



MONTSERRAT

## CHAPTER 1.02

# INTERPRETATION ACT and Subsidiary Legislation

### Revised Edition

showing the law as at 1 January 2019

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

### INTERPRETATION ACT

Act 12 of 2011 .. in force 27 September 2011 (S.R.O. 40/2011)

Amended by Act 4 of 2012 .. in force 2 April 2012

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### PUBLICATION OF SUBORDINATE LEGISLATION ORDER – Section 68 (1)

S.R.O. 28/2015 .. in force 30 April 2015

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**CHAPTER 1.02**

**INTERPRETATION ACT**

*(Acts 12 of 2011 and 4 of 2012)*

**Commencement**

*[27 September 2011]*

**PART 1**

**PRELIMINARY**

**Short title**

1. This Act may be cited as the Interpretation Act.

**Interpretation**

2. (1) In this Act—

“**appointed day**” has the same meaning as in the Constitution;

“**enact**” includes to issue, make or establish;

“**enactment**” means an Act or subordinate legislation or any portion of an Act or subordinate legislation;

“**public officer**” includes a person who serves the Crown in a civil capacity who is authorised under an enactment to do or enforce the doing of an act or thing or to exercise a power, or on whom a duty is imposed under an enactment;

“**repeal**” includes revoke or cancel.

(2) For the purposes of this Act, an enactment that has been replaced is repealed and an enactment that has expired, lapsed or otherwise ceased to have effect is considered to be repealed.

**Application**

3. (1) The provisions of this Act apply, unless a contrary intention appears, to an enactment, whether enacted before or after the commencement of this Act.

- (2) The provisions of this Act apply to the interpretation of this Act.

- (3) This Act does not exclude the application to an enactment of a rule of construction applicable to that enactment and not inconsistent with this Act.

**Act binds Crown**

4. This Act binds the Crown.

## PART 2

## TERRITORIAL APPLICATION OF ENACTMENTS

**Territorial Sea, exclusive economic zone, continental shelf**

5. (1) An enactment applies to the whole of Montserrat, unless a contrary intention is expressed in the enactment.

(2) If an enactment that does not apply to the whole of Montserrat is amended, no provision in the amending enactment applies to any part of Montserrat to which the amended enactment does not apply, unless it is provided in the amending enactment that it applies to that part of Montserrat or to the whole of Montserrat.

(3) An enactment that applies in respect of exploring or exploiting, conserving or managing natural resources, whether living or non-living, applies, in addition to its application to Montserrat, to the exclusive economic zone of Montserrat, unless a contrary intention is expressed in the enactment.

(4) An enactment that applies in respect of exploring or exploiting natural resources that are—

- (a) mineral or other non-living resources of the seabed or subsoil; or
- (b) living organisms belonging to sedentary species, that is to say, organisms that, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or subsoil—

applies, in addition to its application to Montserrat, to the continental shelf of Montserrat, unless a contrary intention is expressed in the enactment.

## PART 3

## PERSONAL APPLICATION OF ENACTMENTS

**Crown Immunity**

6. An enactment does not bind the Crown nor does it affect the rights or prerogatives of the Crown, unless it is expressly stated, or unless it appears by necessary implication, that the Crown is bound by the enactment.

**References to Crown**

7. In an enactment a reference to the Sovereign or to the Crown is to be read as a reference to the Sovereign who is reigning at the time the enactment is being applied.

### **Reference to public officers by title of office**

8. A reference in an enactment to a public officer by the usual title of the office is to be read as a reference to the person who holds or is carrying out the duties of that office if there is such an office customarily in Montserrat.

### **Common names**

9. The name commonly applied to any country, place, body, corporation, society, officer, functionary, person, party or thing means the country, place, body, corporation, society, officer, functionary, person, party or thing to which the name is commonly applied, although the name is not their formal or extended designation.

## **PART 4**

### **COMMENCEMENT, TIME AND DISTANCE**

#### **Commencement of Act**

10. (1) The Clerk of the Legislative Assembly must endorse on an Act, the day, month and year when the Act was assented to in Her Majesty's name and the endorsement is a part of the Act.

(2) An Act comes into force—

- (a) where provision is made for it to come into force on a particular day, at the beginning of that day; and
- (b) where no provision is made for its coming into force, at the beginning of the day on which the Act receives the Royal Assent.

(3) If an Act contains a provision that the Act or any portion of it is to come into force on a day later than the date that it is assented to, the provision comes into force on the date that it is assented to.

(4) If an Act provides that certain of its provisions are to come or have come into force on a day other than the date that it is assented to, the remaining provisions of the Act come into force on the date that it is assented to.

(5) Judicial notice must be taken of a day for the coming into force of an enactment that is fixed by subordinate legislation.

#### **Commencement of subordinate legislation**

11. Subordinate legislation comes into force on the later of—

- (a) the commencement date of the enactment under which it is made; and
- (b) the date—

- (i) specified in the subordinate legislation, if any; or
- (ii) endorsed on the subordinate legislation as the date of first publication under section 68(1), if no date is specified under paragraph (b)(i); or
- (iii) of the publication of the annual volume in which the subordinate legislation is contained, if no date is specified under paragraph (b)(i) or endorsed under paragraph (b)(ii).

