
STATUTORY INSTRUMENTS

2010 No. 2474

The Montserrat Constitution Order 2010

PART VIII

FINANCE

Taxation

89.—(1) No tax, rate or other levy shall be imposed except under the authority of an Act of the Legislature.

(2) Where an Act of the Legislature confers powers on any person or authority to waive or vary a tax imposed by that law, that person or authority shall report to the Legislative Assembly on the exercise of those powers as often as shall be determined by law but not less than annually.

Consolidated Fund

90.—(1) There shall be a Consolidated Fund into which shall be paid all revenues or other moneys raised or received by and for the purposes of the Government.

(2) The revenues or other moneys referred to in subsection (1) shall not include revenues or other moneys—

- (a) that are payable by or under an Act of the Legislature into some other fund established for a specific purpose; or
- (b) that may, by or under an Act of the Legislature, be retained by the department of government that received them for the purpose of defraying the expenses of that department.

Withdrawal from Consolidated Fund or other public funds

91.—(1) No moneys shall be withdrawn from the Consolidated Fund except—

- (a) to meet expenditure charged on the Fund by this Constitution or by an Act of the Legislature; or
- (b) where the issue of those moneys has been authorised by an Appropriation Act, a Supplementary Appropriation Act, or as provided in subsection (3).

(2) No moneys shall be withdrawn from any public fund of Montserrat other than the Consolidated Fund unless the issue of those moneys has been authorised by law.

(3) If the Minister of Finance is satisfied that the Appropriation Act in respect of any financial year will not or has not come into force by the beginning of that financial year, that Minister may, subject to subsection (4), authorise the issue of moneys from the Consolidated Fund for the purpose of meeting expenditure necessary to carry on the services of the Government until the expiration of four months from the beginning of that financial year or the coming into force of the Appropriation Act, whichever is the earlier.

(4) Any sum issued in any financial year from the Consolidated Fund under subsection (3) in respect of any ongoing service of the Government—

- (a) shall not exceed one third of the amount approved for that service by the Legislature in an Appropriation Act or a Supplementary Appropriation Act for the previous financial year; and
- (b) shall be set off against the amount provided in respect of that service in the Appropriation Act for that financial year when that law comes into force.

Financial year estimates

92.—(1) The Minister of Finance shall cause to be prepared and laid before the Legislative Assembly before the beginning of each financial year estimates of revenues and expenditure of the Government for that financial year.

(2) At any time before the Legislative Assembly considers the estimates of revenues and expenditure laid before it by or on the authority of the Minister of Finance, an appropriate committee of the Assembly may discuss and review the estimates and make appropriate recommendations to the Assembly.

(3) Notwithstanding subsection (1) the Minister of Finance may cause to be prepared and laid before the Legislative Assembly—

- (a) fiscal and monetary programmes and plans for economic and social development covering periods exceeding one year;
- (b) estimates of revenue and expenditure covering periods exceeding one year; and
- (c) estimates of non-financial outputs.

(4) The Legislature shall enact laws giving effect to this section.

Appropriation Bill

93.—(1) The heads of expenditure contained in the estimates, other than expenditure charged on the Consolidated Fund by this Constitution or any Act of the Legislature, shall be included in a Bill, to be known as an Appropriation Bill, which shall be introduced into the Legislative Assembly to provide for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified in the Bill.

(2) If in respect of any financial year it is found that the amount appropriated for any purpose under the Appropriation Act is insufficient or that a need has arisen for expenditure for a purpose for which no amount has been appropriated by that Act, a supplementary estimate showing the sums required shall be laid before the Legislative Assembly by the Minister of Finance; and the heads of expenditure contained in that estimate shall be included in a Bill, to be known as a Supplementary Appropriation Bill, which shall be introduced into the Legislative Assembly to provide for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified in the Bill.

Excess expenditure

94.—(1) Where, in exceptional circumstances, at the close of accounts for any financial year it is found that moneys have been expended on any expenditure vote in excess of the amount appropriated for it by an Appropriation Act or a Supplementary Appropriation Act or for a purpose for which no moneys have been voted and appropriated, the amount of the excess expended, or not appropriated, as the case may be, shall be included in a statement of expenditure in excess which shall be laid before the Legislative Assembly and referred to the Public Accounts Committee of the Assembly.

(2) The Public Accounts Committee shall report to the Legislative Assembly on a statement of expenditure in excess referred to it under subsection (1) within six months after the statement is referred to it.

