
STATUTORY INSTRUMENTS

2010 No. 2474

The Montserrat Constitution Order 2010

PART IV

THE LEGISLATURE

Constitution of Legislature

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

The Legislative Assembly

48.—(1) The Legislative Assembly shall consist of nine elected members and two *ex officio* members, namely the Attorney-General and the Financial Secretary.

(2) The Legislature may by law increase the number of elected members of the Legislative Assembly; but no such law shall come into force—

- (a) if the additional member or members are not to be elected from an existing electoral district or districts, unless a Bill providing for the electoral districts and their boundaries to take account of the additional member or members in accordance with section 79 has been passed; and
- (b) until the dissolution of the Legislative Assembly next following the enactment of such law.

Elected members

49. The elected members of the Legislative Assembly shall be persons qualified for election in accordance with section 51, and shall be elected in the manner provided by law.

Attendance by Deputy Governor and other public officers at meetings of Legislative Assembly

50.—(1) The Deputy Governor may attend and take part in the proceedings of the Legislative Assembly but shall not thereby become a member of the Assembly and shall not have the right to vote in the Assembly.

(2) The Speaker, acting in his or her discretion, may summon to the Legislative Assembly any other public officer when in the opinion of the Speaker the business before the Assembly renders the presence of such officer desirable.

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

Qualifications for elected membership

51.—(1) Subject to section 52, only a person described in subsection (2) is qualified to be elected as an elected member of the Legislative Assembly providing the requirements of subsection (3) are satisfied.

- (2) The person referred to in subsection (1) is a person—
- (a) who is a Montserratian by virtue of section 107(2)(a) or 107(2)(b)(ii); and
 - (b) who was born of a father or mother who at the time of the birth was a Montserratian by virtue of section 107(2)(a) or 107(2)(b)(ii).
- (3) The requirements referred to in subsection (1) are that the person must—
- (a) have attained the age of 21 years;
 - (b) be a registered voter; and
 - (c) have been in Montserrat for at least twelve months during the five years immediately preceding the date of his or her nomination for election.

Disqualifications for elected membership

52.—(1) No person shall be qualified to be elected as a member of the Legislative Assembly who—

- (a) is, by virtue of his or her own act, under any acknowledgement of allegiance, obedience or adherence to a foreign power or state and has not formally renounced it before the expiration of ten days after his or her nomination for election;
- (b) holds or is acting in any public office, in the office of a judge of the High Court or of the Court of Appeal, or in the office of Magistrate;
- (c) has been adjudged or otherwise declared bankrupt under any law in force in any country and has not been discharged;
- (d) 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 and has not before the expiration of ten days after his or her nomination for election delivered a notice to the Electoral Commission setting out the nature of such contract and his or her interest, or the interest of such firm or company, in it;
- (e) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in Montserrat;
- (f) subject to subsection (2), is serving a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him or her by a court of law in any country or substituted by competent authority for some other sentence imposed on him or her by such a court, or is under such a sentence of imprisonment the execution of which has been suspended;
- (g) is disqualified for membership of the Assembly by virtue of any law in force in Montserrat relating to offences connected with elections; or
- (h) is disqualified for election by any law in force in Montserrat by reason of his or her 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)(f)—

- (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.
- (3) The Electoral Commission shall forthwith publish any notice delivered to it under subsection (1)(d) in such manner as it considers effective for the purpose of informing the electorate before the date of election.

Tenure of office of elected members

53.—(1) Every elected member of the Legislative Assembly shall vacate his or her seat in the Assembly at the next dissolution of the Assembly after his or her election.

(2) Notwithstanding that a member of the Legislative Assembly has vacated his or her seat by virtue of subsection (1), every such member shall be entitled to continue receiving the benefits and privileges of a member until the polling day for election to a new Legislative Assembly, but such benefits and privileges shall cease if the member fails to win a seat at the general election.

(3) An elected member of the Legislative Assembly shall also vacate his or her seat in the Assembly—

- (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 is absent from the sittings of the Assembly for such period and in such circumstances as may be prescribed in Standing Orders;
- (c) if he or she ceases to be qualified in accordance with section 51;
- (d) if any circumstances arise that, if he or she were not a member of the Assembly, would cause him or her to be disqualified for election as such by virtue of section 52(1)(a), (b), (c), (e), (g) or (h); or
- (e) if he or she becomes a party to any contract with the Government, or if any firm in which he or she is a partner, or any company of which he or she is a director or manager, becomes a party to any such contract, or if he or she becomes a partner in a firm, or a director or manager of a company, which is a party to any such contract, and he or she has not disclosed to the Assembly within ten days the nature of such contract and his or her interest, or the interest of such firm or company, in it.