*(Amended by Act 4 of 2012)*

### Computation of commencement and repeal

12. If an enactment is to come into force on a particular day, it comes into force on the expiration of the previous day, and if an enactment is to expire, lapse or otherwise cease to have effect on a particular day, it ceases to have effect on the commencement of the following day.

### Time limited and holidays

13. In computing time for the purposes of any law—

- (a) a period of days from the happening of an event or the doing of any act or thing is considered to be exclusive of the day in which the event happens or the act or thing is done;
- (b) if the last day of the period is Sunday or a public holiday (which days are in this section referred to as excluded days) the period is to include the next following day, not being an excluded day;
- (c) if an act or proceeding is directed or allowed to be done or taken on a certain day, then if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being an excluded day;
- (d) when an act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of the time.

### Clear days

14. (1) Where there is a reference to a number of clear days or “at least” a number of days between two events, in calculating that number of days the days on which the events happen are excluded.

(2) Where there is a reference to a number of days, not expressed to be clear days, between two events, in calculating that number of days the day on which the first event happens is excluded and the day on which the second event happens is included.

**Beginning and end of prescribed periods**

15. Where a time is expressed to begin or end at, on or with a specified day, or to continue to or until a specified day, the time includes that day.

**After specified day**

16. Where a time is expressed to begin after or to be from a specified day, the time does not include that day.

**Within a time**

17. Where anything is to be done within a time after, from, of or before a specified day, the time does not include that day.

**Calculation of a period of months after or before a specified day**

18. Where there is a reference to a period of time consisting of a number of months after or before a specified day, the period is calculated by—

- (a) counting forward or backward from the specified day the number of months, without including the month in which that day falls;
- (b) excluding the specified day; and
- (c) including in the last month counted under paragraph (a) the day that has the same calendar number as the specified day or, if that month has no day with that number, the last day of that month.

**Time when specified age attained**

19. A person is considered to have attained a specified number of years of age only from the commencement of the anniversary, of the same number, of the day of that person's birth.

**General Principles Provisions when no time prescribed**

20. Where no time is prescribed or allowed within which anything is to be done, the thing must be done with all convenient speed, and as often as the prescribed occasion arises.

**Law always speaking**

21. The law must be considered as always speaking, and where a matter or thing is expressed in the present tense, or the expression 'for the time being' or 'current' is used, it is to apply to the circumstances as they arise, so that effect may be given to the enactment according to its true spirit, intent and meaning.

### For the time being

22. The expression ‘for the time being’, ‘current’ or similar expression is used in law, must be given an ambulatory meaning so that the law is applied to circumstances as they stand when the law is being applied.

### Measurement of distances

23. In measuring distance for the purposes of a law, that distance must be measured in a straight line on a horizontal plane.

## PART 5

### CITATION OF LAWS

#### Citation of an enactment

24. An enactment may be cited by reference to—

- (a) if it is contained in a revised edition of the laws of Montserrat—
  - (i) its short title; or
  - (ii) its chapter number in the revised edition; and
- (b) in any other case—
  - (i) its short title; or
  - (ii) the year of its passing and its number among the Acts of that year.

#### Citation of an Imperial Act or subordinate legislation

25. If reference is made in an enactment to an Imperial Act or subordinate legislation made under it the following words is to be added at the end of the reference, “**of the United Kingdom,**” or “**(U.K.)**”.

#### Citation of an amended enactment

26. A citation of or reference to an enactment is a citation of or reference to the enactment as amended.

## PART 6

### GENERAL PROVISIONS AS TO INTERPRETATION

#### Acts to be public Acts

27. Unless the contrary is expressly provided by an Act, it is a public Act and as such must be judicially noticed.

## **Judicial notice of subordinate legislation**

**28.** Judicial notice must be taken of—

- (a) a copy of an instrument of subsidiary legislation bearing on its face a certificate of a public officer that the instrument has been published by exhibition under section 68(1); and
- (b) subsidiary legislation published in full in the *Gazette*.  
(Amended by Act 4 of 2012)

## **Sections to be substantive enactments**

**29.** A section of an enactment has effect as a substantive enactment without introductory words.

## **Preamble**

**30.** The preamble of an enactment must be read as a part of the enactment intended to assist in explaining its purpose.

## **Headings**

**31.** The heading of the Chapters, Parts, Divisions and subdivisions into which an enactment is divided is part of the enactment.

## **Schedule**

**32.** A schedule to an enactment forms part of the enactment.

## **Notes (marginal, foot, end and other)**

**33.** Marginal notes, headings to a section or regulation of an enactment, footnotes, endnotes or other notes that appear after the end of a section or other division in an enactment do not form part of the enactment, but are inserted for convenience of reference only.

## **Imperative and permissive construction**

**34.** The expression “**shall**” or “**must**” is to be construed as imperative and the expression “**may**” as permissive.

## **Gender and number**

**35. (1)** Words importing female persons include male persons and corporations and words importing male persons include female persons.

**(2)** Words in the singular include the plural, and words in the plural include the singular.

### Definitions of certain words and expressions

36. In an enactment, unless the contrary intention appears, words and expressions defined in the Dictionary at the end of this Act have the meanings given to them in the Dictionary.

