
STATUTORY INSTRUMENTS

2010 No. 2474

The Montserrat Constitution Order 2010

PART III

THE EXECUTIVE

Executive authority

31.—(1) The executive authority of Montserrat is vested in Her Majesty.

(2) Subject to 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 or her.

(3) Nothing in this section shall operate so as to prejudice any law in force in Montserrat whereby functions are, or may be, conferred on persons or authorities other than the Governor.

Cabinet

32.—(1) There shall be a Cabinet in and for Montserrat which shall consist of a Premier, three other Ministers and two *ex officio* members, namely the Attorney-General and the Financial Secretary.

(2) The number of Ministers referred to in subsection (1) may be increased by a law made in pursuance of section 48(2) which increases the number of elected members of the Legislative Assembly; but in no circumstances may the number of such Ministers be increased so that the total number of Ministers exceeds a number arrived at by subtracting one from the total number of elected members of the Legislative Assembly and then dividing by two.

(3) Subject to this Constitution, the Cabinet shall have the general direction and control of the government of Montserrat and shall be collectively responsible for it to the Legislative Assembly.

(4) The Deputy Governor shall have the right to attend and take part in any meeting of the Cabinet, but shall not have the right to vote in the Cabinet.

Appointment of Ministers

33.—(1) The Governor shall appoint as the Premier the elected member of the Legislative Assembly who demonstrates to the satisfaction of the Governor that he or she commands the confidence of a majority of the elected members of the Assembly.

(2) The other Ministers shall be appointed by the Governor in accordance with the advice of the Premier from among the elected members of the Legislative Assembly, and one of them shall be appointed as Deputy Premier.

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

(4) Appointments under this section shall be made by instrument under the public seal.

Tenure of office of Ministers

34.—(1) If a motion that the Legislative Assembly should declare a lack of confidence in the Government receives in the Assembly the affirmative votes of a majority of all the elected members of the Assembly, the Governor shall, by instrument under the public seal, revoke the appointment of the Premier and appoint another person as Premier in accordance with section 33(1); but before so revoking the Premier’s appointment the Governor shall consult the Premier and may, acting in his or her discretion, dissolve the Legislative Assembly instead of revoking the appointment.

(2) A Minister shall vacate his or her office if—

- (a) he or she resigns it by writing under his or her hand addressed to and received by the Governor;
- (b) he or she ceases to be a member of the Legislative Assembly for any reason other than a dissolution of the Assembly;
- (c) he or she is required by virtue of section 53(4) to cease to perform his or her functions as a member of the Legislative Assembly; or
- (d) he or she is not an elected member of the Legislative Assembly on the date of its first sitting after a general election.

(3) A Minister (other than the Premier) shall also vacate his or her office—

- (a) whenever a Premier is appointed; or
- (b) if his or her appointment is revoked by the Governor, acting in accordance with the advice of the Premier, by instrument under the public seal.

(4) Upon a dissolution of the Legislative Assembly the Premier and other Ministers in office at the time of such dissolution shall remain in office and discharge their functions until a general election is held and a Premier is appointed in accordance with section 33(1) following such election; but such functions may not be exercised, save in the event of a public emergency, to commit or bind the next successor Government to public funding or liability except in the ordinary course of the day to day affairs of Montserrat.

Absence of Ministers from Montserrat

35. The Premier shall give notice to the Governor before being absent from Montserrat, and any other Minister shall obtain the permission of the Premier before being absent from Montserrat.

Acting Premier

36.—(1) During any period when the office of Premier is vacant or the Premier is absent from Montserrat or otherwise unable to perform the functions of his or her office, the Governor shall authorise the Deputy Premier to perform those functions; and if the office of Deputy Premier is vacant or the Deputy Premier is absent from Montserrat or otherwise unable to perform those functions, the Governor shall authorise another Minister to perform those functions, acting in accordance with the advice of the Premier or, if the office of Premier is vacant or it is impracticable to obtain the advice of the Premier, acting in his or her discretion.

(2) Any authorisation under subsection (1) shall be given by the Governor by instrument under the public seal and shall be revoked in like manner as soon as the circumstances giving rise to the authorisation have ceased to exist.

(3) In this section “the Premier” means the person holding the office of Premier and “the Deputy Premier” means the person holding the office of Deputy Premier.

Temporary Ministers

37.—(1) Whenever a Minister (other than the Premier) is absent from Montserrat or otherwise unable to perform the functions of his or her office, the Governor may, by instrument under the public seal, appoint a person who is an elected member of the Legislative Assembly (or, if the Assembly is dissolved, was such a member immediately before the dissolution) to be a temporary Minister.

