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STATUTORY INSTRUMENTS

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**2010 No. 2474**

**The Montserrat Constitution Order 2010**

**PART I**

**FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL**

**Fundamental rights and freedoms of the individual**

**2.** Whereas the realisation of the right to self-determination must be promoted and respected in conformity with the provisions of the Charter of the United Nations;

Whereas every person in Montserrat is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, without distinction of any kind, such as sex, sexual orientation, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely—

- (a) life, liberty, security of the person and the protection of the law;
- (b) freedom of conscience and of religion, of expression, and of assembly and association;
- (c) protection for his or her private and family life, the privacy of his or her home and other property and from deprivation of property save in the public interest and on payment of fair compensation,

the subsequent provisions of this Part shall have effect for the purpose of affording protection to the aforesaid rights and freedoms, and related rights and freedoms, subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said protected rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

**Protection of right to life**

**3.—(1)** Every person's right to life shall be protected by law.

(2) No person shall be deprived intentionally of his or her life.

(3) A person shall not be regarded as having been deprived of his or her life in contravention of this section if he or she dies as the result of a lawful act of war or the use, to such extent and in such circumstances as are permitted by law, of such force as is no more than absolutely necessary—

- (a) for the defence of any person from violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or
- (c) in action lawfully taken for the purpose of suppressing a riot, insurrection or mutiny.

**Protection from inhuman treatment**

**4.** No person shall be subjected to torture or to inhuman or degrading treatment or punishment.

### **Protection from slavery and forced labour**

- 5.—(1) No person shall be held in slavery or servitude.
- (2) No person shall be required to perform forced or compulsory labour.
- (3) For the purposes of this section, “forced or compulsory labour” does not include—
- (a) any labour required in consequence of the sentence or order of a court;
  - (b) any labour required of a member of a disciplined force in pursuance of his or her duties as such or, in the case of a person who has conscientious objections to service in a naval, military or air force, any labour that that person is required by law to perform in place of such service;
  - (c) labour required of a person while he or she is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place in which he or she is detained; or
  - (d) any labour required for the purpose of dealing with any situation arising during a period of public emergency or at a time when any other emergency or calamity threatens the well-being of the community, to the extent that the requiring of such labour is reasonably justifiable for that purpose.

### **Protection from arbitrary arrest or detention**

- 6.—(1) No person shall be deprived of his or her personal liberty save in any of the following cases where reasonably required and in accordance with a procedure prescribed by law—
- (a) in execution of the sentence or order of a court, whether established for Montserrat or some other country, in respect of a criminal offence of which he or she has been convicted or in consequence of his or her unfitness to plead to a criminal charge;
  - (b) in execution of the order of a court punishing him or her for contempt of that court or of another court;
  - (c) in execution of the order of a court made in order to secure the fulfilment of any obligation imposed on him or her by law;
  - (d) for the purpose of bringing him or her before a court in execution of the lawful order of a court;
  - (e) on reasonable suspicion that he or she has committed, is committing or is about to commit a criminal offence;
  - (f) in the case of a minor, under the order of a court or with the consent of his or her parent or guardian, for the purpose of his or her education or welfare;
  - (g) for the purpose of preventing the spread of an infectious or contagious disease;
  - (h) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his or her care or treatment or the protection of the community;
  - (i) for the purpose of preventing the unlawful entry of that person into Montserrat or for the purpose of effecting the expulsion, extradition or other lawful removal from Montserrat of that person or the taking of proceedings relating thereto.
- (2) Any person who is arrested or detained shall be informed promptly, in a language that he or she understands, of the reasons for his or her arrest or detention and of any charge against him or her.
- (3) Any person who is arrested or detained shall have the right, at any stage and at his or her own expense, to retain and instruct without delay a legal representative of his or her own choice, and to hold private communication with him or her, and in the case of a minor he or she shall also be afforded a reasonable opportunity for communication with his or her parent or guardian; but when

the person arrested or detained is unable to retain a legal representative of his or her own choice or be represented by a legal representative at the public expense, he or she may be represented, and hold private communication with, such person as a court may approve.

