



MONTSERRAT

CHAPTER 13.09

UNDESIRABLE PERSONS EXPULSION ACT

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—

UNDESIRABLE PERSONS EXPULSION ACT

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Act 8 of 1920 .. in force 28 February 1920

Amended by Acts: 17 of 1920

4 of 1923

3 of 1941

3 of 1947

1 of 1968

24 of 1982

Amended by S.R.O. 15/1956

Amended by Act 9 of 2011 .. in force 27 September 2011 (S.R.O. 40/2011)



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CHAPTER 13.09

UNDESIRABLE PERSONS EXPULSION ACT

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CHAPTER 13.09

UNDESIRABLE PERSONS EXPULSION ACT

*(Acts 8 of 1920, 17 of 1920, 4 of 1923, 3 of 1941,
3 of 1947, 1 of 1968, 24 of 1982, 9 of 2011 and S.R.O. 15 of 1956)*

Commencement

[28 February 1920]

Short title

1. This Act may be cited as the Undesirable Persons Expulsion Act.

PART 1

EXPULSION ORDERS

Power to make expulsion orders against convicted persons

2. The Governor may, if he thinks fit, make an expulsion order requiring any person not born in Montserrat to leave Montserrat within a time fixed by the Order, and thereafter to remain out of Montserrat, if it is certified to him by any Court in Montserrat (including a Court of summary jurisdiction)—

- (a) where such person is not a Montserratian, that such person has been convicted by or before that Court of an arrestable offence, or other offence for which the Court has power to impose imprisonment without the option of a fine; and
- (b) where such person is a Montserratian, that such person has been convicted by or before that Court of sedition (including seditious libel) or riot, whether as a principal or as an accessory, and, in either case, that the Court recommend that an expulsion order should be made in his case, either in addition to or in lieu of his sentence.

(Amended by Acts 24 of 1982 and 9 of 2011)

Power to make expulsion order for peace and good order of Montserrat

3. The Governor may, if he thinks fit, make an expulsion order in the case of any person not born in Montserrat if it appears to the Governor acting on the advice of Cabinet that it is expedient for the peace and good order of Montserrat that an expulsion order should be made in the case of such person:

Provided that, this section shall not apply to a Montserratian who is domiciled in Montserrat, or who throughout the preceding twelve months has been resident in Montserrat:

Provided further that, before the question of the expediency of an expulsion order being made in the case of any person is considered by the Governor acting on the advice of Cabinet, such person shall be given an opportunity of urging any reason why such an order should not be made against him before the Governor or before any person appointed by the Governor for the purpose, and, where a person is so appointed, he shall communicate the substance of such reasons, if any, to the Governor.

(Amended by Acts 24 of 1982 and 9 of 2011)

Contravention of expulsion order

4. (1) If any person against whom an expulsion order has been made is at any time after the service of such order upon him found in Montserrat in contravention of the order, he shall be guilty of an offence under this Act.

(2) Where a person has been convicted of an offence under the preceding subsection of this section the Governor may, if he thinks fit, order such person to comply with the expulsion order within such extended time as the Governor may fix, and, if such person fails to comply with such expulsion order within the time so extended, or if he is found within Montserrat after the expiration of the time so extended, he shall be deemed to be guilty of a further offence under this Act.

(3) The Governor may, if he thinks fit, order that any person who has been convicted of an offence under either of the preceding subsections of this section shall within six weeks after the expiration of his sentence be deported from Montserrat in such manner as the Governor may direct and in the mean time be detained in custody. Should such person not be deported from Montserrat within six weeks after the expiration of his sentence he shall be liberated from custody and the Governor's order shall cease to be valid. Any person who, after having been conveyed out of Montserrat under this subsection, returns to Montserrat shall be guilty of an offence under this Act.

Power to make an expulsion order authorizing arrest and deportation

5. (1) It shall be lawful for the Governor, if he thinks fit, in any expulsion order, instead of requiring the person against whom it is made to leave Montserrat within a fixed time, to order that the person be arrested and deported from Montserrat in such manner as the Governor may by such expulsion order, or subsequently, direct.

(2) Any person arrested under an expulsion order shall, pending his deportation from Montserrat, be detained in custody in such manner and place as the Governor shall direct, and, if not deported from Montserrat within six weeks after his arrest, shall, on the expiration of that period, be released from custody, and the expulsion order shall cease to be valid.

(3) No person in custody under an expulsion order shall be admitted to bail except with the consent of the Governor.

(4) An expulsion order whereby the arrest of any person is ordered shall be deemed to authorise any police officer to arrest such person in any part of Montserrat and to detain him in custody.

Power to revoke expulsion order

6. It shall be lawful for the Governor to revoke an expulsion order, either absolutely or subject to such conditions as he may think fit.

