

SCHEDULE 2 TO THE ORDER

Sections 2(1) and 4

THE CONSTITUTION OF MONTSERRAT

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THE CONSTITUTION OF MONTSERRAT

PART I

THE GOVERNOR

The Governor.

1.—(1) There shall be a Governor of Montserrat who shall be appointed by Her Majesty by Commission under Her Sign Manual and Signet and shall hold office during Her Majesty's pleasure.

(2) The Governor shall, for the purpose of administering the government of Montserrat, have such functions as may be conferred upon him by or under this Constitution or any other law and such other functions as Her Majesty may from time to time be pleased to assign to him and, subject to the provisions of this Constitution and, in the case of functions conferred upon him by or under any other law, subject to the provisions of that law, shall perform all such functions (including functions which are expressed by this Constitution to be exercisable in his discretion) according to such instructions, if any, as may be given to him by Her Majesty: Provided that the question whether or not the Governor has in any matter complied with any such instructions shall not be enquired into by any court.

(3) A person appointed to the office of Governor shall, before entering upon the functions of that office, make oaths or affirmations of allegiance and for the due execution of that office in the forms set out in the Schedule to this Constitution.

Acting Governor.

2.—(1) During any period when the office of Governor is vacant or the Governor is absent from Montserrat or is for any other reason unable to perform the functions of his office those functions shall, during Her Majesty's pleasure, be assumed and performed by—

- (a) such person as Her Majesty may designate in that behalf by instructions given under Her Sign Manual and Signet or through a Secretary of State; or
- (b) if there is no person in Montserrat so designated and able to perform those functions, the person who, if he were not directed by this section to perform the functions of the office of Governor, would for the time being be performing the functions of the office of Attorney-General.

(2) Before assuming the functions of the office of Governor, any such person as aforesaid shall make the oaths or affirmations directed by section 1(3) of this Constitution to be made by the Governor.

(3) Any such person as aforesaid shall not continue to perform the functions of the office of Governor after the Governor or some other person having a prior right to perform those functions has notified him that he is about to assume or resume those functions.

(4) For the purposes of this section the Governor shall not be regarded as absent from Montserrat or as unable to perform the functions of his office—

- (a) by reason that he is in passage from one part of Montserrat to another, or
- (b) at any time when there is a subsisting appointment of a deputy under section 3 of this Constitution.

Deputy to Governor.

3.—(1) Whenever the Governor—

- (a) has occasion to be absent from the seat of Government but not from Montserrat; or
- (b) has occasion to be absent from Montserrat for a period which he has reason to believe will be of short duration; or

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(c) is suffering from an illness which he has reason to believe will be of short duration, he may, acting in his discretion, by instrument under the public seal, appoint any person in Montserrat to be his deputy during such absence or illness and in that capacity to perform on his behalf such of the functions of the office of Governor as may be specified in that instrument.

(2) The power and authority of the Governor shall not be abridged, altered or in any way affected by the appointment of a deputy under this section, and a deputy shall conform to and observe all instructions that the Governor, acting in his discretion, may from time to time address to him: Provided that the question whether or not a deputy has conformed to and observed any such instructions shall not be enquired into by any court.

(3) A person appointed as a deputy under this section shall hold that appointment for such period as may be specified in the instrument by which he is appointed, and his appointment may be revoked at any time by Her Majesty by instructions given through a Secretary of State or by the Governor, acting in his discretion.

(4) In this section “the Governor” does not include a deputy appointed under this section.

Exercise of Governor’s functions.

4.—(1) In the exercise of his functions the Governor shall, subject to the following provisions of this section, obtain and act in accordance with the advice of the Executive Council, except—

- (a) when acting under instructions given to him by Her Majesty through a Secretary of State;
- (b) when exercising any function conferred upon him by this Constitution which is expressed to be exercisable by him in his discretion or in accordance with the advice of, or after consultation with, any person or authority other than the Executive Council;
- (c) when exercising any function conferred upon him by any other law in terms which authorise him to exercise that function without obtaining the advice of the Executive Council; or
- (d) in any case which, in his judgment, involves a matter for which he is responsible under section 16(1)(e) of this Constitution.

(2) The Governor shall not be required to obtain the advice of the Executive Council in any case in which, in his judgment, the urgency of the matter requires him to act before the Council can be consulted or the question for decision is too unimportant to require their advice; but in any such case of urgency he shall, as soon as is practicable, communicate to the Council the measures that he has adopted and the reasons therefor.

(3) The Governor shall not be obliged to act in accordance with the advice of the Executive Council in any case which, in his judgment, involves a matter for which he is responsible under section 16 of this Constitution.

(4) Where the Governor is by this Constitution or any other law directed to exercise any function after consultation with any person or authority other than the Executive Council he shall not be obliged to exercise that function in accordance with the advice of that person or authority.

(5) Where the Governor is by this Constitution or any other law directed to exercise any function in accordance with the advice of, or after consultation with, any person or authority, the question whether he has so exercised that function shall not be enquired into by any court.

Powers to dispose land.

5. Subject to the provisions of any law in force in Montserrat, the Governor or any person duly authorised by him in that behalf by writing under his hand, in Her Majesty’s name and on Her Majesty’s behalf, may, under the public seal, make grants and dispositions of land or other

immovable property in Montserrat or interest in such property that are vested in Her Majesty for the purposes of the Government of Montserrat.

Power to constitute offices and make appointments etc.

6.—(1) Subject to subsection (2) of this section and any law in force in Montserrat, the Governor, in Her Majesty's name and on Her Majesty's behalf may—

- (a) constitute offices for Montserrat and make appointments (including acting appointments), to be held during Her Majesty's pleasure, thereto;
- (b) dismiss any person so appointed or take such other disciplinary action in relation to him as the Governor may think fit.

(2) Power to make appointments to the office of any magistrate or any registrar or other officer of the High Court who is required to possess legal qualifications, and power to exercise disciplinary control over or remove from office any person holding or acting in any such office, shall vest in the Governor, acting after consultation with the Chief Justice.

(3) The Governor shall consult with the Chief Minister before appointing any person to the office of permanent secretary.