(4) Subject to subsection (6), if any elected member of the Legislative Assembly is sentenced by a court of law in any country to imprisonment (by whatever name called) for a term exceeding twelve months, he or she shall forthwith cease to perform his or her functions as a member of the Assembly and his or her seat in the Assembly shall become vacant at the expiration of a period of 30 days thereafter.

(5) The Governor, acting in his or her discretion, may, at the request of the member, from time to time extend the period of 30 days referred to in subsection (4) for further periods of 30 days to enable the member to pursue any appeal in respect of his or her conviction or sentence; but extensions of time exceeding in the aggregate 330 days shall not be given without the approval, signified by resolution, of the Legislative Assembly.

(6) If at any time before the member vacates his or her seat under subsection (4) he or she is granted a free pardon or his or her conviction is set aside or his or her sentence is reduced to a term of imprisonment of twelve months or less or a punishment other than imprisonment is substituted, the seat of that member shall not become vacant under subsection (4) and he or she may resume the performance of his or her functions as a member.

(7) For the purposes of subsections (4) and (6)—

- (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 the payment of a fine.

Validity of proceedings

54. Subject to section 65, the Legislative Assembly 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 Assembly shall not be affected by reason only of the fact that some person who was not entitled to do so sat or voted in the Assembly or otherwise took part in its proceedings.

Determination of questions as to membership

55. Any question whether—

- (a) any person has been validly elected as a member of the Legislative Assembly; or
- (b) any elected member of the Assembly has vacated his or her seat in the Assembly or is required by virtue of section 53(4) to cease to perform his or her functions as a member,

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

Filling of vacancies

56. Whenever the seat of an elected member of the Legislative Assembly becomes vacant the vacancy shall be filled by election in the manner provided by law.

Temporary members

57.—(1) Whenever one of the *ex officio* members of the Legislative Assembly is absent from Montserrat or is performing the functions of the office of Governor, a person may be appointed by the Governor, by instrument under the public seal, to be a temporary member of the Assembly.

(2) Where an appointment is made under this section—

- (a) the person appointed shall be a person holding a public office;
- (b) subject to subsection (4), he or she shall hold his or her appointment during Her Majesty's pleasure; and
- (c) so long as his or her appointment shall subsist this Constitution shall, subject to subsection (4), apply to him or her as if he or she were an *ex officio* member of the Legislative Assembly.

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

(4) 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.

(5) In the exercise of the powers conferred on him or her by this section the Governor shall act in his or her discretion.

Sessions and meetings of Legislative Assembly

58.—(1) The sessions of the Legislative Assembly shall be held at such times and places as the Speaker may appoint by proclamation published in the *Gazette*; but there shall be at least one session in every year, and a session shall be held within one month after every general election at such time and place as the Governor may appoint by proclamation so published.

(2) When the Legislative Assembly is in session, the Speaker may call meetings of the Assembly from time to time and, if no meeting has been called sooner, shall call a meeting within two months of the previous meeting except during the month designated by the Assembly by resolution as the recess.

Speaker and Deputy Speaker

59.—(1) When the Legislative Assembly first meets after any general election and before it proceeds to the despatch of any other business, it shall elect a person to be the Speaker of the Assembly.

(2) If the office of Speaker falls vacant for any reason other than a dissolution of the Legislative Assembly, the Assembly shall, as soon as practicable, elect another person to that office.

(3) The Speaker shall be elected from among the elected members of the Legislative Assembly who are not members of the Cabinet, or from among persons who are not members of the Assembly; but no person shall be elected as Speaker if—

- (a) he or she is not qualified in accordance with section 51; or
- (b) he or she is a person disqualified for election as an elected member of the Assembly by virtue of any provision of section 52(1) other than paragraph (d).

(4) When the Legislative Assembly 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 the Assembly who is not a member of the Cabinet to be Deputy Speaker of the Assembly.

(5) If the office of Deputy Speaker falls vacant for any reason other than a dissolution of the Legislative Assembly, the Assembly shall, as soon as practicable, elect another such member to that office.