(2) Subject to section 34, a person appointed under this section shall hold office until he or she is notified by the Governor that the circumstances giving rise to the appointment have ceased to exist.

(3) The powers conferred on the Governor by this section shall be exercised by him or her in accordance with the advice of the Premier.

Assignment of responsibilities to Ministers

38.—(1) Subject to this Constitution, the Governor, acting in accordance with the advice of the Premier, shall, by directions in writing, charge any Minister with responsibility for the conduct (subject to this Constitution and any other law) of any business of the Government, including responsibility for the administration of any department of government.

(2) A Minister shall not be charged with responsibility under this section for any of the matters mentioned in section 39, matters relating to the judiciary, or the audit of accounts which are the responsibility of the Auditor-General under section 103.

(3) Authority to exercise any function that is conferred or imposed by this Constitution or any other law on any person or authority other than a Minister shall not be conferred by the Governor on a Minister.

(4) A Minister charged with responsibility for any matter under this section shall exercise his or her responsibility in accordance with the policies of the Government as determined by the Cabinet and in accordance with the collective responsibility of the members of the Cabinet for the policies and decisions of the Government.

(5) Where a Minister has been charged under this section with responsibility for the administration of any department of government, the Minister shall (subject to this Constitution and any other law) exercise general direction and control over that department, and, subject to such direction and control, the department shall be under the supervision of a permanent secretary who shall be a public officer; but two or more departments of government may be placed under the supervision of one permanent secretary.

(6) The Governor, acting in his or her discretion, may at any time and upon notifying the relevant Minister call for any official papers or seek any official information or advice available to a Minister with respect to a matter or department with responsibility for which that Minister is charged under this section.

Governor's special responsibilities

39.—(1) The Governor, acting in his or her discretion, shall be responsible for the conduct, subject to this Constitution, of any business of the Government with respect to the following matters—

- (a) defence;
- (b) external affairs;
- (c) the regulation of international financial services;
- (d) internal security, including the police service;
- (e) the functions conferred on the Governor by this Constitution or any other law in relation to the public service;

and the Governor shall keep the Premier fully informed concerning the general conduct of these matters, and the Premier may request information in respect of any particular matter.

(2) The Governor, acting after consultation with the Premier, may assign to a member of the Cabinet responsibility for the conduct on behalf of the Governor of any business in the Legislative Assembly with respect to any of the matters mentioned in subsection (1); but in the absence of such assignment the Deputy Governor shall conduct any such business on behalf of the Governor in the Assembly.

(3) The Governor, acting in his or her discretion, may by directions in writing delegate, with the prior approval of a Secretary of State, to the Premier or any other Minister designated by the Premier, such responsibility for any matter mentioned in subsection (1)(a), (b), (c) and (d) as the Governor may think fit on such conditions as he or she may impose.

(4) Notwithstanding subsection (3), and without prejudice to any authority previously granted by or on behalf of a Secretary of State, the Governor shall by directions in writing delegate to a Minister responsibility for the conduct within Caribbean regional organisations of external affairs affecting Montserrat, and other Caribbean regional affairs of interest to or affecting Montserrat, on the terms and conditions set out in those directions.

(5) In the event of any disagreement regarding the exercise of any delegated responsibility under subsection (4) or regarding the terms and conditions referred to in that subsection, the matter shall be referred to a Secretary of State whose decision on the matter shall be final and whose directions shall be complied with.

(6) Where the Governor, acting in his or her discretion, determines that the exercise of any function conferred on any other person or authority (other than the Legislative Assembly) would involve or affect any matter mentioned in subsection (1), the Governor may, acting in his or her discretion, give directions as to the exercise of that function, and the person or authority concerned shall exercise the function in accordance with those directions.

(7) Before exercising any function with respect to any matter mentioned in subsection (1)(a), (b), (c) and (d), the Governor shall consult the Cabinet but may act against any advice given to him or her by the Cabinet; but the Governor shall not be obliged to consult the Cabinet in any case in which, in his or her judgement—

- (a) it is in the public interest that he or she should act without consulting the Cabinet;
- (b) the matters to be decided are too trivial to require the advice of the Cabinet; or
- (c) the matters to be decided are too urgent to admit the Governor obtaining the advice of the Cabinet by the time within which it may be necessary for him or her to act.

(8) The question of whether a matter falls within the scope of subsection (1) shall be determined by the Governor acting in his or her discretion.