### Definitions and interpretation sections

37. (1) Definitions or rules of interpretation in an enactment apply to all the provisions of the enactment, including the provisions that contain those definitions or rules of interpretation.

(2) If an enactment contains an interpretation section or provision or dictionary, it must be read and construed—

(a) as being applicable only if a contrary intention does not appear; and

(b) as being applicable to all other enactments relating to the same subject-matter unless a contrary intention appears.

(3) If a word is defined in an enactment, other parts of speech and grammatical forms of the same word have corresponding meanings in the enactment.

### Meaning of words in subordinate legislation

38. If an enactment confers power to make subordinate legislation, expressions used in the subordinate legislation have the same respective meanings as in the enactment conferring the power.

### Reference to evidence is to *prima facie* evidence

39. If an enactment provides that a document is evidence of a fact without anything in the context to indicate that the document is conclusive evidence, then, in judicial proceedings, the document is admissible in evidence and the fact is considered to be established in the absence of any evidence to the contrary.

### Construction of references to Act, section, etc.

40. (1) A reference in an enactment by number or letter to two or more chapters, parts, divisions, sections, subsections, paragraphs, subparagraphs, clauses, subclauses, schedules, appendices or forms is to be read as including the number or letter first mentioned and the number or letter last mentioned.

(2) A reference in an enactment to a chapter, part, division, section, schedule, appendix or form is to be read as a reference to a part, division, section, schedule, appendix or form of the enactment in which the reference occurs.

(3) A reference in an enactment to a subsection, paragraph, subparagraph, clause or subclause is to be read as a reference to a



subsection, paragraph, subparagraph, clause or subclause of the section, subsection, paragraph, subparagraph or clause, as the case may be, in which the reference occurs.

(4) A reference in an enactment to regulations is to be read as a reference to regulations made under the enactment in which the reference occurs.

(5) A reference in an enactment by number or letter to any section, subsection, paragraph, subparagraph, clause, subclause or other division or line of another enactment is to be read as a reference to the section, subsection, paragraph, subparagraph, clause, subclause or other division or line of such other enactment as printed by authority of law at the time of the passing of the enactment that contains the reference.

(6) Any reference in any Act or Ordinance to that or any other Act or Ordinance is considered to include a reference to any subordinate legislation made under the Act or Ordinance to which reference is made.

## Forms

41. Where a form is prescribed, deviations from the form, not affecting the substance or calculated to mislead, do not invalidate the form used.

## PART 7

### SUBORDINATE LEGISLATION

#### **Power to make implies power to revoke etc.**

42. Where an Act confers a power to make an instrument, the power is to be construed as including a power, exercisable in the same manner and subject to the same consent and conditions, if any, to revoke, amend or vary the instrument and make others.

#### **General provision with respect to power given to any authority to make subordinate legislation etc.**

43. Where an Act confers power on an authority to make or issue an instrument the following provisions have effect—

- (a) there may be annexed to the breach of an instrument of subordinate legislation penalty not exceeding \$20,000 as the authority making the regulation, rule, by-law, order in cabinet or order may think fit;
- (b) where an Act confers power to make subordinate legislation for any general purpose, and also for any special purposes incidental to the general purpose, the enumeration of the special purposes does not derogate from the generality of the powers conferred with reference to the general purpose;

- (c) where an instrument of subordinate legislation purports to be made or issued under a particular provision, then it is considered also to be made under all other powers enabling it to be made; and
- (d) a reference in an instrument of subordinate legislation to “**the Act**” or “**the Ordinance**” must be read and construed as a reference to the Act conferring the power to make or issue the subordinate legislation.

### Affirmative and negative resolutions

44. (1) Where an Act provides that an instrument of subordinate legislation made under it—

- (a) is to be laid before the Legislature; and
- (b) may or is to be annulled if the Legislature so resolves within a period provided in the Act;

the time that the Legislature is dissolved or prorogued is not to be taken into account in calculating the period.

(2) A reference in any enactment to the laying of an instrument of subordinate legislation or statutory document or any report, account or other document before the Legislature, is to be construed as a reference to the taking, during the existence of the Legislature, of action that—

- (a) by or under any Standing Order or other direction of the Legislature in force, is directed to constitute the laying of such an instrument or document before the Legislature; or
- (b) is accepted by virtue of the practice of the Legislature as constituting such laying, although the action so directed or accepted consists wholly or partly of action capable of being taken otherwise than at or during the time of sitting of the Legislature.

(3) The expression “**subject to affirmative resolution**” when used in relation to an instrument of subordinate legislation means that the instrument does not come into operation unless affirmed by a resolution of the Legislature.

(4) The expression “**subject to negative resolution**” when used in relation to an instrument of subordinate legislation means that as soon as practicable after the instrument is made, it is to be laid before the Legislature, and if the Legislature, within the period required by the instrument, or if none is required, within the period of forty days, after the instrument is so laid, resolves that the instrument be annulled, the instrument is void from the date of the resolution, but without prejudice to the validity of anything done under it or to the making of a new instrument.

