

SCHEDULE 2
TO THE ORDER

THE CONSTITUTION OF MONTSERRAT
THE CONSTITUTION OF MONTSERRAT

PART III
THE LEGISLATURE

Constitution of Legislature.

22. There shall be a Legislature in and for Montserrat, which shall consist of Her Majesty and a Legislative Council.

The Legislative Council.

23. The Legislative Council shall consist of seven elected members, two ex officio members, namely the Attorney-General and the Financial Secretary, and two nominated members.

Nominated members.

24.—(1) Subject to section 28 of this Constitution, the nominated members of the Legislative Council shall be persons of the age of twenty-one years or upwards, who possess the qualifications for elected members under section 27 of this Constitution, and shall be appointed by the Governor by instrument under the public seal.

(2) One nominated member shall be appointed by the Governor acting after consultation with the Chief Minister, the second nominated member shall be appointed by the Governor acting in accordance with the advice of the Chief Minister.

(3) The Governor shall forthwith report to Her Majesty through a Secretary of State every appointment made under this section.

Elected members.

25. The elected members of the Legislative Council shall be persons qualified for election in accordance with section 27 of this Constitution, and shall be elected in the manner provided by law.

Power to summon public officers to attend meetings of Legislative Council.

26.—(1) The Speaker, acting in his discretion, may summon to the Legislative Council any public officer, notwithstanding that such officer may not be a member of the Council, when in the opinion of the Speaker the business before the Council renders the presence of such officer desirable.

(2) Any public officer so summoned shall be entitled to take part in the proceedings of the Council relating to the matter in respect of which he was summoned but shall not thereby become a member of the Council and shall not have the right to vote in the Council.

Qualifications for elected membership.

27. Subject to section 28 of this Constitution, any person who—

- (a) is a Commonwealth citizen of the age of twenty-one years or upwards; and

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- (b) has resided in Montserrat for a period of twelve months immediately preceding the date of his nomination for election, or is domiciled in Montserrat and is resident therein at the date aforesaid,

shall be qualified to be elected as an elected member of the Legislative Council, and no other person shall be qualified to be so elected or, having been so elected, shall sit or vote in the Council.

Disqualifications for nominated and elected membership.

28.—(1) No person shall be qualified to be appointed or elected as a member of the Legislative Council who—

- (a) is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to a foreign power or state;
- (b) holds or is acting in any public office or in the office of a Judge of the High Court or of the Court of Appeal;
- (c) is a minister of religion;
- (d) has been adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth and has not been discharged;
- (e) is a party to, or a partner in a firm or a director or manager of a company which is a party to, any contract with the Government of Montserrat for or on account of the public service and—
 - (i) in the case of a nominated member, has not disclosed to the Governor the nature of such contract and his interest, or the interest of such firm or company, therein, or
 - (ii) in the case of an elected member, has not within one month before the date of election published in the Gazette and in a newspaper circulating in the electoral district for which he seeks election a notice of setting out the nature of such contract and his interest, or the interest of such firm or company, therein;
- (f) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in Montserrat;
- (g) subject to subsection (2) of this section, is under sentence of death imposed on him by a court of law in any country, or is serving a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court, or is under such a sentence of imprisonment the execution of which has been suspended;
- (h) is disqualified for membership of the Council by virtue of any law in force in Montserrat relating to offences connected with elections; or
- (i) in the case of an elected member, is disqualified for election by any law in force in Montserrat by reason of his holding, or acting in, any office the functions of which involve—
 - (i) any responsibility for, or in connection with, the conduct of any election; or
 - (ii) any responsibility for the compilation or revision of any electoral register for the purpose of any election.

(2) For the purposes of subsection (1)(g) of this section—

- (a) two or more sentences of imprisonment that are required to be served consecutively shall be regarded as separate sentences if none of those sentences exceeds twelve months, but if any one of such sentences exceeds that term they shall be regarded as one sentence; and
- (b) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

Tenure of office of nominated and elected members.

