public Prosecutions advises that there are grounds, criminal proceedings shall be instituted, and the Commission or

authorised officer shall not commence disciplinary proceedings until the determination of the criminal proceedings so instituted and the time allowed for an appeal from such determination has expired. (*Amended by Act 10 of 2011*)

Regulations to govern disciplinary proceedings

38. (1) Any misconduct by an officer shall be dealt with under this Part of these Regulations as soon as possible after the time of its occurrence.

(2) Any case not covered by these Regulations shall be reported to the Commission who will refer it to the Deputy Governor for instructions as to how it is to be dealt with; and the case shall be dealt with in accordance with such instructions. (*Amended by Act 10 of 2011*)

Grounds for criminal proceedings

39. Where upon preliminary investigation or a disciplinary inquiry an offence against any law appears to have been committed by an officer, the Commission or authorised officer shall suspend disciplinary proceedings and report the matter to the Deputy Governor who shall consult the Director of Public Prosecutions as to whether there are grounds for criminal proceedings being instituted. (*Amended by Act 10 of 2011*)

Suspension

40. (1) Where there have been or are about to be instituted against an officer—

- (a) disciplinary proceedings; or
- (b) criminal proceedings,

and where the Commission or the authorised officer is of the opinion that the public interest requires that that officer should forthwith cease to perform the functions of his office, the Commission or the authorised officer may recommend his suspension from his duties.

(2) An officer so suspended shall, subject to the provisions of regulation 44, be permitted to receive such proportion of the salary of his office as the Deputy Governor may decide after considering the recommendation of the Commission or the authorised officer. (*Amended by Act 10 of 2011*)

(3) If disciplinary proceedings against any such officer result in his exculpation, he shall be entitled to the full amount of the salary which he would have received if he had not been suspended from duty but if the proceedings result in any punishment other than dismissal the officer shall be allowed such salary as the Deputy Governor may decide after considering the recommendation of the Commission or the authorised officer. (*Amended by Act 10 of 2011*)

Copies of evidence of inquiry

41. An officer in respect of whom a disciplinary inquiry is to be held shall be entitled without charge to him to receive copies of or be allowed access to any documentary evidence relied on for the purpose of the inquiry. He shall so be given

upon request a copy of the evidence (including copies of documents tendered in evidence) after the inquiry is closed.

Disciplinary action after acquittal of criminal charge

42. An officer acquitted in any Court of a criminal charge shall not be dismissed or otherwise punished in respect of any charge of which he has been acquitted, but nothing in this regulation shall prevent his being dismissed or otherwise punished in respect of any other charge arising out of his conduct in the matter, unless such other charge is substantially the same as that in respect of which he has been acquitted.

Officer convicted of a criminal offence

43. If an officer is convicted in any court of a criminal offence, the Commission or authorised officer may consider the relevant proceedings of that Court and if the Commission or authorised officer is of the opinion that the officer ought to be dismissed or subjected to some lesser punishment in respect of the offence of which he has been convicted, the Commission or authorised officer may thereupon recommend the dismissal or other punishment of the officer without the institution of any disciplinary proceedings under these Regulations.

Non-payment of emoluments on conviction of a criminal offence

44. An officer convicted of a criminal offence involving dishonesty, fraud or moral turpitude or convicted of a criminal offence and sentenced to imprisonment shall not receive any of his emoluments after the date of such conviction pending consideration of his case by the Commission or the authorised officer.

Disciplinary penalties

45. (1) The penalties which may be imposed on an officer against whom a disciplinary charge has been established are—

- (a) dismissal;
- (b) reduction in rank;
- (c) reduction in salary;
- (d) deferment or withholding of increment;
- (e) a fine not exceeding one month's salary;
- (f) severe reprimand;
- (g) reprimand.

(2) Where a fine is imposed the amount of such fine shall be deducted from the salary of the officer by such instalments as may be specified at the time the penalty is imposed.

Deferment and withholding of increments

46. (1) The grant of an increment will be prejudiced by—

- (a) lack of efficiency;

- (b) unsatisfactory service or conduct; or
- (c) failure to pass an examination the passing of which is made a condition for the grant of increment.

(2) Where a Permanent Secretary or Head of Department considers that for any of the reasons specified in paragraph (1)(a) or (b) an officer's increment ought not to be granted he shall—

- (a) notify the officer in writing at least one month before the date on which the increment is due of the reasons for which he considers that the increment ought not to be granted; and
- (b) report the matter to the Commission or the authorised officer through the Deputy Governor for a recommendation to the Deputy Governor as to whether the payment of the increment ought to be made on the date on which it becomes due.