(3) Where on receiving any report of the Public Accounts Committee issued under subsection (2) the Legislative Assembly, by means of a resolution, allows the excess or the amount expended but not appropriated to stand charged to public funds, the sum required to meet that excess or such amount as shall be allowed shall be included in a Supplementary Appropriation Bill for appropriation.

Contingencies

95.—(1) The Minister of Finance, if he or she is satisfied that there is an urgent and unforeseen need for expenditure for which no provision or insufficient provision has been made by an Appropriation Act or Supplementary Appropriation Act, may, by a Contingencies Warrant under his or her hand and in anticipation of the grant of an appropriation by the Legislature, authorise an advance from the Consolidated Fund to meet that need and shall forthwith report his or her action to the Cabinet.

(2) An advance made under subsection (1) shall be subject to any laws enacted by the Legislature, and to any restrictions imposed by the Legislative Assembly by resolution, from time to time.

Remuneration of Speaker and elected members of Legislative Assembly

96.—(1) There shall be paid to the Speaker and the elected members of the Legislative Assembly such remuneration and allowances as may be prescribed by an Act of the Legislature.

(2) The Legislative Assembly shall not proceed on any Bill for an Act referred to in subsection (1) unless a report of the Electoral Commission recommending the appropriate levels of such remuneration and allowances has been laid before the Assembly and has been published; and no Act shall provide for levels of remuneration or allowances that exceed the levels recommended in such report.

(3) The remuneration and allowances payable to the Speaker and elected members of the Legislative Assembly shall be charged on and paid out of the Consolidated Fund.

Remuneration of certain officers

97.—(1) There shall be paid to the holders of the offices to which this section applies such remuneration and allowances as may be prescribed by or under an Act of the Legislature.

(2) The remuneration and allowances payable to the holders of those offices shall be charged on and paid out of the Consolidated Fund.

(3) The remuneration prescribed in pursuance of this section in respect of the holder of any such office and his or her other terms of service (other than allowances that are not taken into account in computing, under any law in that respect, any pension payable in respect of his or her service in that office) shall not be altered to his or her disadvantage after his or her appointment.

(4) Where a person's remuneration or other terms of service depend upon his or her option, the remuneration or terms for which he or she opts shall, for the purposes of subsection (3), be deemed to be more advantageous to him or her than any others for which he or she might have opted.

(5) This section applies to the offices of Governor, Deputy Governor, Attorney-General, Director of Public Prosecutions, Magistrate, Chairman or other member of the Public Service Commission, the Electoral Commission, the Complaints Commission and the Integrity Commission.

(6) Nothing in this section shall preclude an Act of the Legislature that reduces the level of remuneration payable to the holder of any office to which this section applies where that Act makes equivalent reduction to the remuneration of all members of the public service.

Power of Government to borrow or lend

- 98.**—(1) Subject to this Constitution, the Government may borrow from any source.
- (2) The Government shall not borrow, guarantee or raise a loan on behalf of itself or any other public institution, authority or person except—
- (a) as authorised by or under an Act of the Legislature; and
 - (b) in accordance with any borrowing guidelines agreed with Her Majesty’s Government in the United Kingdom.
- (3) An Act of the Legislature made under subsection (2)(a) shall provide—
- (a) that the terms and conditions of the loan shall be laid before the Legislative Assembly and shall not come into force unless they have been approved by a resolution of the Assembly; and
 - (b) that any moneys received in respect of that loan shall be paid into the Consolidated Fund and form part of that Fund or into some other public fund which is existing or is created for the purpose of the loan.
- (4) The Minister of Finance shall, at such times as the Legislative Assembly may determine, cause to be presented to the Assembly such information concerning any loan as is necessary to show—
- (a) the extent of the total indebtedness by way of principal and accumulated interest;
 - (b) the provision made for servicing or repayment of the loan; and
 - (c) the utilisation and performance of the loan.
- (5) The Legislative Assembly may, by resolution, authorise the Government to enter into an agreement for the giving of a loan or a grant out of any public fund or public account.
- (6) An agreement entered into pursuant to subsection (5) shall be laid before the Legislative Assembly and shall not come into force unless it has been approved by the Assembly by resolution.
- (7) For the purposes of this section, the expression “loan” includes any money lent or given to or by the Government on condition of return or repayment and any other form of borrowing or lending in respect of which—
- (a) moneys from the Consolidated Fund or any other public fund may be used for payment or repayment; or
 - (b) moneys from any fund by whatever name called, established for the purpose of payment or repayment whether in whole or in part and whether directly or indirectly, may be used for payment or repayment.
- (8) The Legislature may by law exempt any category of loan from subsections (2)(a) and (3), subject to such conditions as it may so prescribe.