29.—(1) Subject to the provisions of this Constitution, every nominated member of the Legislative Council shall hold his seat therein during Her Majesty's pleasure.

(2) Every nominated or elected member of the Legislative Council shall vacate his seat therein at the next dissolution of the Council after his appointment or election.

(3) A nominated or elected member of the Legislative Council shall also vacate his seat therein—

- (a) if he resigns it by writing under his hand addressed to the Governor;
- (b) if he is absent from the sittings of the Council for such period and in such circumstances as may be prescribed in the Standing Orders of the Council;
- (c) if he ceases to be qualified in accordance with section 27 of this Constitution;
- (d) if any circumstances arise that, if he were not a member of the Council, would cause him to be disqualified for appointment or election as such by virtue of paragraphs (a), (b), (c), (d), (f), (h) or (in the case of an elected member) (i) of section 28(1) of this Constitution;
- (e) if he becomes a party to any contract with the Government of Montserrat for or on account of the public service, or if any firm in which he is a partner, or any company of which he is a director or manager, becomes a party to any such contract, or if he becomes a partner in a firm, or a director or manager of a company, which is a party to any such contract:

Provided that, if in the circumstances it appears to the Governor (in the case of a nominated member) or to the Council (in the case of an elected member) to be just so to do, the Governor, acting in his discretion, or the Council (as the case may be) may exempt any member from vacating his seat under the provisions of this paragraph if that member, before becoming a party to such contract as aforesaid, or before or as soon as practicable thereafter becoming otherwise interested in such contract (whether as a partner in a firm or as a director or manager of a company) discloses to the Governor or to the Council (as the case may be) the nature of such contract and his interest, or the interest of such firm or company, therein.

- (a) (4) (a) Subject to paragraph (b) of this subsection, if any nominated or elected member of the Legislative Council is sentenced by a court of law in any Commonwealth country to death or to imprisonment (by whatever name called) for a term exceeding twelve months, he shall forthwith cease to perform his functions as a member of the Council and his seat in the Council shall become vacant at the expiration of a period of 30 days thereafter:

Provided that the Governor, acting in his discretion, may, at the request of the member, from time to time extend that period for further periods of thirty days to enable the member to pursue any appeal in respect of his conviction or sentence, save that extensions of time exceeding in the aggregate three hundred and thirty days shall not be given without the approval, signified by resolution, of the Council.

- (b) If at any time before the member vacates his seat he is granted a free pardon or his conviction is set aside or his sentence is reduced to a term of imprisonment of twelve months or less or a punishment other than imprisonment is substituted, his seat shall not become vacant under paragraph (a) of this subsection and he may resume the performance of his functions as a member.
- (c) For the purposes of this subsection—
 - (i) where a person is sentenced to two or more terms of imprisonment that are required to be served consecutively each of those terms shall be regarded as a separate term of imprisonment; and
 - (ii) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of payment of a fine.

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Validity of proceedings.

30. Subject to section 40 of this Constitution, the Legislative 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 sat or voted in the Council or otherwise took part in the proceedings.

Determination of questions as to membership.

31.—(1) Any question whether—

- (a) any person has been validly elected as a member of the Legislative Council; or
- (b) any elected member of the Legislative Council has vacated his seat therein or is required by virtue of section 29(4) of this Constitution to cease to perform his functions as a member,

shall be referred to and determined by the High Court in accordance with any law in force in Montserrat in that behalf and, subject to any such law, in accordance with any directions given in that behalf by the Chief Justice.

(2) Any question whether—

- (a) any person has been validly appointed as a nominated member of the Legislative Council; or
- (b) any nominated member of the Council has vacated his seat therein or is required by virtue of section 29(4) of this Constitution to cease to perform his functions as a member,

shall be referred to the Governor in accordance with any directions given in that behalf by the Governor, acting in his discretion, and shall be determined by him acting as aforesaid.

Filling of vacancies.

32.—(1) Whenever the seat of a nominated member of the Legislative Council becomes vacant the vacancy shall be filled by appointment by the Governor in accordance with the provisions of this Constitution.

