

SCHEDULE 2  
TO THE ORDER

THE CONSTITUTION OF MONTSERRAT  
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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 nominated and elected members of the Legislative Council.

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

(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.

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- (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 or nominated 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.

(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

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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.