

MONTSERRAT
PUBLIC ADMINISTRATION BILL 2014

No. of 2014

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I ASSENT

Governor

DATE:

M O N T S E R R A T

No. of 2014

A BILL FOR

AN ACT TO PROVIDE FOR THE EFFICIENT AND EFFECTIVE OPERATION
OF THE PUBLIC SERVICE OF MONTSERRAT.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and
with the advice and consent of the Legislative Assembly of
Montserrat, and by the Authority of the same as follows—

PART 1—PRELIMINARY

1 Short title and commencement

- (1) This Act may be cited as the Public Administration Act,
2014.

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- (2) This Act comes into operation by Order, on a date appointed by the Governor acting on the advice of Cabinet.
- (3) Different dates may be appointed under subsection (2) in respect of different sections of this Act.

2 Interpretation

In this Act—

“**Code**” means the Labour Code, (No. 12 of 2012);

“**Code of Conduct**” means the Public Service Code of Conduct referred to in section 3;

“**collective agreement**” means the agreement between the Government and the recognised association of public officers which sets out public officers’ terms and conditions of employment and any other matter that is of mutual interest to the Government and the recognised association of public officers;

“**Commission**” means the Public Service Commission constituted under section 82 of the Constitution;

“**Constitution**” means the Montserrat Constitution Order, 2010;

“**department**” means a ministry or a non-ministerial department of Government;

“**Deputy Governor**” means the person appointed as Deputy Governor under section 23 of the Constitution;

“**divisional head**” means a staff member who manages a departmental section, division or unit of a department and reports directly to a head of department;

“**employment agreement**” means a written agreement between the Government and a public officer by which a contract of service is instituted for either an open-ended or limited period;

“**Executive Member**” means the Deputy Governor, the Attorney General or the Financial Secretary;

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“external output” means output produced by an individual and delivered to a person outside a department;

“financial year” means a period of twelve months ending on 31 March;

“fixed-term employment agreement” means an employment agreement which has a defined date of cessation;

“Government” means Her Majesty’s Government of Montserrat;

“Government company” means—

- (a) a company registered under the Companies Act in which the Government has a controlling interest; and
- (b) in respect of each Government company, includes a subsidiary entity of the company;

“head of department” means in the case of—

- (a) the Office of the Deputy Governor – the Deputy Governor;
- (b) the Attorney General’s Chambers – the Attorney General;
- (c) the Ministry of Finance, Economic Development and Trade - the Financial Secretary;
- (d) the Office of the Director of Public Prosecutions – the Director of Public Prosecutions;
- (e) the High Court Registry- The Registrar of the High Court;
- (f) the Cabinet Secretariat – The Cabinet Secretary;
- (g) a ministry, except the Ministry of Finance, Economic Development and

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Trade - the permanent secretary of that ministry;

“input” means any labour, capital or other resource used to produce outputs;

“internal output” means output produced by an individual and delivered within a department rather than provided to a person outside the department;

“ministry” means the whole of a department of Government for which a Minister is accountable to the Legislative Assembly and includes a departmental section, division or unit which forms part of that ministry, but does not include a statutory body or Government company;

“misconduct” means—

- (a) acting in a dishonest or illegal manner;
- (b) failing to comply with the Code of Conduct referred to in section 3;
- (c) failing to comply with conditions of employment; or
- (d) failing to comply with workplace rules;

“Montserratian” has the same meaning as in section 107(2) of the Constitution;

“non-ministerial department” means—

- (a) the Registry of the High Court;
- (b) the whole of a department of Government for the actions of which an Executive Member is accountable to the Legislative Assembly, and includes a departmental section, division or unit which forms part of the non-ministerial department; and
- (c) does not include a statutory body or Government company;

“open and fair employment process”—

- (a) in relation to appointment, reappointment, transfer or promotion means a process which—
- (i) provides an opportunity for a suitably qualified person to apply for the position;
 - (ii) ensures that each person applying is considered for appointment in an unbiased manner; and
 - (iii) ensures that the person appointed, reappointed, transferred or promoted is the person whose qualifications, skills, knowledge, experience and integrity make him the most suitable person for the position, taking into account any requirement in this Act or regulations to give preference to a Montserratian;
- (b) in relation to discipline, dismissal, retirement or termination of employment for any other reason, means a process which provides an opportunity for the public officer concerned to be—
- (i) informed of all relevant matters; and
 - (ii) given an opportunity to make representations in an environment that is neutral and unbiased towards that public officer;

“output” means the goods produced or services provided by an individual or a department;

“performance related remuneration” means—

- (a) in the case of a public officer on the permanent and pensionable establishment- increments; and

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(b) in the case of a public officer on a fixed term employment agreement - increments and gratuity;

“permanent disability” means a disability which, as certified by the Chief Medical Officer, is likely to render a person incapable by reason of infirmity of body or mind from discharging the duties of his office permanently or for a period in excess of [] months ;

“personnel arrangements” means the engagement, employment and management of an employee;

“political pressure” means an attempt directly or indirectly by a Minister or a Member of the Legislative Assembly to improperly or illegally influence a personnel or other input-related decision of a public officer under this or any other Act;

“Public Finance (Management and Accountability) Act” means the Public Finance (Management and Accountability Act, (No. 7 of 2008);

“public office” and **“public officer”** have the same meanings assigned to them in section 107(1) of the Constitution;

“Public Service Regulations” means the Public Service Regulations, (Cap. 1.06);

“regulations” mean the regulations made under section 47;

“remuneration” means salary, wages, allowances, increments, gratuity and any benefit received by a person as a result of his employment;

“salary” means the rate of pay assigned to a public office in a salary scale;

“second” means—

(a) the temporary appointment of a public officer to a position in a statutory body or Government company; or

Comment [m1]: Deputy Governor to advise of period to be inserted here.