**Acts done under subordinate legislation to be deemed done under law by which subordinate legislation authorised**

45. An act is done under an Act or by virtue of the powers conferred by an Act or in pursuance or execution of the powers of or under the authority of an Act if it is done under or by virtue of or in pursuance of any regulation, rule, by-law, proclamation, order in cabinet, order or notice made or issued under any power contained in the Act.

PART 8

STATUTORY BODIES AND CORPORATIONS

**Powers of board, etc., not affected by vacancy, etc.**

46. Where under an Act a board, commission, committee or similar body, whether corporate or unincorporate, is established, then, unless the contrary intention appears, the powers of the board, commission, committee or similar body is not affected by—

- (a) any vacancy in its membership;
- (b) the fact that it is afterwards discovered that there was some defect in the appointment or qualification of a person purporting to be a member; or
- (c) the fact that there was any minor irregularity in the convening of any of its meeting.

**Powers vested in corporation**

47. (1) Words establishing a corporation are to be construed as—

- (a) vesting in the corporation power to sue and be sued, to contract and be contracted by its corporate name, to have a common seal and to alter or change it at pleasure, to have perpetual succession, to acquire and hold property for the purposes for which the corporation is established and to alienate that property at pleasure;
- (b) vesting in a majority of the members of the corporation the power to bind the others by their acts; and
- (c) exempting from personal liability for its debts, obligations or acts individual members of the corporation who do not contravene the provisions of the enactment establishing the corporation.

(2) A corporation is not authorised to carry on the business of banking unless that power is expressly conferred on it by the enactment establishing the corporation.

### Majority may act

48. Where an enactment requires or authorises more than two persons to do an act or thing, a majority of them may do it.

### Quorum of statutory body

49. Where an enactment establishes a board, court, commission or other body consisting of three or more members, in this section called an “association”—

- (a) at a meeting of the association, a quorum is constituted by a number of members of the association equal to—
  - (i) if the number of members provided for by the enactment is a fixed number, at least one-half of the number of members, and
  - (ii) if the number of members provided for by the enactment is not a fixed number but is within a range having a maximum or minimum, at least one-half of the number of members in office if that number is within the range;
- (b) an act or thing done by a majority of the members of the association present at a meeting, if the members present constitute a quorum, is deemed to have been done by the association; and
- (c) a vacancy in the membership of the association does not invalidate the constitution of the association or impair the right of the members in office to act, if the number of members in office is not less than a quorum.

## PART 9

### POWERS

#### Anticipatory exercise of statutory powers

50. Where an enactment is not in force and it contains provisions conferring power to make an instrument or do any other thing for the purposes of the enactment, the power may, for the purpose of making the enactment effective on its commencement, be exercised at any time before its commencement, but an instrument so made or thing so done has no effect until the commencement of the enactment, except in so far as may be necessary to make the enactment effective on its commencement.

#### Power exercised from time to time

51. Where an enactment confers a power or imposes a duty, then the power may be exercised and the duty is to be performed from time to time as occasion requires.

### **Person acting may exercise power**

**52.** Where an enactment confers power or imposes a duty on the holder of an office, as such, then the power may be exercised and the duty is to be performed by the person who holds the office from time to time, or by a person appointed to act for him.

### **Power to appoint includes power to remove, etc.**

**53. (1)** Where an enactment confers on a person or authority, power to make appointments to an office or place the power must be construed as including the power to—

- (a) remove or suspend the person;
- (b) reappoint or reinstate the person; and
- (c) appoint another person to act temporarily in the place of the person if—
  - (i) the person is temporarily absent from Montserrat or is unable to perform the functions of the office for any reason, or
  - (ii) the position is vacant and a new appointment has not yet been made.

**(2)** However, if the power of the person or authority to make the appointment is only exercisable on the recommendation or subject to the approval, consent or concurrence of another person or authority, the power of removal must only be exercisable on the recommendation or subject to the approval, consent or concurrence of that other person or authority.

### **Governor's power to act without Cabinet advice**

**54.** For the purpose of section 26 of the Constitution, where a power or function is conferred on the Governor in an enactment, the enactment is to be read as authorising the Governor to exercise the power or function without obtaining the advice of Cabinet, unless the enactment expressly requires the Governor to obtain the advice of Cabinet.

### **Governor's power to appoint public officer to act for another during absence or inability**

**55.** If under an enactment powers are conferred or duties are imposed on a public officer, during any period that the person is absent from Montserrat or is unable to perform the functions of the office for any cause, the powers may be exercised and the duties must be performed by the person designated by, or under the authority of, the Governor or Deputy Governor.

*(Amended by Act 4 of 2012)*

### **Governor's power to appoint public officer to boards, etc.**

**56. (1)** If under an enactment power is given to the Governor or other public officer to appoint a person to be a member of a body, the appointment may be by reference to the official designation of a public office, and, on appointment and until the appointment is cancelled or otherwise determined, the person holding or acting in the public office is a member of the body.

**(2)** If under an enactment power is given to the Governor or other public officer to appoint a body, the Governor or other public officer may appoint a chairman of the body.