(4) Every person who is arrested shall be informed, in a language that he or she understands and as soon as possible after he or she is brought to a police station or other place of custody, of his or her rights under subsection (3); and that person shall also have the right, and shall be informed at the same time that he or she has the right, to remain silent and to have one person informed by the quickest practicable means of his or her arrest and whereabouts.

(5) Any person who is arrested or detained in such a case as is mentioned in subsection (1)(d) or (e) and who is not released shall be brought promptly before a judge or other officer authorised to exercise judicial power.

(6) If any person arrested or detained in such a case as is mentioned in subsection (1)(e) is not tried within a reasonable time he or she shall (without prejudice to any further proceedings that may be brought against him or her) be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he or she appears at a later date for trial or for proceedings preliminary to trial.

(7) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation in respect of it from that other person.

#### **Provisions to secure protection of law**

7.—(1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence—

- (a) shall be presumed to be innocent until he or she is proved guilty according to law;
- (b) shall be informed promptly, in a language that he or she understands and in detail, of the nature and cause of the accusation against him or her;
- (c) shall be given adequate time and facilities for the preparation of his or her defence;
- (d) shall be permitted to defend himself or herself before the court in person or, at his or her own expense, by a legal representative of his or her own choice, or, when the interests of justice so require, by a legal representative at the public expense;
- (e) shall be afforded facilities to examine in person or by his or her legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his or her behalf before the court on the same conditions as those applying to witnesses for the prosecution;
- (f) shall be permitted to have without payment the assistance of an interpreter if he or she cannot understand or speak the language used at the trial of the charge; and
- (g) shall, when tried before the High Court, have the right to trial by jury except as otherwise provided for by Act of the Legislature;

and, except with his or her own consent, the trial shall not take place in his or her absence, unless he or she so behaves in the court as to render the continuance of the proceedings in his or her presence impracticable and the court has ordered him or her to be removed and the trial to proceed in his or her absence, or unless, having had reasonable notice of the hearing and of the nature of the offence charged, he or she is voluntarily absent from the proceedings.

(3) When a person is tried for any criminal offence, the accused person or any person authorised by him or her shall, if he or she so requires and subject to payment of such reasonable fee as may be

prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he or she has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he or she could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if that person shows that he or she has been lawfully pardoned for that offence.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(8) Any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be determined fairly within a reasonable time.

(9) All proceedings instituted in any court for the determination of the existence or extent of any civil right or obligation or to try any criminal charge, including the announcement of the decision of the court, shall be held in public.

(10) Nothing in subsection (9) shall prevent the court from excluding from the proceedings persons other than the parties and their legal representatives to such extent as the court—

(a) may be empowered by law so to do and may consider strictly necessary or expedient in circumstances where publicity would prejudice the interests of justice, in interlocutory proceedings, or in the interests of the welfare of minors or the private lives of persons concerned in the proceedings; or

(b) may be empowered or required by law so to do in the interests of defence, public safety, public order or public morality.

(11) Nothing in any law or done under its authority shall be held to contravene—

(a) subsection (2)(a) to the extent that the law in question imposes on any person charged with a criminal offence the burden of proving particular facts;

(b) subsection (2)(e) to the extent that the law in question imposes conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds;

(c) subsection (5) to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force; but any court so trying such a member and convicting him or her shall in sentencing him or her to any punishment take into account any punishment imposed on him or her under that disciplinary law.

(12) Every person convicted of a criminal offence by a court shall have the right to have his or her conviction or sentence reviewed by a higher court, and the exercise of this right, including the grounds on which it may be exercised, shall be governed by law.

(13) When a person has by a final decision been convicted of a criminal offence and when subsequently his or her conviction has been reversed, or he or she has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated

according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him or her.

### **Protection of right of prisoners to humane treatment**

**8.—(1)** All persons deprived of their liberty (“prisoners”) have the right to be treated with humanity and with respect for the inherent dignity of the human person.

