

**EXPLANATORY MEMORANDUM TO
THE MONTSERRAT CONSTITUTION ORDER 2010**

2010 No. 2474

1. This explanatory memorandum has been prepared by the Foreign and Commonwealth Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order establishes a new Constitution for the British overseas territory of Montserrat. It replaces the Montserrat Constitution Order 1989 (as amended), to which the current Constitution is scheduled.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Context

The Order is made under sections 5 and 7 of the West Indies Act 1962 and all other powers enabling Her Majesty. It revokes the current constitutional instrument for the territory, the Montserrat Constitution Order 1989 (S.I. 1989/2401, amended by S.I. 2000/1339) and the Royal Instructions to the Governor of Montserrat dated 13th January 1990. The Order also disapplies to Montserrat the Leeward Islands (Emergency Powers) Order in Council 1959 (S.I. 1959/2206) with effect from the day on which the provisions of the new Constitution that deal with emergency powers come into force.

5. Territorial Extent and Application

This instrument applies to Montserrat.

6. European Convention on Human Rights

Although this instrument is laid before Parliament after being made, there is no provision for further parliamentary proceedings and no statement is therefore required.

7. Policy background

• *What is being done and why*

7.1 The Order provides a more modern Constitution for Montserrat than the current constitutional arrangements dating from 1989. The new Constitution establishes enforceable fundamental rights and freedoms of the individual closely based, but exceeding, those in the European Convention on Human Rights. It establishes the offices of Governor, who is appointed by Her Majesty and is Her

representative in Montserrat, and Deputy Governor, who must be a Montserratian. It establishes a Cabinet, chaired by the Governor, consisting of a Premier and other Ministers, the Financial Secretary and the Attorney-General. The Legislature consists of Her Majesty and a Legislative Assembly, composed of nine elected members, the Financial Secretary and the Attorney-General. The superior courts of Montserrat continue to be the High Court and Court of Appeal of the Eastern Caribbean Supreme Court (with final appeals to the Privy Council), and provision is made for the establishment of subordinate courts by local legislation. A new National Advisory Council is established to advise the Governor on certain functions, and the Constitution establishes for the first time the office of an independent Director of Public Prosecutions and an independent Electoral Commission. The Constitution also makes provision for the Montserrat public service, for public finance and the independent audit of the public accounts of Montserrat, and for standards in public life including the establishment of a Complaints Commission.

Consolidation

7.2 No question of consolidation arises.

8. Consultation outcome

The new Constitution was negotiated by the British Government with the Legislative Council of Montserrat over several years. The Legislative Council has debated and approved the new Constitution established by this instrument, following wide public consultation on the island.

9. Guidance

No guidance is required.

10. Impact

10.1 No impact on business, charities or voluntary bodies in the United Kingdom.

10.2 No impact on the United Kingdom public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

The operation of the new Constitution will be constantly monitored and reviewed.

13. Contact

Susan Dickson at the Foreign and Commonwealth Office, Tel: 020 7008 3317 or email: susan.dickson@fco.gov.uk can answer any queries regarding the instrument.