(2) Whenever the seat of an elected member of the Legislative Council becomes vacant the vacancy shall be filled by election in accordance with any law in force in Montserrat in that behalf.

Temporary members.

33.—(1) Whenever—

- (a) one of the ex officio members is absent from Montserrat or is performing the functions of the office of Governor;
- (b) a nominated member is absent from Montserrat or is incapable of performing his functions as a member by virtue of section 29(4) or by reason of a declaration made under section 34 of this Constitution,

a person may be appointed by the Governor, by instrument under the public seal, to be a temporary member of the Legislative Council.

(2) Where an appointment is made under this section in circumstances mentioned in subsection (1)(a)—

- (a) the person appointed shall be a person holding a public office;
- (b) subject to the provisions of this section, he shall hold his appointment during Her Majesty's pleasure; and

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- (c) so long as his appointment shall subsist the provision of this Constitution shall, subject as aforesaid, apply to him as if he were an ex officio member of the Council.
- (3) Where an appointment is made under this section in circumstances mentioned in subsection (1)(b)—
 - (a) the person shall be a person qualified for appointment as a nominated member; and
 - (b) so long as his appointment shall subsist the provisions of this Constitution (including the provisions of section 29) shall, subject to the provisions of this section, apply to him as if he were a nominated member of the Council.
- (4) The Governor shall forthwith report to Her Majesty through a Secretary of State every appointment made under this section.
- (5) An appointment made under this section may be revoked by the Governor by instrument under the public seal and shall in any case cease to have effect if the person appointed is notified by the Governor that the circumstances giving rise to the appointment have ceased to exist.
- (6) In the exercise of the powers conferred upon him by this section the Governor shall act in his discretion:

Provided that the Governor shall consult the Chief Minister with respect to the making of any appointment in circumstances mentioned in subsection (1)(b) and the revocation of any appointment so made.

Incapacity of nominated members.

34. The Governor acting in his discretion may, by instrument under public seal, declare a nominated member of the Legislative Council to be, by reason of illness, supported by medical opinion, temporarily incapable of performing his functions as a member of the Council and thereupon such member shall not perform his said functions until he is declared, in manner aforesaid, again to be capable of performing them.

Sessions of Legislative Council.

- 35.—**(1) Subject to subsection (2) of this section, the sessions of the Legislative Council shall be held at such times and places as the Speaker may appoint by proclamation published in the Gazette.
- (2) There shall be a session of the Legislative Council from time to time so that a period of three months does not intervene between the last sitting in one session and the first sitting in the next session.

Speaker and Deputy Speaker.

- 36.—**(1) When the Legislative Council first meets after any general election (or as soon as practicable thereafter) and before it proceeds to the despatch of any other business, it shall proceed to elect a person to be the Speaker of the Council, and if the office of Speaker falls vacant for any reason other than a dissolution of the Council, the Council shall, as soon as practicable, elect another person to that office.
- (2) The Speaker shall be elected from among persons who are not members of the Legislative Council, and no person shall be elected as Speaker if—
 - (a) he is not qualified in accordance with section 27 of this Constitution;
 - (b) he is a person disqualified for election as an elected member of the Council by virtue of any provision of section 28(1) of this Constitution other than paragraph (e).
- (3) When the Legislative Council first meets after any general election and before it proceeds to the despatch of any other business except the election of the Speaker, it shall elect a member of

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the Legislative Council who is not a member of the Executive Council to be Deputy Speaker of the Legislative Council; and if the office of Deputy Speaker falls vacant for any reason other than a dissolution of the Council, the Council shall, as soon as practicable, elect another such member to that office.