### **Appointment of officers by name or office**

**57.** If under an enactment the Governor or a public officer or body is empowered to appoint or name a person to have and exercise powers or perform duties, the Governor or public officer or body may either appoint a person by name or direct a person holding the office designated by the Governor or by the public officer or the body to have and exercise the powers and perform the duties.

### **Change in title of public office**

**58.** If the Governor considers it necessary to change the title of any public office, he must cause a notice to that effect to be published in the *Gazette* setting out the former title and the substituted title or titles of the office, and declaring that the change of title will take effect, or has taken effect, from a date specified in the notice, and from that date—

- (a)* where the change in title consists of the substitution of a single title for the former title, the substituted title replaces the former title wherever the former title appears in an enactment or in a deed or other instrument; and
- (b)* where the change in title consists in the substitution of two or more titles for the former title, the former title shall be replaced, in the provisions of any such Act, deed or other instrument as may be specified in such notice, by such substituted titles as may be specified in such notice.

### **Construction of enabling words**

**59.** Where in any enactment power is given to any person to do or enforce the doing of any act or thing, it is to be read and construed as also giving all powers that is reasonably necessary to enable the person to do or enforce the doing of the act or thing.

### **Appointment of successor to office during leave of absence before retirement of substantive holder**

60. When a substantive holder of an office constituted under an enactment is on leave of absence pending relinquishment of the office, another person may be appointed substantively to the same office.

## **PART 10**

### **OFFENCES AND PENALTIES**

#### **Penalties prescribed to be maximum penalties**

61. When in an enactment a penalty is provided for an offence, that penalty is the maximum penalty that may be imposed for that offence; and it is not necessary in the law prescribing the penalty to use the expressions “**not exceeding**”, “**a term not exceeding**”, “**on conviction**” or similar expressions.

#### **Statement of penalty at foot of section**

62. When in an enactment a penalty is set out at the foot or end of a section this indicates that a contravention of the section whether by act or omission is an offence and is punishable by a penalty not exceeding the penalty stated.

#### **Provisions as to offences under two or more laws**

63. Where an act or omission constitutes an offence under two or more enactments, the offender is liable to be prosecuted and punished under either or any of those enactments, but is not liable to be punished twice for the same offence.

#### **Attempt to commit an offence to be deemed an offence**

64. A provision that constitutes an offence is considered to provide also that an attempt to commit the offence shall be an offence against the provision, punishable as if the offence itself had been committed.

#### **Disposal of forfeits**

65. (1) If under an enactment, money or an animal or a thing is adjudged by a court or other authority to be forfeited it is, unless it is expressed by law to be forfeited to a person, forfeited to the Crown, and the money or the net proceeds of the animal or thing, if it is ordered by competent authority to be sold, is to be paid into the Consolidated Fund and shall form part of the public revenue, unless other provision is made.

(2) This section does not affect an enactment under which a portion of a fine or forfeit or proceeds of a forfeit are recoverable by a person or may be granted by an authority to a person.

### Imposition of penalty not to bar civil action

66. In the absence of express provision to the contrary, the imposition of a penalty or fine by an enactment does not relieve a person from liability to answer for damages to a person injured.

## PART 11

### PUBLICATION OF ENACTMENTS

#### Republication of amended laws

67. When an enactment is amended, the Government Printer may, with the authority of the Governor, publish the enactment, in print or online, with all the necessary additions, omissions, substitutions and amendments affected by the amending enactment and the enactment so published is to be considered the official version of the amended enactment.

#### Publication of subordinate legislation

68. (1) Subordinate legislation must be first published—

- (a) by exhibition in full on one or more public notice boards designated for that purpose by the Governor acting in accordance with the advice of Cabinet; or
- (b) by online publication in full on the website of the Government of Montserrat.

(2) Subordinate legislation published under subsection (1) must be notified in the next *Gazette* by—

- (a) publication in full, in print or online, together with a note of the date and place of exhibition or online publication, certified by the relevant public officer; or
- (b) publication, in print or online, of a notice—
  - (i) that the subordinate legislation has been published by exhibition or online,
  - (ii) stating the date, place and manner of the publication and a certificate to that effect by the relevant public officer,
  - (iii) stating the name and number of the subordinate legislation,
  - (iv) giving the general import and effect of the subordinate legislation, and
  - (v) giving advice of where a full copy of the subordinate legislation may be viewed or purchased.



(3) Subordinate legislation published under subsection (1) is considered to have been duly made and published in accordance with the legal requirements applying when it was made.

## PART 12

### REPEAL AND AMENDMENT

#### **Amendment or repeal in same session**

69. An Act may be amended, or repealed by an Act passed in the same session of the Legislature.

#### **Amendment part of enactment**

70. An amending enactment is to be construed as part of the enactment that it amends to the extent that this is consistent with the tenor of the amending enactment.