Powers of pardon, etc.

7.—(1) The Governor may, in Her Majesty's name and on Her Majesty's behalf—

- (a) grant to any person concerned in or convicted of any offence against any law in force in Montserrat a pardon, either free or subject to lawful conditions;
- (b) grant to any person a respite, either indefinite or for a specified period, from the execution of any sentence passed on that person for such an offence;
- (c) substitute a less severe form of punishment for that imposed by any sentence for such an offence; or
- (d) remit the whole or any part of any sentence passed for such an offence or any penalty or forfeiture otherwise due to Her Majesty on account of such an offence.

(2) In the exercise of his powers under this section the Governor shall act in his discretion but shall first consult the Executive Council unless in any particular case the matter is in his judgment too urgent to permit such consultation.

Public seal.

8. The Governor shall keep and use the public seal for sealing all things whatsoever that shall pass the said seal.

PART II

THE EXECUTIVE

Executive authority.

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

(2) Subject to the provisions of 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, but nothing in this section shall operate so as to prejudice the provisions of any law in force

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in Montserrat whereby functions are, or may be, conferred on persons or authorities other than the Governor.

Executive Council.

10.—(1) There shall be an Executive Council in and for Montserrat which, subject to sections 11 and 14 of this Constitution, shall consist of a Chief Minister, three other Ministers and two ex officio members, namely the Attorney-General and the Financial Secretary of Montserrat.

(2) Subject to the provisions of this Constitution, the Executive Council shall have the general direction and control of the government of Montserrat and shall be collectively responsible therefor to the Legislative Council.

Appointment of members.

11.—(1) The Governor, acting in his discretion, shall appoint as the Chief Minister the elected member of the Legislative Council who, in his judgment, is most likely to command the confidence of a majority of the elected members of the Legislative Council.

(2) The other Ministers shall be appointed by the Governor in accordance with the advice of the Chief Minister from among the nominated and elected members of the Legislative Council.

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

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

Tenure of office of members.

12.—(1) If a motion that the Legislative Council should declare a lack of confidence in the Government of Montserrat receives in the Legislative Council the affirmative votes of a majority of all the elected members thereof the Governor shall, by instrument under the public seal, revoke the appointment of the Chief Minister:

Provided that before so revoking the Chief Minister's appointment the Governor shall consult with the Chief Minister and, if the Chief Minister so requests, the Governor, acting in his discretion, may dissolve the Legislative Council instead of revoking the appointment.

(2) A Minister or the member without portfolio shall vacate his office—

- (a) if he resigns it by writing under his hand addressed to and received by the Governor;
- (b) if he ceases to be a member of the Legislative Council for any reason other than a dissolution thereof;
- (c) if, by virtue of section 29(4) of this Constitution, he is required to cease to perform his functions as a member of the Legislative Council;
- (d) if he is absent from Montserrat without, in the case of the Chief Minister, having given the Governor prior notice of such absence or, in any other case, having obtained the permission of the Governor, acting in accordance with the advice of the Chief Minister.

(3) A Minister (other than the Chief Minister) and the member without portfolio shall also vacate his office—

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

(4) For the purposes of subsection (2) of this section—

- (a) a person shall be deemed to have ceased to be a member of the Legislative Council for a reason other than a dissolution thereof when the Legislative Council first meets after any dissolution if he is not then a member of the Council; and
 - (b) a person shall not be regarded as absent from Montserrat during his passage from one part of Montserrat to another.
- (5) For the avoidance of doubt it is hereby declared that a person who has vacated his office as a Minister or the member without portfolio may, if qualified, again be appointed to that office from time to time.

Performance of functions of Chief Minister in certain events.

13.—(1) If the office of Chief Minister falls vacant while the Legislative Council is dissolved or the Chief Minister is unable, by reason of his illness or absence from Montserrat, to perform the functions of his office, the Governor may, by instrument under the public seal, authorise any other Minister to perform the functions conferred on the Chief Minister by this Constitution (other than the functions conferred upon him by subsection (3) of this section).

(2) The Governor may, by instrument under the public seal, revoke any authority given under this section.

(3) The powers conferred upon the Governor by this section shall be exercised by him acting in his discretion if the office of Chief Minister is vacant or if, in his judgment, it is impracticable to obtain the Chief Minister's advice owing to his illness or absence, and in any other case shall be exercised in accordance with the advice of the Chief Minister.

Temporary members.

14.—(1) Whenever a Minister (other than the Chief Minister) or the member without portfolio is unable, by reason of his illness or absence from Montserrat, to perform the functions of his office, the Governor may, by instrument under the public seal, appoint a person who is an elected or nominated member of the Legislative Council (or, if the Council is dissolved, was such a member immediately before its dissolution) to be a temporary Minister or, as the case may be, a temporary member of the Executive Council without portfolio.

(2) Subject to section 12 of this Constitution, a person appointed under this section shall hold office until he is notified by the Governor that the circumstances giving rise to the appointment have ceased to exist.

(3) The powers conferred upon the Governor by this section shall be exercised by him in accordance with the advice of the Chief Minister.

Assignment of responsibilities to Ministers.

15.—(1) Subject to the provisions of this Constitution, the Governor, acting in accordance with the advice of the Chief Minister, may, by directions in writing, charge any Minister with responsibility for any subject or any department of government and may amend or revoke any such directions by subsequent directions:

Provided that a Minister shall not be so charged with responsibility for any of the matters mentioned in section 16 of this Constitution, matters relating to the judiciary, or the audit of accounts of the Government of Montserrat or of the Courts or other authorities of Montserrat.

(2) Nothing in this section shall empower the Governor to confer on any Minister authority to exercise any power or discharge any duty that is conferred or imposed by this Constitution or any other law on the Governor or any person or authority other than that Minister.

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(3) The Governor, acting in his discretion, may at any time call for any official papers or seek any official information or advice available to a Minister with respect to a subject or department with responsibility for which that Minister is charged under this section.

Governor's special responsibilities.