- (4) A person shall vacate the office of Speaker or Deputy Speaker—
- (a) on a dissolution of the Legislative Council;
 - (b) if he announces the resignation from his office to the Legislative Council or if by writing under his hand addressed to the Council and received by the Clerk of the Council he resigns that office;
 - (c) in the case of the Speaker—
 - (i) if he ceases to be qualified in accordance with section 27 of this Constitution;
 - (ii) if any circumstances arise that would cause him to be disqualified for election as an elected member of the Council by virtue of any provision of section 28(1) of this Constitution other than paragraph (e);
 - (iii) on the expiration of a period of thirty days from the date of his election if he was at that date a party to, or a partner in a firm or a director or manager of a company which is a party to, any contract with the Government of Montserrat for or on account of the public service and if, before the expiration of that period, he has not disclosed to the Council the nature of such contract and his interest, or the interest of such firm or company, therein, and the Council has not exempted him from vacating his office under this sub-paragraph; or
 - (iv) if any circumstances arise that, if he were an elected member, would cause him to vacate his seat under paragraph (e) of section 28(1) of this Constitution;
 - (d) in the case of the Deputy Speaker, if he ceases to be a member of the Council for any reason other than a dissolution of the Council or if he is appointed to be a member of the Executive Council.

Presiding in Legislative Council.

37.—(1) The Speaker or, in his absence, the Deputy Speaker or, if they are both absent, a member of the Legislative Council (not being a member of the Executive Council) elected by the Legislative Council for that sitting shall preside at each sitting of the Legislative Council.

(2) References in this section to circumstances in which the Speaker or Deputy Speaker is absent include references to circumstances in which the office of Speaker or Deputy Speaker is vacant.

Governor's right to address Legislative Council.

38. The Governor, acting in his discretion, shall have the right of addressing the Legislative Council at any time when he shall think fit.

Oath or affirmation of allegiance.

39. No member of the Legislative Council shall be permitted to take part in the proceedings of the Council (other than proceedings necessary for the purposes of this section) until he has made and subscribed before the Council an oath or affirmation of allegiance in the form set out in the Schedule to this Constitution:

Provided that the election of a Speaker and Deputy Speaker may take place before the members of the Council have made such oath or affirmation.

Quorum.

40.—(1) If at any sitting of the Legislative Council any member who is present draws the attention of the person presiding at the sitting to the absence of a quorum and, after such interval as may be prescribed in the Standing Orders of the Council, the person presiding at the sitting ascertains that a quorum of the Council is still not present the Council shall be adjourned.

(2) A quorum of the Legislative Council shall consist of five members besides the person presiding at the sitting.

Voting.

41.—(1) Subject to the provisions of this section, all questions proposed for decision in the Legislative Council shall be determined by a majority of the votes of the members present and voting.

(2) Notwithstanding subsection (1) of this section, only the elected members of the Legislative Council shall be entitled to vote on a motion that the Legislative Council should declare a lack of confidence in the Government of Montserrat.

(3) The person presiding shall not vote unless on any question the votes are equally divided, in which case he shall have and may exercise a casting vote:

Provided that where the motion before the Council is one to which subsection (2) of this section applies the person presiding shall not have a casting vote unless he is an elected member.

(4) For the avoidance of doubt it is hereby declared that the Speaker shall be deemed not to be an elected member of the Legislative Council for the purposes of this section.

Prorogation and dissolution.

42.—(1) The Governor, acting in accordance with the advice of the Chief Minister, may at any time, by proclamation published in the Gazette, prorogue the Legislative Council.

(2) The Governor, acting after consultation with the Chief Minister, may at any time, by proclamation published in the Gazette, dissolve the Legislative Council.

(3) The Governor shall dissolve the Legislative Council at the expiration of five years from the date when the Council first meets after any general election unless it has been sooner dissolved.

General elections.

43. A general election for the elected members of the Legislative Council shall be held at such time within three months after every dissolution of the Legislative Council as the Governor shall appoint by proclamation published in the Gazette.

Introduction of Bills etc.

44.—(1) Subject to the provisions of this Constitution and of the Standing Orders of the Legislative Council, any member of the Legislative Council may introduce any Bill or propose any motion for debate in, or may present any petition to, the Legislative Council, and the same shall be debated and disposed of according to the Standing Orders of the Council.