#### **Effect of repeal**

71. Where an enactment is repealed in whole or in part, the repeal does not—

- (a) revive an enactment or anything not in force or existing at the time when the repeal takes effect;
- (b) affect the previous operation of the enactment so repealed or anything duly done or suffered under it;
- (c) affect a right, privilege, obligation or liability acquired, accrued, accruing or incurred under the enactment so repealed;
- (d) affect an offence committed against or contravention of the provisions of the enactment so repealed, or a punishment, penalty or forfeiture incurred under the enactment so repealed; or
- (e) affect an investigation, legal proceeding or remedy in respect of any right, privilege, obligation or liability referred to in paragraph (c) or in respect of a punishment, penalty or forfeiture referred to in paragraph (d),

and an investigation, legal proceeding or remedy as described in paragraph (e) may be instituted, continued or enforced, and the punishment, penalty or forfeiture may be imposed as if the enactment had not been so repealed.

## Repeal and substitution

72. Where an enactment, in this section called the “**former enactment**”, is repealed and another enactment, in this section called the “**new enactment**”, is substituted therefore—

- (a) a person who is appointed under the former enactment continues, as if appointed under the new enactment, until another is appointed in the person’s place;
- (b) a bond and security given by a person appointed under the former enactment remains in force, and all books, papers, forms and things made or used under the former enactment must continue to be used as before the repeal in so far as they are consistent with the new enactment;
- (c) a proceeding taken under the former enactment is to be taken up and continued under and in conformity with the new enactment in so far as it may be done consistently with the new enactment;
- (d) the procedure established by the new enactment must be followed as far as it can be adapted—
  - (i) in the recovery or enforcement of fines, penalties and forfeitures imposed under the former enactment;
  - (ii) in the enforcement of rights, existing or accruing under the former enactment; and
  - (iii) in a proceeding in relation to matters that have happened before the repeal;
- (e) when any punishment, penalty or forfeiture is reduced or mitigated by the new enactment, the punishment, penalty or forfeiture if imposed or adjudged after the repeal must be reduced or mitigated accordingly;
- (f) except to the extent that the provisions of the new enactment are not in substance the same as those of the former enactment, the new enactment must not be held to operate as new law, but must be construed and have effect as a consolidation and as declaratory of the law as contained in the former enactment;
- (g) regulations made under the repealed enactment remain in force and are considered to have been made under the new enactment, in so far as they are not inconsistent with the new enactment, until they are repealed or others made in their place; and
- (h) a reference in an unrepealed enactment to the former enactment is, with respect to a subsequent transaction, matter or thing, to be read and construed as a reference to the provisions of the new enactment relating to the same subject-

matter as the former enactment, but where there are no provisions in the new enactment relating to the same subject-matter, the former enactment shall be read as unrepealed in so far as is necessary to maintain or give effect to the unrepealed enactment.

### **Repeal does not imply enactment was in force**

73. The repeal of an enactment in whole or in part is not, and does not involve, a declaration that the enactment was previously in force or was considered by the legislature or other body or person by whom the enactment was enacted to have been previously in force.

### **Amendment does not imply change in law**

74. The amendment of an enactment is not, and does not involve, a declaration that the law under that enactment was or was considered by the legislature or other body or person by whom the enactment was enacted to have been different from the law as it is under the enactment as amended.

### **Repeal does not declare previous law**

75. The repeal or amendment of an enactment in whole or in part is not, and does not involve, a declaration as to the previous state of the law.

### **Judicial construction not adopted**

76. A re-enactment, revision, consolidation or amendment of an enactment is not, and does not involve, an adoption of the construction that has by judicial decision or otherwise been placed on the language used in the enactment or on similar language.

## PART 13

### INTERPRETATION OF ENACTMENTS OF OTHER LEGISLATURES

### **Imperial Acts to be read with necessary modifications**

77. When an Imperial Act, or subordinate legislation made under it, is extended to Montserrat it is to be read with the formal alterations as to names, localities, courts, officers, persons, moneys, penalties and otherwise as is necessary to make it applicable to the circumstances.

### **Construction of Acts of the former Federation of the West Indies**

78. (1) In this section “**Federal Act**” means any Act, which applies to Montserrat, which was enacted by the legislature of the former Federation of the West Indies, and includes any subordinate legislation made under any Act and also any regulations made under section 2 of the West Indies Order in Council 1957.

(2) This Act applies for the interpretation and operation of a Federal Act as it applies for the interpretation and operation of an enactment.

(3) Where in a Federal Act there is a reference to a specific authority, department, office or person and there is no longer the authority, department, office or person, the reference is to be construed as a reference to another authority, department, office or person specified by order by the Governor acting on the advice of Cabinet.

## PART 14

### MISCELLANEOUS

#### **Evidence of signature of Governor, Attorney General or Director of Public Prosecutions**

79. Whenever the *fiat* of the Governor, the Attorney General or the Director of Public Prosecutions is necessary before any prosecution or action is commenced, any document purporting to bear the *fiat* of the Governor, the Attorney General or the Director of Public Prosecutions must be received as *prima facie* evidence in any proceeding without proof being given that the signature to such *fiat* is that of the Governor, the Attorney General or the Director of Public Prosecutions.

#### **The Government Printer**

80. (1) The Governor acting on the advice of the Cabinet may, by Order, appoint a Government Printer who, subject to section 68, is responsible for publishing, in print or online, the *Gazette* or any enactment.

(2) Where no appointment is made under subsection (1), the Clerk of the Legislative Assembly must act as the Government Printer.