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

- (a) defence;
- (b) external affairs;
- (c) international financial services or any directly related aspect of finance;
- (d) internal security, including the police force;
- (e) the appointment of any person to any public office, the suspension, termination of appointment, dismissal or retirement of any public officer, or the taking of any disciplinary action in respect of such an officer, the application to any public officer of the terms or conditions of employment of the public service (including salary scales, allowances, leave, passages or pensions) for which financial provision has been made, or the organisation of the public service in so far as it does not involve new financial provision:

Provided that the Governor, acting in his discretion, may assign to a member of the Executive Council responsibility for the conduct on behalf of the Governor of any business in the Legislative Council with respect to any of the said matters.

(2) The Governor, acting in his discretion, may by directions in writing delegate, with the prior approval of a Secretary of State, to the Chief Minister or any other Minister after consultation with the Chief Minister, such responsibility for matters relating to defence, external affairs, international financial services or internal security as the Governor may think fit upon such conditions as he may impose.

(3) Where the Governor, acting in his discretion, determines that the exercise of any function conferred upon any other person or authority (other than the Legislative Council) would involve or affect any matter mentioned in subsection (1) of this section, he may, acting in his 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.

(4) Before exercising any function with respect to any matter mentioned in subsection (1), paragraphs (a), (b), (c) and (d), the Governor shall consult the Executive Council but may, if he thinks it right to do so, act against any advice given to him by the Council. Provided that the Governor shall not be obliged to consult the Executive Council in any case in which, in his judgment, it is in the public interest that he should act without consulting the Council thereon, or the matters to be decided are too unimportant to require the advice of the Council thereon, or are too urgent to admit his obtaining the advice of the Council by the time within which it may be necessary for him to act.

(5) The question of whether a matter falls within the scope of subsection (1) shall be determined by the Governor acting in his discretion, and the determination of the Governor therein shall not be enquired into in any Court.

Oaths and affirmations.

17. Every member of the Executive Council appointed under section 11 or 14 of this Constitution shall, before entering upon the duties of his office, make before the Governor an oath or affirmation of allegiance in the form set out in the Schedule to this Constitution and an oath or affirmation for the due execution of that office in such form as may be prescribed by any law in force in Montserrat

or, if no law in that behalf is for the time being in force, in the form set out in the Schedule to this Constitution.

Summoning of Executive Council.

18. The Executive Council shall not be summoned except by the authority of the Governor, acting in his discretion:

Provided that the Governor shall summon the Council if the Chief Minister so requests.

Proceedings in Executive Council.

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

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

(3) No business shall be transacted at any meeting of the Council if there are less than three members present.

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

Summoning of persons to Executive Council.

20. The Governor, acting in his discretion, may summon any public officer to a meeting of the Executive Council whenever, in his opinion, the business before the Council renders the presence of that officer desirable.

Powers of Attorney-General.

21.—(1) The Attorney-General shall have power, in any case in which he considers it desirable so to do—

- (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 any other person or authority.

(2) The powers of the Attorney-General under subsection (1) of this section may be exercised by him in person or by officers subordinate to him acting under and in accordance with his general or special instructions.

(3) The powers conferred upon the Attorney-General by subsection (1)(b) and (c) of this section shall be vested in him to the exclusion of any other person or authority:

Provided that 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.

(4) 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

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such proceedings, to any other court or to Her Majesty in Council shall be deemed to be part of those proceedings.

(5) In the exercise of the powers conferred upon him by this section and section 48 of this Constitution the Attorney-General shall not be subject to the direction or control of any other person or authority.

PART III

THE LEGISLATURE

Constitution of Legislature.

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

The Legislative Council.

23. The Legislative Council shall consist of seven elected members, two ex officio members, namely the Attorney-General and the Financial Secretary, and two nominated members.

Nominated members.

24.—(1) Subject to section 28 of this Constitution, the nominated members of the Legislative Council shall be persons of the age of twenty-one years or upwards, who possess the qualifications for elected members under section 27 of this Constitution, and shall be appointed by the Governor by instrument under the public seal.

(2) One nominated member shall be appointed by the Governor acting after consultation with the Chief Minister, the second nominated member shall be appointed by the Governor acting in accordance with the advice of the Chief Minister.

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

Elected members.

25. The elected members of the Legislative Council shall be persons qualified for election in accordance with section 27 of this Constitution, and shall be elected in the manner provided by law.

Power to summon public officers to attend meetings of Legislative Council.

26.—(1) The Speaker, acting in his discretion, may summon to the Legislative Council any public officer, notwithstanding that such officer may not be a member of the Council, when in the opinion of the Speaker the business before the Council renders the presence of such officer desirable.

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

Qualifications for elected membership.

27. Subject to section 28 of this Constitution, any person who—

- (a) is a Commonwealth citizen of the age of twenty-one years or upwards; and

- (b) has resided in Montserrat for a period of twelve months immediately preceding the date of his nomination for election, or is domiciled in Montserrat and is resident therein at the date aforesaid,

shall be qualified to be elected as an elected member of the Legislative Council, and no other person shall be qualified to be so elected or, having been so elected, shall sit or vote in the Council.

Disqualifications for nominated and elected membership.

28.—(1) No person shall be qualified to be appointed or elected as a member of the Legislative Council who—

- (a) is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to a foreign power or state;
- (b) holds or is acting in any public office or in the office of a Judge of the High Court or of the Court of Appeal;
- (c) is a minister of religion;
- (d) has been adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth and has not been discharged;
- (e) 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 of Montserrat for or on account of the public service and—
 - (i) in the case of a nominated member, has not disclosed to the Governor the nature of such contract and his interest, or the interest of such firm or company, therein, or
 - (ii) in the case of an elected member, has not within one month before the date of election published in the Gazette and in a newspaper circulating in the electoral district for which he seeks election a notice of setting out the nature of such contract and his interest, or the interest of such firm or company, therein;
- (f) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in Montserrat;
- (g) subject to subsection (2) of this section, is under sentence of death imposed on him by a court of law in any country, or is serving a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court, or is under such a sentence of imprisonment the execution of which has been suspended;
- (h) is disqualified for membership of the Council by virtue of any law in force in Montserrat relating to offences connected with elections; or
- (i) in the case of an elected member, is disqualified for election by any law in force in Montserrat by reason of his 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)(g) of this section—

- (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.