(2) Except with the approval of the Governor signified by a Minister, the Legislative Council shall not—

- (a) proceed upon any Bill (including any amendment to a Bill) which, in the opinion of the person presiding in the Council, would dispose of or charge any public revenue or public funds of Montserrat or alter any disposition thereof or charge thereon or impose, alter or repeal any rate, tax or duty;

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- (b) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding in the Council, is that provision should be made for any of the purposes aforesaid;
- (c) receive any petition which, in the opinion of the person presiding in the Council, requests that provision be made for any of the purposes aforesaid.

Power to make laws.

45. Subject to the provisions of this Constitution, the Legislature shall have power to make laws for the peace, order and good government of Montserrat.

Standing Orders.

46. Subject to the provisions of this Constitution, the Legislative Council may make, amend and revoke Standing Orders for the regulation and orderly conduct of its own proceedings and the despatch of business, and the passing, intitling and numbering of Bills and the presentation of the same to the Governor for assent.

Penalties for unauthorised persons sitting or voting.

47.—(1) Any person who sits or votes in the Legislative Council knowing or having reasonable grounds for knowing that he is not entitled so to do shall be liable to a penalty not exceeding two hundred Eastern Caribbean dollars for every day upon which he so sits or votes.

(2) The said penalty shall be recoverable by action in the High Court at the suit of the Attorney-General.

Assent to Bills.

48.—(1) A Bill shall not become a law until either—

- (a) the Governor has assented thereto in Her Majesty's name and on Her Majesty's behalf and has signed the same in token of such assent; or
- (b) Her Majesty has given Her assent thereto through a Secretary of State and the Governor has signified such assent by proclamation published in the Gazette.

(2) When a Bill is presented to the Governor for assent he shall declare that he assents or refuses to assent thereto or that he reserves the Bill for the signification of Her Majesty's pleasure:

Provided that, unless he has been authorised by a Secretary of State to assent thereto, the Governor shall reserve for the signification of Her Majesty's pleasure any Bill—

- (a) which appears to him, acting in his discretion—
 - (i) to be inconsistent with any obligation of Her Majesty's Government in the United Kingdom towards any other state or power or any international organisation;
 - (ii) to be likely to prejudice the Royal prerogative, or the efficiency of the judiciary, or to affect any of the matters mentioned in section 16 of this Constitution; or
- (b) which is in any way repugnant to or inconsistent with the provisions of this Constitution.

(3) A law assented to by the Governor shall come into operation on the date on which such assent shall be given, unless it shall be enacted either in such law or in some other enactment that it shall come into operation on some other date, in which case it shall come into operation on that date.

(4) A Bill reserved for the signification of Her Majesty's pleasure shall become a law so soon as Her Majesty has given her assent thereto, through a Secretary of State, and such assent has been signified by proclamation published in the Gazette. Every such law shall come into operation on the

date of such proclamation, unless it shall be enacted either in such law or in some other enactment that it shall come into operation on some other date, in which case it shall come into operation on that date.

Words of enactment.

49. In every Bill presented to the Governor for assent the words of enactment shall be as follows—

“Be it enacted by The Queen’s Most Excellent Majesty, by and with the advice and consent of the Legislative Council of Montserrat, and by the authority of the same as follows:—”.

Disallowance of laws.

50.—(1) Any law assented to by the Governor may be disallowed by Her Majesty through a Secretary of State.

(2) Whenever any law has been disallowed by Her Majesty the Governor shall, as soon as practicable, cause notice of such disallowance to be published in the Gazette and the law shall be annulled with effect from the date of publication of that notice.

(3) Section 16(1) of the Interpretation Act 1978⁽¹⁾ shall apply to the annulment of any law under this section as it applies to the repeal of an Act of Parliament, save that any enactment repealed or amended by or in pursuance of that law shall have effect as from the date of the annulment as if that law had not been made.

Privileges etc. of Legislative Council.

51. The Legislature may by law determine and regulate the privileges, immunities and powers of the Legislative Council and the members thereof, but no such privileges, immunities or powers shall exceed those of the Commons' House of Parliament of the United Kingdom or of the members thereof.

(1) 1978 c. 30.