(2) Save where the interests of defence, public safety, public order, public morality, public health or the administration of justice otherwise require, unconvicted prisoners shall be segregated from convicted prisoners; and every unconvicted prisoner shall be entitled to be treated in a manner appropriate to his or her status as such.

(3) Juvenile prisoners shall be segregated from adult prisoners and every juvenile prisoner shall be treated in a manner appropriate to his or her age and legal status and, if he or she is an unconvicted prisoner and unless he or she is earlier released, be entitled to have any criminal proceedings against him or her pursued with the greatest possible expedition.

### **Protection of private and family life and privacy of home and other property**

**9.—(1)** Every person has the right to respect for his or her private and family life, his or her home and his or her correspondence.

(2) Except with his or her consent, no person shall be subjected to the search of his or her person or property or the entry by others on his or her premises.

(3) Nothing in any law or done under its authority shall be held to contravene this section to the extent that it is reasonably justifiable in a democratic society—

- (a) in the interests of defence, public safety, public order, public morality, public health, town or country planning, the development of mineral resources, or the development or utilisation of any other property in such a manner as to promote the public benefit;
- (b) for the purpose of protecting the rights and freedoms of other persons;
- (c) for the prevention or detection of offences against the criminal law or the customs law;
- (d) to enable an officer or agent of the Government, a local government authority or a body corporate established by law for a public purpose to enter on the premises of any person in order to inspect those premises or anything on them for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to the Government or that authority or body corporate, as the case may be; or
- (e) to authorise, for the purpose of enforcing the judgment or order of a court, the search of any person or property by order of a court or the entry on such premises by such order.

### **Protection of right to marry**

**10.—(1)** Notwithstanding anything in section 16, every man and woman of marriageable age (as determined by or under any law) has the right to marry a person of the opposite sex and to found a family.

(2) No person shall be compelled to marry, that is to say, to do so without his or her free and full consent.

(3) Nothing in any law or done under its authority shall be held to contravene subsection (1) to the extent that it is reasonably justifiable in a democratic society—

- (a) in the interests of public order, public morality or public health;
- (b) for regulating, in the public interest, the procedures and modalities of marriage; or

(c) for protecting the rights and freedoms of other persons.

(4) Spouses shall be entitled to equal rights and shall be subject to equal responsibilities as between themselves and as regards their children both during marriage and, if the marriage is dissolved, on and after dissolution, but this equality of rights and responsibilities shall be subject to such arrangements or measures as may be agreed, or as may be ordered by a court, in the interests of their children.

### **Protection of freedom of conscience and of religion**

**11.**—(1) Except with his or her consent, no person shall be hindered in the enjoyment of his or her freedom of conscience, and for the purposes of this section the said freedom includes freedom of thought and of religion, freedom to change one's religion or belief and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate one's religion or belief in worship, teaching, practice and observance.

(2) Except with his or her consent (or, in the case of a minor, the consent of his or her parent or guardian) no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance.

(3) No religious community or denomination shall be prevented from or hindered in providing religious instruction for persons of that community or denomination in the course of education provided by that community or denomination whether or not that community or denomination is in receipt of any government subsidy, grant or other form of financial assistance designed to meet, in whole or in part, the cost of such education.

(4) No person shall be compelled to take any oath which is contrary to his or her religion or belief or to take any oath in a manner which is contrary to his or her religion or belief.

(5) Nothing in any law or done under its authority shall be held to contravene this section to the extent that it is reasonably justifiable in a democratic society—

- (a) in the interests of defence, public safety, public order, public morality or public health; or
- (b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion or belief without the unsolicited interference of persons professing any other religion or belief.

(6) Every person who is a parent or legal guardian has the right to respect for his or her liberty to ensure the religious and moral education of his or her children in conformity with his or her own convictions.

(7) References in this section to a religion shall be construed as including references to a religious denomination, and cognate expressions shall be construed accordingly.

### **Protection of right to education**

**12.**—(1) This section is without prejudice to section 11.

(2) Every child of the appropriate age, as provided by law, shall be entitled to receive primary and secondary education which shall, subject to subsection (3), be free.