*(Inserted by Act 4 of 2012)*

**SCHEDULE**

*(Section 36)*

**DICTIONARY**

- “**Act**” means an Act or Ordinance of the legislature of Montserrat;
- “**act**” used with reference to an offence or civil wrong, includes a series of acts, and words which refer to acts done, extend to illegal omissions;
- “**British citizen**”, “**British Overseas Territories citizen**” and “**British protected person**” have the meanings respectively given to those expressions in the British Nationality Act 1981 (U.K.);
- “**British possession**” means any part of Her Majesty’s dominions other than the United Kingdom;
- “**Chief Justice**” means the Chief Justice of the Eastern Caribbean Supreme Court;
- “**Christian name**” means any name prefixed to a surname, whether received in Christian baptism or otherwise;
- “**coin**” means any coin legally current in Montserrat;
- “**commencement**” used with reference to a law means the date on which the law comes into force;
- “**committed for trial**” used in relation to a person means committed to prison with the view of being tried before the High Court by an authority having power to commit a person to prison with a view to his trial, and includes a person who is admitted to bail on a recognizance to appear and take his trial before the High Court;
- “**common law**” means the common law of England;
- “**Commonwealth citizen**” has the meaning given to that expression in the British Nationality Act 1981 (U.K.);
- “**constable**” has the same meaning as in the Police Act;
- “**Constitution**” means the Montserrat Constitution Order, 2010 of the United Kingdom (S.I. 2010 No. 2474);
- “**Consul**” or “**consular officer**” includes Consul General, Consul, Vice-Consul, Consular Agent and any person for the time being authorised to discharge the duties of a Consul General, Consul or Vice-Consul;
- “**contravene**” in relation to a requirement or condition prescribed in a law, or in a permit, licence, or other authority, granted under or in pursuance of a law, includes a failure to comply with that requirement or condition;
- “**court**” means a court of Montserrat of competent jurisdiction;
- “**Court of Appeal**” means the Court of Appeal constituted under the Supreme Court Order 1967 (S.I. 1967 No. 223 (U.K.));

“**Crown Agent**” means a person who acts in the United Kingdom as the Crown Agent for Overseas Governments and Administrations;

“**day**” means twenty-four hours, and when used in relation to any act or omission or occurrence commences at the first moment of the day on which the act, omission or occurrence is done or happens after midnight of the previous day and ends at the last moment of the day on which the act, omission or occurrence is done or happens before midnight of the last mentioned day;

“**document**” includes—

- (a) a book, map, plan, graph or drawing;
- (b) a photograph;
- (c) a label, marking or other writing which identifies or describes anything of which it forms part, or to which it is attached by any means;
- (d) a disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced;
- (e) a film (including microfilm), negative, tape or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced;
- (f) an electronic record as defined by the Electronic Transactions Act;
- (g) anything on which is marked any words, figures, letters or symbols which are capable of carrying a definite meaning to persons conversant with them;

“**dollar**” means a dollar of Eastern Caribbean currency as provided in the Eastern Caribbean Central Bank Act;

“**Dominion**” means a Dominion as defined in the Statute of Westminster, 1931;

“**the Gazette**” means the official publication published, in print or online, for the Government of Montserrat under the title of “The Montserrat Gazette”;

“**gazetted**” means published in the *Gazette* and includes publication in accordance with section 68;

“**Government Printer**” means a person authorised by the Governor acting on the advice of Cabinet to publish, in print or online, the *Gazette* or any enactments;

“**Her Majesty**” or “**His Majesty**”, “**the Queen**” or “**the King**” or “**the Crown**” means Her Majesty the Queen or His Majesty the King, the Sovereign of Great Britain and Northern Ireland and all British

possessions, and includes the predecessors and the heirs and successors of the Queen or King;

**“house”** includes any message, part of a message, house, part of a house, building, or other construction, whether wholly or in part above or below the surface of the ground, inhabited or occupied either by day or by night by man, whether beneficially or otherwise, or intended to be so inhabited or occupied;

**“Imperial Act”** or **“Statute”** means an Act passed by the Imperial Parliament and assented to by Her Majesty;

**“Imperial Parliament”** or **“Parliament”** means the Parliament of the United Kingdom;

**“judge”** includes the Chief Justice and any puisne judge of the High Court;

**“a Justice”** or **“a Justice of the Peace”** means a person appointed by the Governor to be a Justice of the Peace for Montserrat;

**“land”** and **“premises”** includes all tenements or hereditaments, and also all messages, houses, buildings, or other constructions, whether the property of Her Majesty, Her heirs or successors, or of any corporation, or of any private individual, except where there are words to exclude houses and other buildings;

**“law”** includes any Act, Ordinance, Act of the Imperial Parliament and any subordinate legislation or rule of court made or given under the authority of law;

**“Legislative Assembly”** means the Legislative Assembly of Montserrat;

**“magistrate”** has the meaning given in the Magistrate’s Court Act;

**“magistrate’s Court”** means a court exercising jurisdiction under the Magistrate’s Court Act;

**“Master”** means a Master of the Supreme Court;

**“master”** used with reference to a ship, means any person (except a pilot or harbour master) having control or charge of the ship;