PART 2

APPEALS

Right of appeal

7. (1) Subject to the provisions of this Act, any person against whom an expulsion order has been made may appeal against such order to the High Court and the appeal shall be brought to the Judge who shall after the expiration of fifteen days from the day on which such expulsion order was served upon such person first hold a sitting of either the High Court or the Court of Summary Jurisdiction for the purpose of hearing the appeal:

Provided that, such appeal shall be made on all or any of the grounds mentioned in the next following section of this Act, but not on any other grounds.

(2) The decision of the Judge shall be final, and there shall be no right of appeal therefrom.

Grounds of appeal

8. The grounds upon which an appeal against an expulsion order may be made are—

- (a) That the expulsion order could only be legally made against a person who is not a Montserratian and that the applicant is not such person;
- (b) In any case where the expulsion order was made under section 3 against a person who is a Montserratian, that such person was domiciled in Montserrat or had been resident therein throughout the three months preceding the expulsion order.

(Amended by Act 9 of 2011)

Notice of appeal

9. (1) The appellant shall, within seven days after the service of the expulsion order upon him, transmit to the Governor, and serve upon the Registrar a written notice of his intention to appeal; the notice shall specify the grounds of his appeal, and shall be signed by the appellant or by his solicitor:

Provided that, any Judge may, either before or after the expiration of the said period of seven days, if he considers that the interests of justice so require, extend the said period to fourteen days.

(2) For the purposes of section 7 and of the preceding subsection of this section, an expulsion order ordering the arrest of the appellant shall be deemed to have been served upon him at the time when he was arrested.

(3) In the notice of appeal it shall be sufficient to refer to the appeal as being to the Judge of the High Court who shall after the expiration of the period mentioned in section 7 first hold a sitting of either the High Court or the Court of Summary Jurisdiction for the purpose of hearing the appeal and it shall not be necessary to specify which of such Courts.

Extent to which giving of notice of appeal suspends order

10. After notice of intention to appeal has been duly given, no steps to enforce the expulsion order (except the arrest and the detention of the appellant when the order orders his arrest) shall be taken unless and until the appeal is dismissed, and the six weeks mentioned in section 5(2) shall not be deemed to begin to run until such appeal has been disposed of.

Person in custody to be given facilities for appealing

11. Every person detained in custody under an expulsion order shall, if he so desire, be given facilities for giving notice of his intention to appeal, and communicating, with reference to his appeal, with his friends and legal advisers.

Onus of proof

12. In any appeal against an expulsion order the appellant—

- (a) shall, if the power to make the expulsion order depended upon the appellant being a person who is not a Montserratian, be presumed to be such person; and
- (b) shall, if a Montserratian against whom the expulsion order was made under section 3, be presumed neither to have been domiciled in Montserrat nor to have been resident therein throughout the three months preceding the expulsion order, unless the contrary is proved.

(Amended by Act 9 of 2011)

Power of Judge on dismissal of appeal

13. If the appeal is dismissed the time (if any) within which the appellant is, by the expulsion order, required to leave Montserrat, may be extended by the Judge for such period not exceeding four weeks from the dismissal of the appeal as he may think proper.

Appellant to be released on allowance of appeal

14. If the appeal is allowed, the expulsion order shall be deemed to be revoked, and the appellant, if in custody, shall, unless his detention is lawful under some other power or authority, be released forthwith.

Power to order payment of allowances to witnesses

15. The Judge hearing the appeal may order allowances, not exceeding those for the time being in force for witnesses in criminal proceedings in the High Court to be paid to all persons examined or detained as witnesses for the respondent, and may, if he thinks fit, order similar allowances to be paid to any persons examined or detained as witnesses for the appellant.

PART 3

MISCELLANEOUS

Punishment of offences

16. Any person who is guilty of an offence under this Act shall on summary conviction thereof be liable to be imprisoned for six months.

In prosecutions expulsion orders to be deemed valid

17. In any prosecution for an offence under this Act the production of an expulsion order shall be conclusive evidence that the same was valid and was lawfully made.

Power to allow expenses of conforming with expulsion order

18. Where an expulsion order is made against any person the Governor may, if he thinks fit, direct the payment from the general revenue of Montserrat of the whole or any part of the expenses of or incidental to the departure from Montserrat and maintenance until departure of such person and his dependents (if any).

Revocation of expulsion order or allowance of appeal not to have retrospective effect

19. The revocation of an expulsion order by the Governor, or the allowance of an appeal against an expulsion order, shall not affect the validity of anything already done thereunder or in respect thereof, and shall not affect any liability to conviction or punishment previously incurred under the provisions of this Act.

Actions for things done under this Act

20. No action shall be brought by any person against whom an expulsion order has been made with reference to anything done or omitted in the execution or purported execution of that order or of the provisions of this Act,

on the ground that he was not a person against whom an expulsion order could be legally made.