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Tenure of office of nominated and elected members.

29.—(1) Subject to the provisions of this Constitution, every nominated member of the Legislative Council shall hold his seat therein during Her Majesty's pleasure.

(2) Every nominated or elected member of the Legislative Council shall vacate his seat therein at the next dissolution of the Council after his appointment or election.

(3) A nominated or elected member of the Legislative Council shall also vacate his seat therein—

- (a) if he resigns it by writing under his hand addressed to the Governor;
- (b) if he is absent from the sittings of the Council for such period and in such circumstances as may be prescribed in the Standing Orders of the Council;
- (c) if he ceases to be qualified in accordance with section 27 of this Constitution;
- (d) if any circumstances arise that, if he were not a member of the Council, would cause him to be disqualified for appointment or election as such by virtue of paragraphs (a), (b), (c), (d), (f), (h) or (in the case of an elected member) (i) of section 28(1) of this Constitution;
- (e) if he becomes a party to any contract with the Government of Montserrat for or on account of the public service, or if any firm in which he is a partner, or any company of which he is a director or manager, becomes a party to any such contract, or if he becomes a partner in a firm, or a director or manager of a company, which is a party to any such contract:

Provided that, if in the circumstances it appears to the Governor (in the case of a nominated member) or to the Council (in the case of an elected member) to be just so to do, the Governor, acting in his discretion, or the Council (as the case may be) may exempt any member from vacating his seat under the provisions of this paragraph if that member, before becoming a party to such contract as aforesaid, or before or as soon as practicable thereafter becoming otherwise interested in such contract (whether as a partner in a firm or as a director or manager of a company) discloses to the Governor or to the Council (as the case may be) the nature of such contract and his interest, or the interest of such firm or company, therein.

- (4) (a) Subject to paragraph (b) of this subsection, if any nominated or elected member of the Legislative Council is sentenced by a court of law in any Commonwealth country to death or to imprisonment (by whatever name called) for a term exceeding twelve months, he shall forthwith cease to perform his functions as a member of the Council and his seat in the Council shall become vacant at the expiration of a period of 30 days thereafter:

Provided that the Governor, acting in his discretion, may, at the request of the member, from time to time extend that period for further periods of thirty days to enable the member to pursue any appeal in respect of his conviction or sentence, save that extensions of time exceeding in the aggregate three hundred and thirty days shall not be given without the approval, signified by resolution, of the Council.

- (b) If at any time before the member vacates his seat he is granted a free pardon or his conviction is set aside or his sentence is reduced to a term of imprisonment of twelve months or less or a punishment other than imprisonment is substituted, his seat shall not become vacant under paragraph (a) of this subsection and he may resume the performance of his functions as a member.
- (c) For the purposes of this subsection—
 - (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 payment of a fine.

Validity of proceedings.

30. Subject to section 40 of this Constitution, the Legislative Council shall not be disqualified for the transaction of business by reason of any vacancy in the membership thereof, and the validity of the transaction of business in the Council shall not be affected by reason only of the fact that some person who was not entitled so to do sat or voted in the Council or otherwise took part in the proceedings.

Determination of questions as to membership.

31.—(1) Any question whether—

- (a) any person has been validly elected as a member of the Legislative Council; or
- (b) any elected member of the Legislative Council has vacated his seat therein or is required by virtue of section 29(4) of this Constitution to cease to perform his functions as a member,

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

(2) Any question whether—

- (a) any person has been validly appointed as a nominated member of the Legislative Council; or
- (b) any nominated member of the Council has vacated his seat therein or is required by virtue of section 29(4) of this Constitution to cease to perform his functions as a member,

shall be referred to the Governor in accordance with any directions given in that behalf by the Governor, acting in his discretion, and shall be determined by him acting as aforesaid.

Filling of vacancies.

32.—(1) Whenever the seat of a nominated member of the Legislative Council becomes vacant the vacancy shall be filled by appointment by the Governor in accordance with the provisions of this Constitution.

(2) Whenever the seat of an elected member of the Legislative Council becomes vacant the vacancy shall be filled by election in accordance with any law in force in Montserrat in that behalf.

Temporary members.

33.—(1) Whenever—

- (a) one of the ex officio members is absent from Montserrat or is performing the functions of the office of Governor;
- (b) a nominated member is absent from Montserrat or is incapable of performing his functions as a member by virtue of section 29(4) or by reason of a declaration made under section 34 of this Constitution,

a person may be appointed by the Governor, by instrument under the public seal, to be a temporary member of the Legislative Council.

(2) Where an appointment is made under this section in circumstances mentioned in subsection (1)(a)—

- (a) the person appointed shall be a person holding a public office;
- (b) subject to the provisions of this section, he shall hold his appointment during Her Majesty's pleasure; and

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- (c) so long as his appointment shall subsist the provision of this Constitution shall, subject as aforesaid, apply to him as if he were an ex officio member of the Council.
- (3) Where an appointment is made under this section in circumstances mentioned in subsection (1)(b)—
 - (a) the person shall be a person qualified for appointment as a nominated member; and
 - (b) so long as his appointment shall subsist the provisions of this Constitution (including the provisions of section 29) shall, subject to the provisions of this section, apply to him as if he were a nominated member of the Council.
- (4) The Governor shall forthwith report to Her Majesty through a Secretary of State every appointment made under this section.
- (5) 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.
- (6) In the exercise of the powers conferred upon him by this section the Governor shall act in his discretion:

Provided that the Governor shall consult the Chief Minister with respect to the making of any appointment in circumstances mentioned in subsection (1)(b) and the revocation of any appointment so made.

Incapacity of nominated members.

34. The Governor acting in his discretion may, by instrument under public seal, declare a nominated member of the Legislative Council to be, by reason of illness, supported by medical opinion, temporarily incapable of performing his functions as a member of the Council and thereupon such member shall not perform his said functions until he is declared, in manner aforesaid, again to be capable of performing them.

Sessions of Legislative Council.