(3) Every person who is the parent or legal guardian of a child shall be entitled to have his or her child (of whatever age) educated, at his or her own expense unless a law otherwise provides, in a private school (that is to say, a school other than one established by a public authority) and, in such a school, to ensure the religious and moral education of his or her child in accordance with his or her own convictions.

(4) Nothing in any law or done under its authority shall be held to contravene subsection (3) to the extent that it is reasonably justifiable in a democratic society and to the extent that the law makes

provision requiring private schools, as a condition of their being allowed to operate and on terms that are no more onerous than are applicable to schools established by a public authority, to satisfy—

- (a) such minimum educational standards (including standards relating to the qualifications of teaching staff and other staff) as may be prescribed by or under that or any other law; and
- (b) such minimum standards imposed in the interests of public order, public morality or public health as may be so prescribed.

### **Protection of freedom of expression**

13.—(1) Except with his or her consent, no person shall be hindered in the enjoyment of his or her freedom of expression, and for the purposes of this section the said freedom includes freedom to hold opinions and freedom to receive and impart ideas and information without interference, and freedom from interference with his or her correspondence and other means of communication.

(2) Nothing in any law or done under its authority shall be held to contravene this section to the extent that it is reasonably justifiable in a democratic society—

- (a) in the interests of defence, public safety, public order, public morality or public health;
- (b) for the purpose of protecting the rights, reputations and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, regulating telephony, telegraphy, posts, wireless broadcasting, television or other means of communication or regulating public exhibitions or public entertainments; or
- (c) for the imposition of restrictions on public officers or teachers that are reasonably required for the purpose of ensuring the proper performance of their functions.

(3) For the purposes of subsection (2)(c) in so far as it relates to public officers, “law” in subsection (2) includes directions in writing regarding the conduct of public officers generally or any class of public officer issued by the Government.

### **Protection of freedom of assembly and association**

14.—(1) Except with his or her consent, no person shall be hindered in the enjoyment of his or her freedom of peaceful assembly and association, that is to say, his or her right to assemble freely and associate with other persons and in particular to form or belong to political parties or to form or belong to trade unions or other associations for the promotion and protection of his or her interests.

(2) Nothing in any law or done under its authority shall be held to contravene this section to the extent that it is reasonably justifiable in a democratic society—

- (a) in the interests of defence, public safety, public order, public morality or public health;
- (b) for the purpose of protecting the rights and freedoms of other persons; or
- (c) for the imposition of restrictions on public officers that are reasonably required for the purpose of ensuring the proper performance of their functions.

(3) For the purposes of subsection (2)(c), “law” in subsection (2) includes directions in writing regarding the conduct of public officers generally or any class of public officer issued by the Government.

### **Protection of freedom of movement**

15.—(1) Except with his or her consent, no person shall be hindered in the enjoyment of his or her freedom of movement, that is to say, the right to move freely throughout Montserrat, the right to reside in any part of Montserrat, the right to enter or leave Montserrat and immunity from expulsion from Montserrat.

(2) Nothing in any law or done under its authority shall be held to contravene this section to the extent that the law in question makes provision—

- (a) for the removal of a person from Montserrat to be tried or punished in some other country for a criminal offence under the law of that country;
- (b) for the removal of a person from Montserrat to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence under the law of Montserrat of which he or she has been convicted;
- (c) for the imposition of restrictions on the movement or residence within Montserrat or the right to leave Montserrat of public officers that are reasonably required for the purpose of ensuring the proper performance of their functions;
- (d) for the imposition of restrictions on persons who are not Montserratians; but—
  - (i) no restriction may be imposed by virtue only of this paragraph on the right of any such person, so long as he or she is lawfully present in Montserrat, to move freely throughout Montserrat and to reside anywhere in Montserrat;
  - (ii) no restriction may be imposed by virtue only of this paragraph on the right of any such person to leave Montserrat; and
  - (iii) no such person shall be liable, by virtue only of this paragraph, to be expelled from Montserrat unless the requirements of subsection (4) are satisfied;
- (e) for the imposition of restrictions on the acquisition or use by any person of land or other property in Montserrat; or
- (f) for the imposition of restrictions, by order of a court, on the movement or residence within Montserrat of any person or on any person's right to leave Montserrat either in consequence of that person having been found guilty of a criminal offence under the law of Montserrat, or for the purpose of ensuring a fair trial or that he or she appears before a court at a later date for trial of such a criminal offence or for proceedings preliminary to trial or for proceedings relating to his or her extradition or lawful removal from Montserrat.