(6) A person shall vacate the office of Speaker or Deputy Speaker—

- (a) on a dissolution of the Legislative Assembly; but a person so vacating the office of Speaker shall be entitled to continue receiving the benefits and privileges of that office until another person is elected to that office;
- (b) if he or she announces his or her resignation from his or her office to the Assembly or if by writing under his or her hand addressed to the Assembly and received by the Clerk of the Assembly he or she resigns that office; or
- (c) if he or she becomes a member of the Cabinet.

(7) A person shall also vacate the office of Speaker—

- (a) if he or she ceases to be qualified in accordance with section 51;
- (b) if any circumstances arise that would cause him or her to be disqualified for election as an elected member of the Legislative Assembly by virtue of any provision of section 52(1) other than paragraph (d);
- (c) on the expiration of a period of 30 days from the date of his or her election if he or she 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 and if, before the expiration of that period, he or she has not disclosed to the Assembly the nature of such contract and his

or her interest, or the interest of such firm or company, in it, and the Assembly has not exempted him or her from vacating his or her office under this paragraph:

- (d) if any circumstances arise that, if he or she is or were an elected member, would cause him or her to vacate his or her seat under section 53(3)(e); or
- (e) if a motion of no confidence in the Speaker receives in the Legislative Assembly the votes of at least two-thirds of all the elected members of the Assembly.

(8) A person shall also vacate the office of Deputy Speaker if he or she ceases to be a member of the Legislative Assembly for any reason other than a dissolution of the Assembly.

Presiding in Legislative Assembly

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

(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.

Leader of the Opposition

61.—(1) There shall be a Leader of the Opposition who shall be appointed by the Governor by instrument under the public seal.

(2) The Governor shall appoint as Leader of the Opposition the member of the Legislative Assembly who in the judgement of the Governor is best able to command the support of the members of the Assembly in opposition to the Government.

(3) If at any time between the polling in a general election and the next following dissolution of the Legislative Assembly the Governor is satisfied that, if the office of the Leader of the Opposition were then vacant, he or she would in accordance with subsection (2) appoint to that office a person other than the person then holding it, the Governor shall revoke the appointment of the Leader of the Opposition.

(4) The office of the Leader of the Opposition shall also become vacant—

- (a) if for any reason other than a dissolution of the Legislative Assembly the holder of that office ceases to be a member of the Assembly; or
- (b) if the holder of that office is appointed as a Minister.

(5) In the exercise of the functions conferred on him or her by this section the Governor shall act in his or her discretion.

(6) If at any time the Governor is unable to appoint a person as Leader of the Opposition in accordance with this section, then, during any period while there is no Leader of the Opposition—

- (a) the Governor may exercise in his or her discretion any function which this Constitution requires the Governor to exercise in accordance with the advice of, or after consultation with, the Leader of the Opposition; and
- (b) the National Advisory Council shall be deemed to be validly constituted notwithstanding the absence of a Leader of the Opposition.

Governor's right to address Legislative Assembly

62. The Governor shall have the right to address the Legislative Assembly.

Standing Committees

63.—(1) The Legislative Assembly shall establish at least two Standing Committees of the Assembly, each of which shall be charged with responsibility for monitoring the conduct of business of the Government for which responsibility has been assigned to a Minister under section 38; and one such Committee shall be charged with responsibility for monitoring the public accounts and shall be called the Public Accounts Committee.

(2) Each Standing Committee shall consist of members of the Legislative Assembly who are not members of the Cabinet, and at least one Committee shall be presided over by a member of the Assembly in opposition to the Government (if there is any such member).

(3) Each Standing Committee shall have power—

- (a) to summon any Minister, or any public officer of a department of government for which a Minister is responsible, to appear before it;
- (b) subject to any law in force in Montserrat or to Standing Orders, to require any person so summoned to answer questions and provide information about the conduct of business of the Government by the Minister or department concerned.

(4) Each Standing Committee shall report on its activities to the Legislative Assembly as often as may be deemed necessary but at least annually.

(5) The Legislative Assembly shall publish reports submitted to it under subsection (4).

(6) Subject to this section, Standing Orders shall provide for the composition and functions of, and proceedings and conduct of business before, Standing Committees.

Oaths or affirmations of members

64. No member of the Legislative Assembly shall be permitted to take part in the proceedings of the Assembly (other than proceedings necessary for the purpose of this section) until he or she has made and subscribed before the Assembly oaths or affirmations of allegiance and for the due execution of his or her office in the forms set out in the Schedule; but the election of the Speaker and Deputy Speaker may take place before the members of the Assembly have made such oaths or affirmations.