- 35.—**(1) Subject to subsection (2) of this section, the sessions of the Legislative Council shall be held at such times and places as the Speaker may appoint by proclamation published in the Gazette.
- (2) There shall be a session of the Legislative Council from time to time so that a period of three months does not intervene between the last sitting in one session and the first sitting in the next session.

Speaker and Deputy Speaker.

36.—(1) When the Legislative Council first meets after any general election (or as soon as practicable thereafter) and before it proceeds to the despatch of any other business, it shall proceed to elect a person to be the Speaker of the Council, and if the office of Speaker falls vacant for any reason other than a dissolution of the Council, the Council shall, as soon as practicable, elect another person to that office.

(2) The Speaker shall be elected from among persons who are not members of the Legislative Council, and no person shall be elected as Speaker if—

- (a) he is not qualified in accordance with section 27 of this Constitution;
- (b) he is a person disqualified for election as an elected member of the Council by virtue of any provision of section 28(1) of this Constitution other than paragraph (e).

(3) When the Legislative Council 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 Legislative Council who is not a member of the Executive Council to be Deputy Speaker of the Legislative Council; and if the office of Deputy Speaker falls vacant for any reason other than a dissolution of the Council, the Council shall, as soon as practicable, elect another such member to that office.

- (4) A person shall vacate the office of Speaker or Deputy Speaker—
- (a) on a dissolution of the Legislative Council;
 - (b) if he announces the resignation from his office to the Legislative Council or if by writing under his hand addressed to the Council and received by the Clerk of the Council he resigns that office;
 - (c) in the case of the Speaker—
 - (i) if he ceases to be qualified in accordance with section 27 of this Constitution;
 - (ii) if any circumstances arise that would cause him to be disqualified for election as an elected member of the Council by virtue of any provision of section 28(1) of this Constitution other than paragraph (e);
 - (iii) on the expiration of a period of thirty days from the date of his election if he 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 of Montserrat for or on account of the public service and if, before the expiration of that period, he has not disclosed to the Council the nature of such contract and his interest, or the interest of such firm or company, therein, and the Council has not exempted him from vacating his office under this sub-paragraph; or
 - (iv) if any circumstances arise that, if he were an elected member, would cause him to vacate his seat under paragraph (e) of section 28(1) of this Constitution;
 - (d) in the case of the Deputy Speaker, if he ceases to be a member of the Council for any reason other than a dissolution of the Council or if he is appointed to be a member of the Executive Council.

Presiding in Legislative Council.

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

(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.

Governor's right to address Legislative Council.

38. The Governor, acting in his discretion, shall have the right of addressing the Legislative Council at any time when he shall think fit.

Oath or affirmation of allegiance.

39. No member of the Legislative Council shall be permitted to take part in the proceedings of the Council (other than proceedings necessary for the purposes of this section) until he has made and subscribed before the Council an oath or affirmation of allegiance in the form set out in the Schedule to this Constitution:

Provided that the election of a Speaker and Deputy Speaker may take place before the members of the Council have made such oath or affirmation.

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Quorum.

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

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

Voting.

41.—(1) Subject to the provisions of this section, all questions proposed for decision in the Legislative Council shall be determined by a majority of the votes of the members present and voting.

(2) Notwithstanding subsection (1) of this section, only the elected members of the Legislative Council shall be entitled to vote on a motion that the Legislative Council should declare a lack of confidence in the Government of Montserrat.

(3) The person presiding shall not vote unless on any question the votes are equally divided, in which case he shall have and may exercise a casting vote:

Provided that where the motion before the Council is one to which subsection (2) of this section applies the person presiding shall not have a casting vote unless he is an elected member.

(4) For the avoidance of doubt it is hereby declared that the Speaker shall be deemed not to be an elected member of the Legislative Council for the purposes of this section.

Prorogation and dissolution.

42.—(1) The Governor, acting in accordance with the advice of the Chief Minister, may at any time, by proclamation published in the Gazette, prorogue the Legislative Council.

(2) The Governor, acting after consultation with the Chief Minister, may at any time, by proclamation published in the Gazette, dissolve the Legislative Council.

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

General elections.

43. A general election for the elected members of the Legislative Council shall be held at such time within three months after every dissolution of the Legislative Council as the Governor shall appoint by proclamation published in the Gazette.

Introduction of Bills etc.

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

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

- (a) proceed upon any Bill (including any amendment to a Bill) which, in the opinion of the person presiding in the Council, would dispose of or charge any public revenue or public funds of Montserrat or alter any disposition thereof or charge thereon or impose, alter or repeal any rate, tax or duty;

- (b) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding in the Council, is that provision should be made for any of the purposes aforesaid;
- (c) receive any petition which, in the opinion of the person presiding in the Council, requests that provision be made for any of the purposes aforesaid.

Power to make laws.

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

Standing Orders.

46. Subject to the provisions of this Constitution, the Legislative Council 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, intitling and numbering of Bills and the presentation of the same to the Governor for assent.

Penalties for unauthorised persons sitting or voting.

47.—(1) Any person who sits or votes in the Legislative Council knowing or having reasonable grounds for knowing that he is not entitled so to do shall be liable to a penalty not exceeding two hundred Eastern Caribbean dollars for every day upon which he so sits or votes.

(2) The said penalty shall be recoverable by action in the High Court at the suit of the Attorney-General.

Assent to Bills.

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

- (a) the Governor has assented thereto in Her Majesty's name and on Her Majesty's behalf and has signed the same in token of such assent; or
- (b) Her Majesty has given Her assent thereto 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 he shall declare that he assents or refuses to assent thereto or that he reserves the Bill for the signification of Her Majesty's pleasure:

Provided that, unless he has been authorised by a Secretary of State to assent thereto, the Governor shall reserve for the signification of Her Majesty's pleasure any Bill—

- (a) which appears to him, acting in his discretion—
 - (i) to be inconsistent with any obligation of Her Majesty's Government in the United Kingdom towards any other state or power or any international organisation;
 - (ii) to be likely to prejudice the Royal prerogative, or the efficiency of the judiciary, or to affect any of the matters mentioned in section 16 of this Constitution; or
- (b) which is in any way repugnant to or inconsistent with the provisions of this Constitution.