(3) For the purposes of subsection (2)(c), “law” in subsection (2) includes directions in writing regarding the conduct of public officers generally or any class of public officer issued by the Government.

(4) The requirements to be satisfied for the purposes of subsection (2)(d)(iii) (that is to say, before a person who is not a Montserratian may be expelled from Montserrat) are as follows—

- (a) the decision to expel him or her is taken by an authority, in a manner and on grounds prescribed by law;
- (b) he or she has the right, save where the interests of defence, public safety or public order otherwise require, to submit reasons against his or her expulsion to a competent authority prescribed by law;
- (c) he or she has the right, save as aforesaid, to have his or her case reviewed by a competent authority prescribed by law; and
- (d) he or she has the right, save as aforesaid, to be represented for the purposes of paragraphs (b) and (c) before the competent authority or some other person or authority designated by the competent authority.

(5) Nothing in any law or done under its authority shall be held to contravene this section to the extent that it is reasonably justifiable in a democratic society—

- (a) for the imposition of restrictions on the movement or residence within Montserrat or on the right to leave Montserrat of persons generally or any class of persons that are reasonably required—



- (i) in the interests of defence, public safety, public order, public morality or public health; or
  - (ii) for the purpose of protecting the rights and freedoms of other persons; or
- (b) for the imposition of restrictions on the right of any person to leave Montserrat that are reasonably required in order to secure the fulfilment of any obligation imposed by law.
- (6) Any restriction on a person's freedom of movement which is involved in his or her lawful detention shall not be held to contravene this section.

### **Protection from discrimination**

**16.**—(1) Subject to subsections (4) and (5), no law shall make any provision which is discriminatory either of itself or in its effect.

(2) Subject to subsections (4), (5) and (7), no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this section, the expression “discriminatory” means affording different treatment to different persons on any ground such as sex, sexual orientation, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

(4) Nothing in any law or done under its authority shall be held to contravene this section to the extent that it has an objective and reasonable justification and there is a reasonable proportion between the provision of law in question or, as the case may be, the thing done under it and the aim which that provision or thing done under it seeks to realise.

(5) Subsection (1) shall not apply to any law so far as that law makes provision—

- (a) for the appropriation of revenues or other funds of Montserrat or for the imposition of taxation (including the levying of fees for the grant of licences);
- (b) with respect to the entry into or exclusion from Montserrat, or the employment or engaging in any business or profession within Montserrat, of persons who are not Montserratians;
- (c) for the application, in the case of persons of any such description of grounds as is mentioned in subsection (3) (or of persons connected with such persons) of the law with respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters that is the personal law applicable to persons of that description; or
- (d) whereby persons of any such description of grounds as is mentioned in subsection (3) may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society;

and subsection (2) shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision of law.

(6) No person shall be treated in a discriminatory manner in respect of access to any place to which the general public has access.

(7) Nothing in subsection (2) shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution.

### **Protection from deprivation of property**

17.—(1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except in accordance with a law applicable to that taking of possession or acquisition and where the following conditions are satisfied, that is to say—

- (a) the taking of possession or acquisition is in the public interest; and
- (b) there is a reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property; and
- (c) provision is made by a law applicable to the taking of possession or acquisition—
  - (i) for the prompt payment of adequate compensation; and
  - (ii) securing to any person having an interest in or right over the property a right of access to the High Court, whether direct or on appeal from any other authority, for the determination of his or her interest or right, the legality of the taking of possession or acquisition and the amount of any compensation to which he or she is entitled, and for the purpose of obtaining prompt payment of that compensation.