(Amended by Act 10 of 2011)

(3) In making a recommendation for the deferment or withholding of an increment the Permanent Secretary or Head of Department shall take into account the gravity of the original misconduct or dereliction of duty, if any, and the nature of the officer's subsequent behaviour or his present degree of efficiency.

(4) An increment may be deferred for a period not exceeding twelve months and shall be payable from the date on which it is restored.

(5) Where an increment has been withheld the Deputy Governor on the recommendation of the Commission or the authorised officer may at any subsequent incremental date grant to the officer concerned a special increment in addition to his ordinary increment. *(Amended by Act 10 of 2011)*

Proceedings for misconduct not warranting dismissal of officers

47. (1) Where—

- (a) it is represented to the Commission that an officer has been guilty of misconduct; and
- (b) the Commission is of the opinion that the misconduct alleged is not so serious as to warrant proceedings with a view to dismissal;

the Commission may cause an inquiry to be made into the matter in such manner as it may think proper; and the officer shall be entitled to know the whole case made against him, and shall be given an adequate opportunity of making his defence.

(2) If, after inquiry, the Commission is of the opinion that the alleged misconduct is proved it may recommend to the Deputy Governor such punishment other than dismissal as may seem just. *(Amended by Act 10 of 2011)*

Proceedings for misconduct not warranting dismissal where powers of disciplinary control have been delegated to an authorised officer

48. (1) Where—

- (a) it is represented to an authorised officer to whom power to exercise disciplinary control has been delegated that an officer holding an office in respect of which such powers have been delegated has been guilty of misconduct; and
- (b) the authorised officer is of the opinion that the misconduct alleged is not so serious as to warrant proceedings with a view to dismissal;

the authorised officer (or the Commission at the request of the Deputy Governor) may cause an inquiry to be made into the matter; and the officer whose conduct is under inquiry shall be entitled to know the whole case made against him and shall be given an adequate opportunity of making his defence.

(2) If, after inquiry, the authorised officer is of the opinion that the alleged misconduct is proved, he may recommend to the Deputy Governor such punishment other than dismissal as may seem just.

(Amended by Act 10 of 2011)

Proceedings for misconduct warranting dismissal of officers

49. (1) Except in a case of summary dismissal in accordance with regulation 30(2) or dismissal in accordance with regulation 43, an officer may be dismissed only in accordance with the procedure prescribed by this regulation or by regulation 50.

(2) Except where powers of recommending dismissal have been delegated to an authorised officer, the following procedure shall apply to an inquiry with a view to the dismissal of an officer—

- (a) the Commission (after consultation with the Director of Public Prosecutions if necessary) shall cause the officer to be notified in writing of the charge and called upon to state in writing before a specified day (which day shall allow a reasonable interval for the purpose) any grounds upon which he relies to exculpate himself;
(Amended by Act 10 of 2011)
- (b) if the officer does not furnish such a statement within the time so specified or if he fails to exculpate himself the Commission may either inquire into the charges or may recommend to the Deputy Governor the appointment of a Tribunal to inquire into the charges. A Tribunal so appointed shall consist of not less than three persons selected with due regard to the standing of the officer concerned, and to the nature of the charges made against him; *(Amended by Act 10 of 2011)*
- (c) the Commission or Tribunal shall inform the officer charged that on a day specified they will inquire into the charges and that he will be permitted to appear and defend himself;
- (d) if witnesses are examined by the Commission or Tribunal the officer shall be given an opportunity of being present and of putting questions to the witnesses on his own behalf, and no documentary evidence shall be used against him unless he has previously been supplied with a copy thereof or given access thereto;

- (e) the Commission or Tribunal may in its discretion permit the officer charged and the person or authority preferring the charges to be represented by a public officer or by a solicitor or counsel, and may at any time, subject to such adjournment as in the circumstances may be necessary, withdraw such permission;
- (f) if during the course of the inquiry further grounds of dismissal are disclosed, the Commission or Tribunal shall cause the officer to be furnished with a written charge in respect thereof and the same steps to be taken as those prescribed by this regulation in respect of the original charge;
- (g) if having heard the evidence in support of the charges the Tribunal is of the opinion that the evidence is insufficient it may report accordingly to the Commission without calling upon the officer for his defence;
- (h) the Tribunal, having completed its inquiry, shall forward to the Commission a report on its findings together with the record of the charges framed, the evidence led, the defence and all material documents relating to the inquiry. The report shall include—
 - (i) a statement whether in the opinion of the Tribunal the officer has or has not committed the offence or offences charged and a brief statement of the reason for their opinion;
 - (ii) details of any matters which in the opinion of the Tribunal aggravate or mitigate the gravity of the case;
 - (iii) a summing up and such comments as will indicate clearly the opinion of the Tribunal on the matter under inquiry;
- (i) a Tribunal shall not make any recommendation regarding any punishment to be imposed;
- (j) the Commission after consideration of the report of a Tribunal may if it is of the opinion that the report should be amplified in any respect or that further inquiry is desirable, refer any matter back to a Tribunal for further inquiry or report accordingly;
- (k) the Commission after concluding its own inquiry or after consideration of the report of a Tribunal (or of any further report called for under the provisions of the preceding sub-paragraph), shall make recommendation to the Deputy Governor as to the punishment, if any, which should be imposed upon the officer; (*Amended by Act 10 of 2011*)
- (l) if the Commission is of the opinion that the proceedings disclose other grounds for removing the officer from the service in the public interest it may recommend to the Deputy Governor that an order be made accordingly. (*Amended by Act 10 of 2011*)