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

(4) A Bill reserved for the signification of Her Majesty's pleasure shall become a law so soon as Her Majesty has given her assent thereto, through a Secretary of State, and such assent has been signified by proclamation published in the Gazette. Every such law shall come into operation on the

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date of such proclamation, unless it shall be enacted either in such law or in some other enactment that it shall come into operation on some other date, in which case it shall come into operation on that date.

Words of enactment.

49. 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 Council of Montserrat, and by the authority of the same as follows:—”.

Disallowance of laws.

50.—(1) Any law assented to by the Governor may be disallowed by Her Majesty through a Secretary of State.

(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.

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

Privileges etc. of Legislative Council.

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

PART IV

FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

Whereas the realisation of the right of 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, whatever his race, place of origin, political opinions, colour creed or sex, 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, of expression and of assembly and association; and
- (c) protection of the privacy of his home and other property and from deprivation of property without compensation,

Fundamental rights and freedoms of the individual.

52. The subsequent provisions of this Part shall have effect for the purpose of affording protection to the aforesaid rights and freedoms subject to such limitations of that protection as are contained

(1) 1978 c. 30.

in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

Protection of right to life.

53.—(1) No person shall be deprived intentionally of his life save in execution of the sentence of a court in respect of a criminal offence of which he has been convicted.

(2) A person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably justifiable—

- (a) for the defence of any person from violence or for the defence of property;
 - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
 - (c) for the purpose of suppressing a riot, insurrection or mutiny; or
 - (d) in order to prevent the commission by that person of a criminal offence,
- or if he dies as a result of a lawful act of war.

Protection from inhuman treatment.

54.—(1) No person shall be subjected to torture or to inhuman or degrading treatment or punishment.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the infliction of any description of punishment that was lawful in Montserrat immediately before the commencement of this Constitution.

Protection from slavery and forced labour.

55.—(1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this section, “forced 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 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 any person while he 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 is detained; or
- (d) any labour required during a period of public emergency or in the event of any other emergency or calamity that threatens the life or well-being of the community, to the extent that the requiring of such labour is reasonably justifiable, in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation.

Protection from arbitrary arrest or detention.

56.—(1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases—

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- (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 has been convicted or in consequence of his unfitness to plead to a criminal charge;
 - (b) in execution of the order of a court punishing him for contempt of that court or of another court or tribunal;
 - (c) in execution of the order of a court made in order to secure the fulfilment of any obligation imposed upon him by law;
 - (d) for the purpose of bringing him before a court in execution of the order of a court;
 - (e) upon reasonable suspicion that he has committed, is committing or is about to commit a criminal offence;
 - (f) in the case of a person who has not attained the age of twenty-one years, under the order of a court or with the consent of his parent or guardian, for the purpose of his education or welfare;
 - (g) for the purpose of preventing the spread of an infectious or contagious disease or 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 care or treatment or the protection of the community;
 - (h) 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 as soon as is reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.
- (3) Any person who is arrested or detained in such a case as is mentioned in subsection (1)(d) or (e) of this section and who is not released shall be brought without undue delay before a court; and if any person arrested or detained in such a case as is mentioned in subsection (1)(e) of this section is not tried within a reasonable time he shall (without prejudice to any further proceedings, that may be brought against him) be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.
- (4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person.

Provisions to secure protection of law.

57.—(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 is proved or has pleaded guilty;
 - (b) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged;
 - (c) shall be given adequate time and facilities for the preparation of his defence;
 - (d) shall be permitted to defend himself before the court in person or, at his own expense, by a legal representative of his own choice, or, where so provided by any law, by a legal representative at the public expense;
 - (e) shall be afforded facilities to examine in person or by his 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 behalf before the court on the same conditions as those applying to witnesses called by the prosecution;

(f) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge; and

(g) shall when charged on information in the High Court, have the right to trial by jury;

and, except with his own consent, the trial shall not take place in his absence, unless he so conducts himself in the court as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence, or unless, having had reasonable notice of the hearing and of the nature of the offence charged, he 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 in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgement 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 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 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 he shows that he has been pardoned for that offence under section 7 of this Constitution.

(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, including the announcement of the decision of the court, shall be held in public.

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

(a) may be empowered by law so to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice, or in interlocutory proceedings or in the interests of public morality, the welfare of persons under the age of eighteen years or the protection of commercial confidence 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 or public order.

(11) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of—

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

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- (b) subsection (2)(e) of this section 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) of this section 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, save that any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.

(12) In this section, “legal representative” means a person entitled to practise in Montserrat as an attorney.

Protection of privacy of home and other property.

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

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

- (a) that is reasonably required—
 - (i) in the interests of defence, public safety, public order, public morality, public health, town and 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;
 - (ii) for the purpose of protecting the rights and freedoms of other persons; or
 - (iii) for the prevention or detection of offences against the criminal law or the customs law;
- (b) 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 thereon 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
- (c) 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 upon any premises by such order,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Protection of freedom of conscience.

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

(2) Except with his consent (or, if he is a person who has not attained the age of twenty-one years, the consent of his 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 if that instruction, ceremony or observance relates to a religion other than his own.

(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 any 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 course of education.

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

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision which is reasonably required—

- (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,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Protection of freedom of expression.

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

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

- (a) that is 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, 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 telephone, telegraphy, posts, wireless broadcasting, television or other means of communication or regulating public exhibitions or public entertainments; or
- (b) that imposes restrictions upon public officers or teachers, except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(3) For the purposes of subsection (2)(b) of this section 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 associations.

61.—(1) Except with his consent, no person shall be hindered in the enjoyment of his freedom of peaceful assembly and association, that is to say, of his 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 protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

- (a) that is reasonably required—

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- (i) in the interests of defence, public safety, public order, public morality or public health;
 - (ii) for the purpose of protecting the rights and freedoms of other persons; or
 - (b) that imposes restrictions upon public officers, except so far as that provisions or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.
- (3) For the purposes of subsection (2)(b) of this section, “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.