Oaths or affirmations

40. Every member of the Cabinet appointed under section 33 or 37 shall, before assuming the functions of his or her office, make before the Governor oaths or affirmations of allegiance and for the due execution of that office in the forms set out in the Schedule.

Summoning of Cabinet

41. The Cabinet shall not be summoned except by the authority of the Governor, acting in his or her discretion; but the Governor shall summon the Cabinet if the Premier so requests.

Proceedings in Cabinet

42.—(1) The Governor shall, so far as is practicable, attend and preside at meetings of the Cabinet.

(2) In the absence of the Governor there shall preside at any meeting of the Cabinet either the Premier or, in the absence of the Premier, such other Minister as the Governor, acting after consultation with the Premier, may appoint.

(3) No business shall be transacted at any meeting of the Cabinet unless there are at least three members present, of whom two are Ministers.

(4) Subject to subsection (3), the Cabinet shall not be disqualified for the transaction of business by reason of any vacancy in its membership, and the validity of the transaction of business in the Cabinet shall not be affected by reason only of the fact that some person who was not entitled to do so took part in its proceedings.

Summoning of persons to Cabinet

43. The Governor, acting after consultation with the Premier, may summon any person to a meeting of the Cabinet whenever, in his or her opinion, the business before the Cabinet renders the presence of that person desirable.

Parliamentary Secretaries

44.—(1) The Governor, acting in accordance with the advice of the Premier, may appoint by instrument under the public seal up to two Parliamentary Secretaries from among the elected members of the Legislative Assembly, to provide assistance to the Ministers.

(2) A Parliamentary Secretary shall vacate his or her office—

- (a) if he or she resigns it by writing under his or her hand addressed to and received by the Governor;
- (b) if he or she ceases to be a member of the Legislative Assembly for any reason other than a dissolution of the Assembly;
- (c) if he or she is required by virtue of section 53(4) to cease perform his or her functions as a member of the Legislative Assembly;
- (d) if he or she is not an elected member of the Legislative Assembly on the date of its first sitting after a general election;
- (e) whenever a Premier is appointed; or
- (f) if his or her appointment is revoked by the Governor, acting in accordance with the advice of the Premier, by instrument under the public seal.

National Advisory Council

45.—(1) There shall be a National Advisory Council for Montserrat (“the Council”), which shall consist of—

- (a) the Governor, as Chairman;
- (b) the Premier;
- (c) one other Minister appointed in writing by the Governor, acting in accordance with the advice of the Premier;
- (d) the Attorney-General;
- (e) the Financial Secretary; and
- (f) subject to section 61(6), the Leader of the Opposition.

(2) The quorum for any meeting of the Council shall consist of at least three members and shall include the Chairman and at least one Minister.

(3) A Minister appointed under subsection (1)(c) shall vacate his or her seat on the Council if—

- (a) his or her office becomes vacant under section 34; or
 - (b) the Governor so directs in writing, acting in accordance with the advice of the Premier.
- (4) The purpose of the Council is to make recommendations to, or advise, the Governor on—
- (a) the matters mentioned in section 39(1)(a), (b) and (d); and
 - (b) the exercise of the Governor’s functions and powers during a period of public emergency as defined in section 21(1);

but the Governor shall not be obliged to act in accordance with the recommendations or advice of the Council.

(5) The Governor, acting in his or her discretion, may summon a meeting of the Council whenever he or she considers it desirable to do so, and shall summon such a meeting whenever the Premier or the Cabinet so requests.

(6) The Council may consult with persons or authorities other than members of the Council, and may invite any Minister or summon any other person to any of its meetings, whenever the business before the Council renders such consultation or the presence of that Minister or other person desirable.

(7) Subject to this section, the Council may regulate its own procedure.

Director of Public Prosecutions

46.—(1) There shall be a Director of Public Prosecutions for Montserrat, whose office shall be a public office.

(2) The Director of Public Prosecutions shall have power, in any case in which he or she considers it desirable to do so—

- (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 herself or by any other person or authority.

(3) The powers of the Director of Public Prosecutions under subsection (2) may be exercised by him or her in person or by officers subordinate to him or her acting under and in accordance with his or her general or special instructions.

(4) The powers conferred on the Director of Public Prosecutions by subsection (2)(b) and (c) shall be vested in him or her to the exclusion of any other person or authority; but 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.

(5) 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.

(6) In the exercise of the powers conferred on him or her by this section and section 73(2) the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority.

(7) During any period when the office of Director of Public Prosecutions is vacant, the Attorney-General shall perform the functions of that office.