(3) Where an officer charged under this regulation admits in writing the facts giving rise to the charges, it shall not be necessary to hold an inquiry or investigation under this regulation unless in the opinion of the Commission such inquiry or

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investigation is likely to find such circumstances as may modify the view taken of and the punishment to be imposed for the offence.

Proceedings for dismissal of officers where powers of dismissal have been delegated to an authorised officer

50. The following procedure shall apply to an inquiry with a view to dismissal of an officer holding an office in respect of which the powers of the Commission have been delegated to an authorised officer—

- (a) the authorised officer shall cause an inquiry to be made in such manner as he may think proper, provided that, the officer against whom the proceedings are instituted shall be informed in writing of the charge against him and shall be called upon to state in writing within seven days of the delivery to him of the written charge any grounds upon which he relies to exculpate himself, and provided that, the officer shall be entitled to know the whole case made against him and shall have an adequate opportunity throughout of making his defence;
- (b) the authorised officer shall consider the charge, the written reply if any, the evidence in support of the charge and any evidence, tendered by the officer in his defence;
- (c) if the authorised officer finds that the charge has not been established he shall so inform the Deputy Governor; (*Amended by Act 10 of 2011*)
- (d) if the authorised officer finds that the charge has been established, he shall so inform the Deputy Governor together with a recommendation as to the penalty to be imposed upon the officer; (*Amended by Act 10 of 2011*)
- (e) the record of proceedings held under this regulation shall be forwarded without delay to the Deputy Governor. (*Amended by Act 10 of 2011*)

Proceedings for discharge of temporary staff

51. The following procedure shall apply only to temporary staff—

- (a) the authorised officer may after such informal inquiry as he may think fit forthwith discharge any temporary employee if he is satisfied that such employee is guilty of misconduct;
- (b) the authorised officer may, without an inquiry being held or without giving any reason therefore, discharge a temporary employee by giving him two weeks notice (or such other notice as may be specified in the letter of appointment) or two weeks salary in lieu of notice.

PART 7

MISCELLANEOUS

Production of relevant documents, etc.

52. Any public officer who submits any matter for the consideration of the Commission or the authorised officer shall ensure that all relevant documents and papers are made available and the Commission or the authorised officer may require the production of any further documents or information relevant to the matter under consideration.

Correspondence

53. All correspondence for the Commission or the authorised officer from Permanent Secretaries and Heads of Departments and other persons shall be addressed to the Secretary, unless otherwise provided by these Regulations.

Service of documents

54. Where under these Regulations—

- (a) it is necessary either—
 - (i) to serve any notice, charge or other document upon a public officer; or
 - (ii) to communicate any information to any public officer by reason of such officer having absented himself from duty; and
- (b) it is not possible to effect such service upon or communicate such information to such officer personally; it shall be sufficient if such notice, charge, or other document or letter containing such information, be served upon such officer by registered post to his last known address.

SCHEDULE

(Regulation 4)

FORMS

FORM 1

(Amended by Act 10 of 2011)

OATH OF OFFICE

I having been appointed Chairman/a member of the Public Service Commission of Montserrat do swear/solemnly and sincerely declare and affirm that I will faithfully and without fear or favour, affection or ill-will execute the functions of that office and that I will not directly or indirectly reveal to any unauthorised person or persons or otherwise than in the course of duty, any information which comes to my knowledge in connection with the work of the Public Service Commission.

(Signed)

Sworn/Declared before me this day of, 20..... .

Magistrate or Justice of the Peace

FORM 2

(Amended by Act 10 of 2011)

I do swear/solemnly and sincerely declare and affirm that I will not directly or indirectly reveal to any unauthorised person or persons or otherwise than in the course of duty, any information in connection with the business of the Public Service Commission which may come to the said Public Service Commission.

(Signed)

Sworn/Declared before me this day of, 20..... .

Magistrate or Justice of the Peace