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

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

- (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, except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society;
- (b) 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 or 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 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 the movement or residence within Montserrat of any person who does not belong to Montserrat or the exclusion or expulsion therefrom of any such person;
- (e) for the imposition of restrictions on the acquisition or use by any person of land or other property in Montserrat;
- (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 his 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 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 extradition or lawful removal from Montserrat; or
- (g) 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, except so far as the provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(3) For the purposes of subsection (2)(c) of this section, “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) Any restriction on a person’s freedom of movement which is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(5) For the purpose of this section, a person shall be deemed to belong to Montserrat if he has, under the law in force in Montserrat regulating immigration, the status of “Belonger”.

Protection from discrimination on grounds of race, etc.

63.—(1) Subject to subsection (4), (5) and (8) of this section, no law shall make any provision which is discriminatory either of itself or in its effect.

(2) Subject to subsections (6), (8) and (9) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any law or in the performance of the functions of any public office or any public authority.

(3) In this section, “discriminatory” means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

(4) Subsection (1) of this section 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, or the employment, engaging in any business or profession, movement or residence within Montserrat of persons who do not belong to Montserrat for the purposes of section 62 of this Constitution;
- (c) for the application, in the case of persons of any such description as is mentioned in subsection (3) of this section (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 as is mentioned in subsection (3) of this section 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.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it requires a person to belong to Montserrat for the purposes of section 62 of this Constitution or to possess any other qualification (not being a qualification specifically relating to race, place of origin, political opinions, colour or creed) in order to be eligible for appointment to any office in the public service or in a disciplined force or any office in the service of a local government authority or of a body corporate established directly by any law for public purposes.

(6) Subsection (2) of this section shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection

(4) or (5) of this section.

(7) Subject to subsection (8) of this section, no person shall be treated in a discriminatory manner in respect of access to any of the following places to which the general public have access, namely, shops, hotels, restaurants, eating-houses, licensed premises, places of entertainment or places of resort.

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(8) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 58, 59, 60, 61 and 62 of this Constitution, being such a restriction as is authorised by section 58(2)(a), 59(5), 60(2), 61(2) or 62(2) (a) as the case may be.

(9) Nothing in subsection (2) of this section 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 or any other law.

Protection from deprivation of property.

64.—(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 where the following conditions are satisfied, that is to say—

- (a) the taking of possession or acquisition is necessary or expedient in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilisation of any property in such manner as to promote the public benefit or the economic well-being of the community; and
- (b) there is 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 that 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 interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled, and for the purpose of obtaining prompt payment of that compensation; and
 - (iii) giving to any party to proceedings in the High Court relating to such a claim the same rights of appeal as are accorded generally to parties to civil proceedings in that Court sitting as a court of original jurisdiction.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section—

- (a) to the extent that the law in question makes provision for the taking of possession or acquisition of any property, interest or right—
 - (i) in satisfaction of any tax, rate or due;
 - (ii) by way of penalty for breach of any law or forfeiture in consequence of a breach of any law;
 - (iii) as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;
 - (iv) by way of the taking of a sample for the purposes of any law;
 - (v) where the property consists of an animal upon its being found trespassing or straying;
 - (vi) in the execution of judgements or orders of a court;
 - (vii) by reason of its being in a dilapidated or dangerous state or injurious to the health of human beings, animals or plants;
 - (viii) in consequence of any law with respect to prescription or the limitation of actions; or

- (ix) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry, or, in the case of land, for the purposes of carrying out thereon work of reclamation, drainage, soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement (being work relating to such development or improvement that the owner or occupier of the land has been required, and has, without reasonable and lawful excuse, refused or failed, to carry out), except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society; or
- (b) to the extent that the law in question makes provision for the taking possession or acquisition of any of the following property (including an interest in or right over property), that is to say—
 - (i) enemy property;
 - (ii) property of a deceased person, a person of unsound mind or a person who has not attained the age of twenty-one years, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein;
 - (iii) property of a person adjudged bankrupt or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the bankrupt or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property; or
 - (iv) property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that the law in question makes provision for the compulsory taking of possession in the public interest of any property, or the compulsory acquisition in the public interest of any interest in or right by law for public purposes in which no moneys have been invested other than moneys provided from public funds.

Provisions for periods of public emergency.

65.—(1) Nothing contained in or done under the authority of any regulation made under the Emergency Powers Orders in Council 1939 to 1973⁽²⁾ or under the Leeward Islands (Emergency Powers) Order in Council, 1959⁽³⁾ shall be held to be inconsistent with or in contravention of section 57, section 58 other than subsections (4) and (6) thereof or any provision of sections 59-64 (inclusive) of this Constitution to the extent that the regulation in question makes in relation to any period of public emergency provision, or authorises the doing during any such period of anything, that is reasonably justifiable in the circumstances of any situation arising or existing during that period for the purpose of dealing with that situation.

(2) Where any person who is lawfully detained in pursuance of such a regulation as is referred to in subsection (1) of this section so requests at any time during the period of that detention (but if he has already made such a request during that period not earlier than six months after he last made such a request during that period), his case shall within one month of making the request be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice.

(3) On any review by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his

(2) See S.I.1952/2031 (1952 I, p. 620). The relevant amending instruments are S.I. 1956/731, 1963/88, 1633, 1964/267, 1199, 1965/131, 1968/724, 1973/759.

(3) S.I. 1959/2206 (1959 I, p. 561).

detention to the authority by which it was ordered but, unless it is otherwise prescribed, that authority shall not be obliged to act in accordance with any such recommendations.

Enforcement of fundamental rights.

66.—(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, then, without prejudice to any other action with respect to the same matter which is lawfully available, 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 in pursuance of subsection (1) of this section; and
- (b) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (3) of this section,

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:

Provided that the High Court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress are or have been available to the person concerned under any other law.

(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; Provided that 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) A law made under section 45 of this Constitution may confer upon 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 upon it by this section.

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

- (a) of the High Court in relation to the jurisdiction and powers conferred upon 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) of this section;

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

Interpretation of Part IV.

