

SCHEDULE 2 TO THE ORDER

THE CONSTITUTION OF MONTSERRAT THE CONSTITUTION OF MONTSERRAT

PART I THE GOVERNOR

The Governor.

1.—(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 upon him 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 and, subject to the provisions of this Constitution and, in the case of functions conferred upon him by or under any other law, subject to the provisions of that law, shall perform all such functions (including functions which are expressed by this Constitution to be exercisable in his discretion) according to such instructions, if any, as may be given to him by Her Majesty: Provided that the question whether or not the Governor has in any matter complied with any such instructions shall not be enquired into by any court.

(3) A person appointed to the office of Governor shall, before entering upon 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 to this Constitution.

Acting Governor.

2.—(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 his office those functions shall, during Her Majesty's pleasure, be assumed and performed by—

- (a) such person as Her Majesty may designate in that behalf by instructions given under Her Sign Manual and Signet or through a Secretary of State; or
- (b) if there is no person in Montserrat so designated and able to perform those functions, the person who, if he were not directed by this section to perform the functions of the office of Governor, would for the time being be performing the functions of the office of Attorney-General.

(2) Before assuming the functions of the office of Governor, any such person as aforesaid shall make the oaths or affirmations directed by section 1(3) of this Constitution to be made by the Governor.

(3) Any such person as aforesaid shall not continue to perform the functions of the office of Governor after the Governor or some other person having a prior right to perform those functions has notified him that he is about to assume or resume those functions.

(4) For the purposes of this section the Governor shall not be regarded as absent from Montserrat or as unable to perform the functions of his office—

- (a) by reason that he is in passage from one part of Montserrat to another, or
- (b) at any time when there is a subsisting appointment of a deputy under section 3 of this Constitution.

Status: This is the original version (as it was originally made).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

Deputy to Governor.

3.—(1) Whenever the Governor—

- (a) has occasion to be absent from the seat of Government but not from Montserrat; or
- (b) has occasion to be absent from Montserrat for a period which he has reason to believe will be of short duration; or
- (c) is suffering from an illness which he has reason to believe will be of short duration,

he may, acting in his discretion, by instrument under the public seal, appoint any person in Montserrat to be his deputy during such absence or illness and in that capacity to perform on his behalf such of the functions of the office of Governor as may be specified in that instrument.

(2) The power and authority of the Governor shall not be abridged, altered or in any way affected by the appointment of a deputy under this section, and a deputy shall conform to and observe all instructions that the Governor, acting in his discretion, may from time to time address to him: Provided that the question whether or not a deputy has conformed to and observed any such instructions shall not be enquired into by any court.

(3) A person appointed as a deputy under this section shall hold that appointment for such period as may be specified in the instrument by which he is appointed, and his appointment may be revoked at any time by Her Majesty by instructions given through a Secretary of State or by the Governor, acting in his discretion.

(4) In this section “the Governor” does not include a deputy appointed under this section.

Exercise of Governor’s functions.

4.—(1) In the exercise of his functions the Governor shall, subject to the following provisions of this section, obtain and act in accordance with the advice of the Executive Council, except—

- (a) when acting under instructions given to him by Her Majesty through a Secretary of State;
- (b) when exercising any function conferred upon him by this Constitution which is expressed to be exercisable by him in his discretion or in accordance with the advice of, or after consultation with, any person or authority other than the Executive Council;
- (c) when exercising any function conferred upon him by any other law in terms which authorise him to exercise that function without obtaining the advice of the Executive Council; or
- (d) in any case which, in his judgment, involves a matter for which he is responsible under section 16(1)(e) of this Constitution.

(2) The Governor shall not be required to obtain the advice of the Executive Council in any case in which, in his judgment, the urgency of the matter requires him to act before the Council can be consulted or the question for decision is too unimportant to require their advice; but in any such case of urgency he shall, as soon as is practicable, communicate to the Council the measures that he has adopted and the reasons therefor.

(3) The Governor shall not be obliged to act in accordance with the advice of the Executive Council in any case which, in his judgment, involves a matter for which he is responsible under section 16 of this Constitution.

(4) 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 Executive Council he shall not be obliged to exercise that function in accordance with the advice of that person or authority.

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

Powers to dispose land.

5. Subject to the provisions of any law in force in Montserrat, the Governor or any person duly authorised by him in that behalf by writing under his 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 interest in such property that are vested in Her Majesty for the purposes of the Government of Montserrat.

Power to constitute offices and make appointments etc.

6.—(1) Subject to subsection (2) of this section and any law in force in Montserrat, the Governor, in Her Majesty's name and on Her Majesty's behalf may—

- (a) constitute offices for Montserrat and make appointments (including acting appointments), to be held during Her Majesty's pleasure, thereto;
- (b) dismiss any person so appointed or take such other disciplinary action in relation to him as the Governor may think fit.

(2) Power to make appointments to the office of any magistrate or any registrar or other officer of the High Court who is required to possess legal qualifications, and power to exercise disciplinary control over or remove from office any person holding or acting in any such office, shall vest in the Governor, acting after consultation with the Chief Justice.

(3) The Governor shall consult with the Chief Minister before appointing any person to the office of permanent secretary.

Powers of pardon, etc.

7.—(1) The Governor may, in Her Majesty's name and on Her Majesty's behalf—

- (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.

(2) In the exercise of his powers under this section the Governor shall act in his discretion but shall first consult the Executive Council unless in any particular case the matter is in his judgment too urgent to permit such consultation.

Public seal.

8. The Governor shall keep and use the public seal for sealing all things whatsoever that shall pass the said seal.