**“medical practitioner”** or **“duly qualified medical practitioner”** or **“registered medical practitioner”** means any person duly registered or licensed to practise medicine under the law applicable to medical practitioners;

**“month”** means a calendar month unless words be added showing lunar month to be intended;

**“Montserrat”**, for greater certainty, includes the territorial sea of Montserrat;

**“oath”** and **“affidavit”** in the case of persons allowed by law to affirm or declare instead of swearing, include affirmation and declaration, and **“swear”** in the same case, includes **“affirm”** and **“declare”**;

“**or**”, “**other**” and “**otherwise**” are to be construed disjunctively and not as implying similarity, unless the word “**similar**” or some other word of like meaning is added;

“**Ordinance**” includes private Ordinance and any subordinate legislation made or given under the authority of any Ordinance;

“**person**” includes a body politic or corporate as well as an individual;

“**police officer**” has the meaning given in the Police Act;

“**Police Service**” has the meaning given in the Police Act;

“**prescribed**” means prescribed by the law in which the word occurs and in relation to any subordinate legislation means prescribed by the Governor acting in accordance with the advice of Cabinet unless some other authority is mentioned in the law in which the word occurs;

“**Prison or Gaol**” includes the common prison or gaol of Montserrat in which a person is committed to prison;

“**property**” includes money, goods, things in action, land and every description of property, whether real or personal; also obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incidental to such property;

“**public holiday**” means a day or part of a day which under the provisions of law is or is declared to be a public holiday;

“**public place**” includes a public highway, street, road, square, court, alley, land, bridle-way, footway, parade, wharf, jetty, quay, bridge, public garden, or open space, and every theatre, place of public entertainment of any kind, or other place of general resort, admission to which is obtained by payment, or to which the public have access;

“**public service**” has the same meaning as in the public service law;

“**public service law**” means any law relating to the matters referred to in section 24(2)(a) to (c) of the Montserrat Constitution Order, 2010;

“**recorded**” used with reference to a document, means recorded under the law applicable to the recording of the document;

“**registered**” used with reference to a document, means registered under the law applicable to the registration of the document;

“**rules of court**” when used in relation to any court, means rules made by the authority having power to make rules or orders regulating the practice and procedure of the court;

“**sell**” includes exchange and barter;

“**Secretary of State**” means one of Her Majesty’s Principal Secretaries of State;



“**service by post**” where a law authorises or requires a document to be served by post, whether the expression “**serve**”, or the expression “**give**” or “**send**”, or any other expression is used, then, the service is considered to be effected by properly addressing, prepaying, and posting a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post;

“**ship**” means every description of vessel used in navigation not exclusively propelled by oars;

“**sign**” with reference to a person who is unable to write his name, includes “**mark**”;

“**street**” or “**road**” includes any public highway, street, road, thoroughfare, square, court, alley, lane, bridle-way, footway, parade, passage, or open place used or frequented by the public, or to which the public have or are permitted to have access;

“**subordinate legislation**” means any regulation, rule, rule of court, bylaw, proclamation, order in cabinet, order, direction, notice, form, tariff of costs or fees, letters patent, commission, warrant, resolution or other instrument having legislative effect issued, made or established—

(a) in the execution of a power conferred by or under the authority of an Act; or

(b) by or under the authority of the Governor;

“**summary**” in relation to any trial or conviction, means a trial or conviction before the Magistrate’s Court and cognate expressions must be construed accordingly;

“**Supreme Court**” means the Eastern Caribbean Supreme Court;

“**the Territory**” means the Overseas Territory of Montserrat;

“**United Kingdom**” means Great Britain and Northern Ireland;

“**vessel**” includes any ship, boat, lighter, hovercraft or other craft used for transportation by water;

“**will**” includes codicil;

“**writing**” includes printing, lithography, typewriting, photography and other modes of representing or reproducing words or figures in visible form;

“**year**” means a year reckoned according to the British calendar.



**PUBLICATION OF SUBORDINATE LEGISLATION ORDER – SECTION 68(1)**

*(S.R.O. 28/2015)*

**Commencement**

*[30 April 2015]*

**Short title**

1. This Order may be cited as the Publication of Subordinate Legislation Order.

**Designation of Public Notice Board**

2. The public notice board at the entrance to the Office of the Legislature located at Farara Plaza in Brades is designated as the public notice board for the publication of subordinate legislation.

**Designation of Public Officer**

3. (1) The Clerk of Cabinet is the public officer responsible for the publication of subordinate legislation on the public notice board designated under paragraph 2.

(2) If the Clerk of Cabinet is on leave, ill or otherwise unable to perform the duties of Clerk of Cabinet, the Permanent Secretary in the Office of the Premier shall act as Clerk of Cabinet for the purposes of this Order and, while acting, has all the powers and duties of the Clerk of Cabinet under this Order.

**Manner of publication**

4. The Clerk of Cabinet shall—
  - (a) sign and date a copy of the subordinate legislation to be published; and
  - (b) on the date of signing, cause the signed subordinate legislation to be exhibited on the public notice board designated under paragraph 2.

**Length of Publication**

5. The subordinate legislation published under paragraph 4 must remain on the public notice board designated under paragraph 2 for as long as space on the public notice board permits.