67.—(1) In this Part, unless it is otherwise expressly provided or required by the context—

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

“court” means any court of law having jurisdiction in Montserrat, including Her Majesty in Council, but excepting, save in sections 53 and 55 of this Constitution, a court constituted 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 force or prison service of 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;

“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 the Emergency Powers Orders in Council 1939 to 1973⁽⁴⁾ or under the Leeward Islands (Emergency Powers) Order in Council, 1959⁽⁵⁾.

(2) In relation to any person who is a member of a disciplined force raised under the law of Montserrat, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of the provisions of this Part other than sections 54, 55 and 56.

(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 contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any provisions of this Part.

PART V

INTERPRETATION

Interpretation.

68.—(1) In this Constitution, unless the context otherwise requires—

“Chief Justice” means the Chief Justice referred to in the Supreme Court Order;

“Chief Minister” means the person appointed as such under section 11(1) of this Constitution;

“Court of Appeal” means the Court of Appeal established by the Supreme Court Order;

“Deputy Speaker” means the member of the Legislative Council elected by the Council in accordance with section 36(3) of this Constitution;

“functions” includes powers and duties;

“Gazette” means the official Gazette of Montserrat;

“High Court” means the High Court established by the Supreme Court Order;

“judiciary” means any Court having jurisdiction in Montserrat and includes any member or officer thereof;

“law” includes any subsidiary instrument;

(4) See S.I. 1952/2031 (1952 I, p. 620). The relevant amending instruments are S.I. 1956/731, 1963/88, 1633, 1964/267, 1199, 1965/131, 1968/724, 1973/759.

(5) S.I. 1959/2206 (1959 I, p. 561).

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“meeting” means any sitting or sittings of the Legislative Council commencing when the Council first meets after being summoned at any time and terminating when the Council is adjourned sine die or at the conclusion of a session;

“Minister” means a person appointed as Chief Minister or other Minister under section 11 of this Constitution;

“minister of religion” means any person in holy orders and any other person the functions of whose principal occupation include teaching or preaching in any congregation for religious worship;

“public office” means, subject to subsection (2) of this section, an office of emolument in the public service;

“public officer” means the holder of any public office and includes any person appointed to act in any such office;

“public service” means the service of the Crown in a civil capacity in respect of the government of Montserrat, but does not include service as a Judge of the Supreme Court;

“session” means the meetings of the Legislative Council commencing when the Council first meets after its prorogation or dissolution at any time, and terminating when the Council is next prorogued or is dissolved without having been prorogued;

“sitting” means a period during which the Legislative Council is sitting continuously without adjournment, and includes any period during which the Council is in Committee;

“Speaker” means the person elected as Speaker by the Legislative Council in accordance with section 36(1) and (2) of this Constitution;

“Standing Orders” means the Standing Orders of the Legislative Council made under section 46 of this Constitution;

“subsidiary instrument” means any proclamation, regulation, order, rule or other like instrument having the force of law;

“Supreme Court Order” means the West Indies Associated States Supreme Court Order 1967(6).

(2) For the purposes of this Constitution, a person shall not be considered as holding or acting in a public office by reason only that he—

- (a) is in receipt of any remuneration or allowance as a Minister or member of the Executive Council or as a member of the Legislative Council or the Public Service Commission;
- (b) is in receipt of a pension or other like allowance in respect of service under the Crown; or
- (c) is on leave of absence pending relinquishment of a public office;

and if it is provided by any law in force in Montserrat that an office (not being an office constituted by this Constitution or the office of member of the Judicial and Legal Service Commission) shall not be a public office for the purposes of this Constitution, this Constitution shall have effect accordingly as if that provision of that law were enacted herein.

(3) Any person who has vacated his seat in the Legislative Council or has vacated any office constituted by or under this Constitution may, if qualified, again be appointed or elected as a member of that body or to that office, as the case may be, from time to time.

(4) Except where the context otherwise requires, a reference in this Constitution to the holder of an office by the term designating his office shall be construed as a reference to any person for the time being lawfully performing the functions of that office.

(5) Where the holder of any office constituted by or under this Constitution is on leave of absence pending the relinquishment of that office, the person or authority having power to make appointments

(6) S.I. 1967/223, amended by S.I. 1983/1108.

to that office may appoint another person thereto; and where two or more persons concurrently hold the same office by virtue of an appointment made in pursuance of this subsection, the person last appointed shall, in respect of any function conferred on the holder of that office, be deemed to be the sole holder thereof.

(6) Where by this Constitution any person is directed, or power is conferred on any person or authority to appoint a person, to act in an office if the holder thereof is unable to perform the functions of that office, the validity of any performance of those functions by the person so directed or of any appointment made in exercise of that power shall not be called in question in any court on the ground that the holder of the office is not unable to perform the functions of the office.

(7) In this Constitution, unless it is otherwise provided or the context otherwise requires—

- (a) any reference to power to make appointments to any public office shall be construed as including a reference to power to make appointments on promotion and transfer, appointments on contract and appointments to act in an office during any period when it is vacant or the holder thereof is absent from Montserrat or is for any other reason unable to perform the functions thereof;
- (b) any reference to power to remove a public officer from office shall be construed as including a reference to any power conferred by any law to require or permit that officer to retire from the public service and to any power or right to terminate a contract on which a person is employed as a public officer and to determine whether any such contract shall or shall not be renewed.

(8) For the purposes of this Constitution, the resignation of the holder of any office that is required to be addressed to any person shall have effect from the time that it is received by that person.

(9) Where any power is conferred by this Constitution to make any subsidiary instrument or to give any directions or instructions or make any designation, the power shall be construed as including a power exercisable in like manner to amend or revoke any such instrument, directions, instructions or designation.

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THE SCHEDULE TO THE CONSTITUTION

Sections 1(3), 2(2), 17 and 39

FORMS OF OATHS AND AFFIRMATIONS

1. *Oath of Allegiance*

I do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law. So help me God.

2. *Affirmation of Allegiance*

I do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law.

3. *Oath for due execution of office*

I do swear that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, in the office of (here insert the description of the office). So help me God.

4. *Affirmation for due execution of office*

I do solemnly and sincerely affirm and declare that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, in the office of (here insert the description of the office).