
STATUTORY INSTRUMENTS

2010 No. 2474

The Montserrat Constitution Order 2010

PART II

THE GOVERNOR

The Governor

22.—(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 on him or her 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 or her.

(3) Subject to this Constitution and any law by which any functions are conferred on the Governor, the Governor shall perform all his or her functions (including functions which are expressed by this Constitution to be exercisable in his or her discretion or in his or her judgement) according to such instructions, if any, as may be given to him or her by Her Majesty; but the question whether or not the Governor has in any matter complied with any such instructions shall not be enquired into by any court.

(4) A person appointed to the office of Governor shall, before assuming 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.

Deputy Governor

23.—(1) There shall be a Deputy Governor for Montserrat who shall be a Montserratian.

(2) The Deputy Governor shall be appointed by the Governor in accordance with section 85, but any appointment shall require the prior approval of a Secretary of State.

(3) If the office of Deputy Governor is vacant or the person holding that office is acting in the office of Governor under section 25 or is for any reason unable to perform the functions of the office of Deputy Governor, then the Governor, acting in his or her discretion, may appoint a person who is a Montserratian to act as Deputy Governor and any such person shall continue to act until his or her appointment is revoked by the Governor, acting in his or her discretion.

Functions of Deputy Governor

24.—(1) The Deputy Governor shall assist the Governor in the exercise of his or her functions, and shall have such functions, not of a ministerial nature, as (subject to this Constitution and any other law) may be assigned to him or her by the Governor, acting in his or her discretion.

(2) Under the authority of the Governor, the Deputy Governor shall be responsible for—

- (a) in accordance with section 84, the appointment of persons to public offices, the suspension, termination of appointment, dismissal or retirement of public officers, and the taking of disciplinary action in respect of public officers;

- (b) 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; and
- (c) the leadership and management of the public service, and the organisation of the public service in so far as it does not involve new financial provision.

(3) The Governor, acting in his or her discretion, may give directions to the Deputy Governor as to the exercise of the responsibilities referred to in subsection (2)(b) and (c), and the Deputy Governor shall comply with any such directions.

Acting Governor

25.—(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 that office, those functions shall, during Her Majesty’s pleasure, be assumed and performed by—

- (a) the Deputy Governor; or
- (b) if the office of Deputy Governor is vacant or the Deputy Governor is absent from Montserrat or is for any other reason unable to perform those functions, such other person as Her Majesty may designate by instructions given through a Secretary of State (“the person designated”).

(2) On each occasion before assuming the functions of the office of Governor, the Deputy Governor or the person designated shall make the oaths or affirmations directed by section 22(4) to be made by the Governor.

(3) The Deputy Governor shall cease to perform the functions of the office of Governor after the Governor has notified him or her that he or she is about to assume or resume those functions, and the person designated shall cease to perform those functions after the Governor or the Deputy Governor has so notified him or her.

(4) In this section “the Governor” means the person holding the office of Governor, and “the Deputy Governor” means the person holding the office of Deputy Governor.

Exercise of Governor’s functions

26.—(1) In the exercise of his or her functions the Governor shall, subject to the following provisions of this section and to section 39(7), obtain and act in accordance with the advice of the Cabinet, except—

- (a) when acting under instructions given to him or her by Her Majesty through a Secretary of State;
- (b) when exercising any function conferred on the Governor by this Constitution which is expressed to be exercisable by the Governor in his or her discretion or in his or her judgement or in accordance with the advice of, or after consultation with, any person or authority other than the Cabinet;
- (c) when exercising any function conferred on the Governor by any other law in terms which authorise him or her to exercise that function without obtaining the advice of the Cabinet; or
- (d) in any case which, in the Governor’s judgement, involves a matter for which the Deputy Governor is responsible under section 24(2) or the Governor is responsible under section 39(1)(e).

(2) The Governor shall not be obliged to act in accordance with the advice of the Cabinet in any case which, in his or her judgement, involves a matter for which he or she is responsible under section 39.

(3) 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 Cabinet he or she shall not be obliged to exercise that function in accordance with the advice of that person or authority.

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

Power to dispose of land

27. Subject to any law in force in Montserrat, the Governor or any person duly authorised by the Governor by writing under his or her 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 interests in such property that are vested in Her Majesty for the purposes of the Government.

Power to constitute offices

28. Subject to this Constitution and any other law in force in Montserrat, the Governor, in Her Majesty's name and on Her Majesty's behalf, may constitute offices for Montserrat.

Power of pardon

29.—(1) There is hereby established a Mercy Committee comprising the Governor, the Attorney General and four other members appointed by the Governor, acting after consultation with the Cabinet; and any appointment may be revoked by the Governor, acting after consultation with the Cabinet.

(2) The Governor may, in Her Majesty's name and on Her Majesty's behalf, subject to subsection (3)—

- (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.

(3) The Governor shall exercise the powers conferred on him or her by subsection (2) after consultation with the Mercy Committee unless in any particular case the matter is in his or her judgement too urgent to permit such consultation, in which case the Governor may act in his or her judgement.

(4) The Mercy Committee shall not be summoned except by the authority of the Governor, acting in his or her discretion; and the Governor shall preside at all meetings of the Committee.

(5) No business shall be transacted at any meeting of the Mercy Committee unless there are at least three members present, of whom one shall be the Attorney General.

(6) The Mercy Committee shall not be disqualified for the transaction of business by reason of any vacancy in its membership, and the validity of the transaction of any business by the Committee shall not be affected by reason only of the fact that some person who was not entitled to do so took part in the proceedings.

(7) Subject to this section the Mercy Committee may regulate its own procedure.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Public seal

30. The Governor shall keep and use the public seal for sealing all things that should be sealed.