Quorum

65.—(1) If at any sitting of the Legislative Assembly 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 Standing Orders, the person presiding at the sitting ascertains that a quorum of the Assembly is still not present the Assembly shall be adjourned.

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

Voting

66.—(1) Subject to subsection (2) and to sections 34(1), 59(7)(e) and 114(2), all questions proposed for decision in the Legislative Assembly shall be determined by a majority of the votes of the members present and voting.

(2) The person presiding shall not vote unless on any question the votes are equally divided, in which case he or she shall have and may exercise a casting vote; but where the motion before the Legislative Assembly is that it should declare a lack of confidence in the Government, the Speaker shall not have a casting vote.

Prorogation and dissolution

67.—(1) The Governor, acting in accordance with the advice of the Premier, may at any time, by proclamation published in the *Gazette*, prorogue the Legislative Assembly.

(2) The Governor, acting after consultation with the Premier, may at any time, by proclamation published in the *Gazette*, dissolve the Legislative Assembly.

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

Recalling dissolved Legislative Assembly in case of emergency

68. If, between a dissolution of the Legislative Assembly and the next ensuing general election, an emergency arises of such a nature that, in the opinion of the Governor, it is necessary for the Assembly to be recalled, the Governor may, acting after consultation with the Premier, summon the Assembly that has been dissolved, and that Assembly shall thereupon be deemed (except for the purposes of section 69) not to have been dissolved, but shall be deemed (except as aforesaid) to be dissolved on the date on which the next ensuing general election is held.

General elections

69. A general election for the elected members of the Legislative Assembly shall be held at such time within three months, but not less than 21 days, after every dissolution of the Assembly as the Governor shall appoint by proclamation published in the *Gazette*.

Introduction of Bills, motions and petitions

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

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

- (a) proceed on any Bill (including any amendment to a Bill) which, in the opinion of the person presiding in the Assembly, would dispose of or charge any public revenue or public funds of Montserrat or alter any disposition of them or charge on them or impose, alter or repeal any rate, tax or duty;
- (b) proceed on any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding in the Assembly, is that provision should be made for any of those purposes; or
- (c) receive any petition which, in the opinion of the person presiding in the Assembly, requests that provision be made for any of those purposes.

Power to make laws

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

Standing Orders

72. Subject to this Constitution, the Legislative Assembly 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, entitling and numbering of Bills and their presentation to the Governor for assent.

Penalty for unauthorised persons sitting or voting

73.—(1) Any person who sits or votes in the Legislative Assembly knowing or having reasonable grounds for knowing that he or she is not entitled to do so shall be liable to a penalty which shall be prescribed by law.

(2) The said penalty shall be recoverable by action in the High Court at the suit of the Director of Public Prosecutions.

Assent to Bills

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

- (a) the Governor has assented to it in Her Majesty's name and on Her Majesty's behalf and has signed it in token of such assent; or
- (b) Her Majesty has given Her assent to it 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 the Governor shall declare that he or she assents or refuses to assent to it or that he or she reserves the Bill for the signification of Her Majesty's pleasure; but, unless he or she has been authorised by a Secretary of State to assent to it, the Governor shall reserve for the signification of Her Majesty's pleasure any Bill which appears to him or her, acting in his or her discretion—

- (a) to be inconsistent with any international obligation of Her Majesty's Government in the United Kingdom;
- (b) to be likely to prejudice the Royal prerogative, or the efficiency of the judiciary, or to affect any of the matters mentioned in section 39; or
- (c) to be in any way repugnant to or inconsistent with this Constitution.

(3) A law assented to by the Governor shall come into force 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 force on some other date, in which case it shall come into force on that date.

(4) A Bill reserved for the signification of Her Majesty's pleasure shall become a law as soon as Her Majesty has given Her assent to it, through a Secretary of State, and such assent has been signified by proclamation published in the *Gazette*; and every such law shall come into force 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 force on some other date, in which case it shall come into force on that date.

Words of enactment

75. 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 Assembly of Montserrat, and by the authority of the same as follows:—”.

Disallowance of laws

76.—(1) Any law assented to by the Governor may be disallowed by Her Majesty through a Secretary of State; but no law shall be disallowed until the expiration of a period notified by a Secretary of State to the Governor, who shall advise the Speaker of that period, in order to give the Legislative Assembly an opportunity to reconsider the law in question.

(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.

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

(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 in pursuance of that law shall have effect as from the date of the annulment as if that law had not been made.

Privileges, immunities and powers of Legislative Assembly

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

(1) 1978 c. 30.