
STATUTORY INSTRUMENTS

2010 No. 2474

The Montserrat Constitution Order 2010

PART X

MISCELLANEOUS

Interpretation

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

“Chief Justice” means the Chief Justice referred to in the Supreme Court Order 1967(1);

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

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

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

“functions” includes powers and duties;

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

“Government” means the Government of Montserrat;

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

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

“law” includes any subsidiary instrument;

“Legislature” means the Legislature established by section 47;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

References to public office

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

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

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

Appointments

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

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

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

Re-election or reappointment

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

Removal from office

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

Resignations

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

Power to amend or revoke instruments

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

Amendment

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

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

Meaning of appointed day

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

Revocations and amendment

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

- (a) the Montserrat Constitution Order 1989(2);
- (b) the Montserrat Constitution (Amendment) Order 2000(3); and
- (c) the Instructions issued under the Royal Sign Manual and Signet to the Governor of Montserrat on 13th January 1990.

(2) The Leeward Islands (Emergency Powers) Order in Council 1959(4) shall cease to apply to Montserrat with effect from the day on which section 18(1) to (8) of this Constitution comes into force; but any regulations made under that Order that are in force in Montserrat immediately before that day shall continue in force there until revoked by the Governor, acting in accordance with section 18 of this Constitution.

Existing laws

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

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

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

(2) [S.I. 1989/2401](#).

(3) [S.I. 2000/1339](#).

(4) [S.I. 1959/2206](#).

Existing offices and officers

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

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

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

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

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

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

Legislative Assembly

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

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

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

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

Transitional provision concerning Director of Public Prosecutions

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

Power reserved to Her Majesty

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