(2) No person who is entitled to compensation under this section shall be prevented from remitting, within a reasonable time after he or she has received any amount of that compensation, the whole of that amount to any country of his or her choice outside Montserrat.

(3) Without prejudice to the generality of the expression “in the public interest” in subsection (1), nothing in any law or done under its authority shall be held to contravene this section to the extent that the law makes provision for the taking of possession or acquisition of any property, interest or right—

- (a) for the purpose of controlling its use in accordance with the general interest;
- (b) as a consequence of a breach of the law;
- (c) to secure the payment of taxes or other like impositions; or
- (d) for the administration or enforcement of the law regulating the civil rights and obligations of persons as between themselves in respect of property.

### **Provisions for periods of public emergency**

18.—(1) The Governor may, by proclamation published in the *Gazette*, declare that a period of public emergency exists.

(2) Without prejudice to the power of the Legislature to make laws under this Constitution, during a period of public emergency the Governor may make such regulations for Montserrat as appear to him or her to be necessary or expedient for securing the public safety, the defence of Montserrat or the maintenance of public order, or for maintaining supplies and services essential to the life of the community.

- (3) Regulations made under subsection (2)—
- (a) shall have effect only prospectively;
  - (b) shall have effect, subject to this section, notwithstanding the provisions of any other law in force in Montserrat or any rule of law having effect in Montserrat;
  - (c) shall (unless previously revoked) expire at the end of the period of public emergency during which they were made unless provision for their continuance in force (with or without modification) is made by the Legislature;
  - (d) shall be published as soon as possible in the *Gazette* or by such other means as the Governor may determine, acting in his or her discretion, and shall come into force upon first publication.

(4) Before exercising any function under subsection (1) or (2) or under any emergency law enacted by the Legislature, the Governor shall consult the National Advisory Council or, if that is not practicable in the circumstances, the Premier; but if in the judgement of the Governor it is impracticable for him or her to consult the National Advisory Council or the Premier, the function shall be exercised by the Governor acting in his or her discretion.

(5) Where the Governor has consulted the National Advisory Council or the Premier under subsection (4), the Governor may, if he or she thinks it right to do so, act otherwise than in accordance with any advice given to him or her by the National Advisory Council or the Premier.

(6) Where any proclamation of emergency has been made by the Governor under subsection (1), a copy of the proclamation shall as soon as practicable be laid before the Legislative Assembly and if the Assembly is not due to meet within five days of the making of the proclamation it shall meet within that period or as soon as practicable thereafter.

(7) A proclamation of emergency shall, unless it is sooner revoked by the Governor, cease to be in force at the expiration of a period of fourteen days beginning on the date on which it was made or such longer period as may be provided under subsection (8), but without prejudice to the making of another proclamation of emergency at or before the end of that period.

(8) If at any time while a proclamation of emergency is in force (including any time while it is in force by virtue of this subsection) a resolution is passed by the Legislative Assembly approving its continuance in force for a further period not exceeding three months, beginning on the date on which it would otherwise expire, the proclamation shall, if not sooner revoked, continue in force for that further period; but the Assembly may abridge that period by a further resolution.

(9) Nothing in any law or done under its authority shall be held to contravene section 6, section 7 other than subsections (4), (5) and (6) thereof, or any provision of sections 8 to 17 (inclusive) to the extent that the law authorises during a period of public emergency the taking of measures that are reasonably justifiable for dealing with the situation that exists in Montserrat during that period.

### **Protection of persons detained under emergency laws**

**19.—**(1) When a person is detained by virtue of any law in relation to a period of public emergency the following provisions shall apply—

- (a) notification shall, as soon as practicable and in any case not more than ten days after the commencement of his or her detention, be published in a public place (and thereafter as soon as possible in the *Gazette*) stating that he or she has been detained and giving particulars of the provision of law by virtue of which his or her detention is authorised;
- (b) he or she shall (if not sooner released), as soon as reasonably practicable and in any case not more than two days after the commencement of his or her detention, be informed, in a language that he or she understands, of the grounds on which he or she is detained and furnished with a written statement;
- (c) his or her case shall, as soon as practicable and in any case not more than 30 days after the commencement of his or her detention and thereafter during the detention at intervals of not more than three months, be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice;
- (d) he or she shall be afforded a reasonable opportunity to consult a legal representative of his or her own choice and to hold private communication with such legal representative; and
- (e) he or she shall, at the hearing of his or her case by the tribunal appointed for its review, be permitted to appear in person or by a legal representative of his or her own choice.