Public Debt

- 99.**—(1) The Public Debt of Montserrat shall be charged on the Consolidated Fund and other public funds of Montserrat.
- (2) For the purposes of this section, the Public Debt includes the interest on that debt, sinking fund payments in respect of that debt, and the costs, charges and expenses incidental to the management of that debt.

Financial control and accounts

- 100.**—(1) The Minister of Finance shall provide the Legislative Assembly with such reports, information and accounts as may be necessary to ensure that the Assembly is kept fully informed at all times of the state of the economy of Montserrat and the finances of the Government.

(2) The Legislature shall make provision by law for the regular publication of accounts of the Consolidated Fund and any other public funds and for the laying of such accounts and any reports on them before the Legislative Assembly.

Auditor-General

101.—(1) There shall be an Auditor-General for Montserrat.

(2) Power to make appointments to the office of Auditor-General is vested in the Governor, acting after consultation with the Public Accounts Committee of the Legislative Assembly.

(3) Power to remove the Auditor-General from office is vested in the Governor, acting in accordance with subsections (4) to (6).

(4) The Governor shall remove the Auditor-General from office if—

- (a) the Auditor-General violates any law concerning the ethics of public leaders; or
- (b) the Auditor-General becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors, or otherwise makes an assignment of remuneration for the benefit of creditors.

(5) If the Legislative Assembly in a resolution addressed to the Governor resolves that the Auditor-General is unable to perform the functions of his or her office due to misconduct, incapacity or incompetence—

- (a) the Governor shall appoint a special tribunal which shall consist of a Chairman and not less than two other members; but the Chairman and at least half of the other members shall be persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in any part of the Commonwealth or Ireland or a court having jurisdiction in appeals from such a court;
- (b) the special tribunal shall inquire into the matter and report on the facts thereof to the Governor and recommend whether or not the Auditor-General should be removed from office.

(6) If the special tribunal appointed in accordance with subsection (5) recommends to the Governor that the Auditor-General should be removed from office then the Governor shall remove him or her from office.

(7) If the question of removing the Auditor-General from office has been referred to a special tribunal under subsection (5), the Governor, acting in his or her discretion, may suspend the Auditor-General from the exercise of the functions of that office and such suspension shall cease to have effect if the special tribunal recommends to the Governor that the Auditor-General should not be removed.

(8) The Auditor-General may resign his or her office by writing under his or her hand addressed to the Governor.

Position and remuneration of Auditor-General

102.—(1) The Auditor-General shall by virtue of his or her office be an officer of the Legislative Assembly.

(2) The terms and conditions of employment including the remuneration and allowances of the Auditor-General shall be set from time to time by a resolution of the Legislative Assembly proposed by the Chairman of the Public Accounts Committee of the Assembly; but any remuneration and allowances shall not be less than the average rate paid to the Financial Secretary.

(3) The remuneration and allowances of the Auditor-General shall be charged on and paid out of the Consolidated Fund.

Functions of Auditor-General

103.—(1) The Auditor-General shall audit and report on the public accounts of Montserrat and of all public offices, including the courts, the central and local government administrations, universities and higher education institutions, and any public corporations or other bodies or organisations established by an Act of the Legislature, and may conduct financial and value for money audits in respect of any project involving public funds.

(2) The Auditor-General shall submit to the Legislative Assembly annually a report of the accounts audited by him or her under subsection (1) for the immediately preceding financial year.

(3) For the purposes of subsection (1) the Auditor-General and any person authorised by him or her shall have a right of access at all reasonable times to all such documents as appear to him or her to be necessary for the purposes of the audit, and shall be entitled to require from any person holding or accountable for any such documents such information and explanation as he or she thinks necessary for those purposes.

(4) In the exercise of his or her functions, the Auditor-General shall not be subject to the direction or control of any other person or authority.

National Audit Office

104.—(1) The Legislature shall by law make provision for the establishment of an independent National Audit Office headed by the Auditor-General.

(2) The budget for the National Audit Office shall be charged on and paid out of the Consolidated Fund, and must at all times be adequate to enable the full performance of the functions conferred on the Auditor-General by this Constitution or any other law.

(3) The accounts of the National Audit Office shall be audited and reported on by an auditor appointed by the Legislative Assembly.