(2) For the purposes of subsection (1)(d) and (e), if the detained person is unable to retain a legal representative of his or her own choice, the tribunal may approve such person as it deems fit to make

representations to it, provided that nothing in subsection (1)(d) or (e) shall be construed as entitling a detained person to legal representation at public expense.

(3) On any review by a tribunal of the case of a detained person under this section, the tribunal may make recommendations concerning the necessity or expediency of continuing his or her detention to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

### **Enforcement of fundamental rights**

**20.**—(1) If any person alleges that any of the foregoing provisions of this Part has been, is being or is likely to be contravened in relation to him or her, then, without prejudice to any other action with respect to the same matter which is lawfully available to him or her, that person may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction—

- (a) to hear and determine any application made by any person under subsection (1); and
- (b) to determine any question arising in the case of any person which is referred to it under subsection (3),

and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the foregoing provisions of this Part to the protection of which the person concerned is entitled.

(3) If, in any proceedings in any court established in Montserrat other than the High Court or the Court of Appeal, any question arises as to the contravention of any of the foregoing provisions of this Part, the court in which the question has arisen shall refer the question to the High Court unless, in its opinion, the raising of the question is merely frivolous or vexatious.

(4) An appeal shall lie as of right to the Court of Appeal from any final determination of any application or question by the High Court under this section, and an appeal shall lie as of right to Her Majesty in Council from the final determination by the Court of Appeal of the appeal in any such case; but no appeal shall lie from a determination by the High Court under this section dismissing an application on the ground that it is frivolous or vexatious.

(5) The Legislature may by law confer on the High Court such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling the Court more effectively to exercise the jurisdiction conferred on it by this section.

(6) Any such law may make, or provide for the making of, provision with respect to the practice and procedure—

- (a) of the High Court in relation to the jurisdiction and powers conferred on it by or under this section;
- (b) of the High Court or the Court of Appeal in relation to appeals under this section from determinations of the High Court or the Court of Appeal; and
- (c) of other courts in relation to references to the High Court under subsection (3),

including provision with respect to the time within which any application, reference or appeal shall or may be made or brought.

### **Interpretation of Part I**

**21.**—(1) In this Part, unless otherwise expressly provided or required by the context—

“contravene” in relation to any requirement includes fail to comply with that requirement, and cognate expressions shall be construed accordingly;

“court” means any court of law or tribunal having jurisdiction in Montserrat, including Her Majesty in Council, but excepting, save in section 5, a court established by or under disciplinary law;

“disciplinary law” means a law regulating the discipline of any disciplined force;

“disciplined force” means—

- (a) a naval, military or air force;
- (b) any police service or prison service in Montserrat;

“legal representative” means a person entitled to practise law in Montserrat;

“member” in relation to a disciplined force includes any person who, under the law regulating the discipline of that force, is subject to that discipline;

“minor” means a person who has not attained the age of eighteen years;

“period of public emergency” means any period during which—

- (a) Her Majesty is at war; or
- (b) there is in force in Montserrat a proclamation of emergency under section 18(1) or under any law made by the Legislature to like effect.

(2) In relation to any person who is a member of a disciplined force raised under the law of Montserrat, nothing in or done under the authority of the disciplinary law of that force shall be held to contravene the provisions of this Part other than sections 3, 4 and 5.

(3) In relation to any person who is a member of a disciplined force raised otherwise than as aforesaid and lawfully present in Montserrat, nothing in or done under the authority of the disciplinary law of that force shall be held to contravene any provisions of this Part.