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- (b) the temporary appointment of a person from a position in a statutory body or Government company to a public office;

“Social Security Act” means the Social Security Act Cap.18.09;

“staff” or **“staff member”** means a public officer, other than—

- (a) an Executive Member;
- (b) the Director of Public Prosecutions;
- (c) the Auditor-General;
- (d) the Cabinet Secretary;
- (e) the Registrar of the High Court;
- (f) a permanent secretary; or
- (g) a public officer requiring legal qualifications;

“statutory body” means a corporation, board, commission, fund or other entity which is—

- (a) established by an Act of the Legislature;
- (b) fully or substantially funded by public funds; and
- (c) accountable to the Legislative Assembly; and

“trade union” means an association of persons registered under the Code, the principal purpose of which is to represent and promote employees interests and regulate relations between employees and employers and includes a federation of trade unions, but not an organisation or association that is dominated by an employer or employers’ organization.

PART 2—PUBLIC SERVICE CODE OF CONDUCT

3 Code of Conduct

- (1) A public officer shall comply with the Code of Conduct set out in Schedule 1.
- (2) A public officer who fails to comply with the Code of Conduct may be disciplined or dismissed in accordance with the regulations and as specified in the collective agreement.
- (3) The Deputy Governor shall—
 - (a) uphold and promote the Code of Conduct throughout the public service; and
 - (b) inquire into the investigation of an alleged breach of the Code of Conduct; and
 - (c) decide the resolution of the breach.
- (4) The Deputy Governor shall—
 - (a) after consultation with the recognised association of public officers and trade unions; and
 - (b) in accordance with the terms of the collective agreement;
recommend to the Governor an amendment to Schedule 1.

PART 3—PERSONNEL AUTHORITIES OF GOVERNOR

4 Personnel authorities of Governor

The Governor shall appoint—

- (a) an Executive Member in accordance with sections 39(1)(e) and 85 of the Constitution;
- (b) the Director of Public Prosecutions, the Registrar of the High Court in accordance with section 85(2) of the Constitution;
- (c) the Auditor-General in accordance with section 101 of the Constitution; and

- (d) the Cabinet Secretary, acting after consultation with the Premier.

**PART 4—PERSONNEL ARRANGEMENTS FOR
EXECUTIVE MEMBERS**

5 Appointment of an Executive Member

- (1) Executive Members shall be appointed as follows—
- (a) the Deputy Governor shall be appointed by the Governor acting in accordance with sections 23 and 85(1) of the Constitution;
 - (b) the Attorney General shall be appointed by the Governor acting after consultation with the Chief Justice in accordance with section 85(2) of the Constitution; and
 - (c) the Financial Secretary shall be appointed by the Governor acting after consultation with the Premier in accordance with section 85(1) of the Constitution.
- (2) The Governor may, in accordance with section 23(3) of the Constitution, appoint a person to act as Deputy Governor.
- (3) The Human Resources Management Unit shall provide the Governor with the information, assistance and support he requests in the process of considering the appointment of an Executive Member.

6 Employment of an Executive Member

- (1) An Executive Member shall, subject to the Constitution, be employed under terms and conditions of employment prescribed in the regulations.
- (2) An Executive Member—
- (a) is an employee of the Government; and
 - (b) is to be employed on the basis of an employment agreement prepared in accordance with the regulations.

7 Remuneration of an Executive Member

- (1) An Executive Member's salary shall be within the salary scale prescribed in accordance with section 93 of the Constitution.
- (2) An Executive Member's remuneration—
 - (a) shall be agreed between the Governor and the Executive Member; and
 - (b) shall include a performance-related portion established in accordance with the regulations, the payment of which shall be based on the Executive Member's performance, as determined by the Governor, for the duration of his employment agreement.
- (3) Except for the Financial Secretary, an Executive Member's remuneration—
 - (a) shall be paid to the Executive Member in accordance with section 97 of the Constitution; and
 - (b) may be altered to his disadvantage only in accordance with section 97(6) of the Constitution.

8 Removal from office of an Executive Member

The Governor, with the prior approval of the Secretary of State, may remove an Executive Member from office only for—

- (a) inability to discharge the functions of his office, whether arising from infirmity of body, mind or any other cause; or
- (b) for misbehaviour.

9 Annual performance agreement with an Executive Member

The Governor shall, for each financial year, enter into an annual performance agreement with an Executive Member and the annual performance agreement shall specify the performance expected of the Executive Member for that financial year.

10 Performance assessment of an Executive Member

- (1) Subject to subsection (5), the performance of an Executive Member is to be reviewed at the end of each financial year by means of an annual performance assessment undertaken by the Governor and involving the Executive Member concerned.
- (2) Before completing an Executive Member's performance assessment, the Governor shall consult with the Executive Member about the extent to which he has achieved the performance specified in the performance agreement for the financial year.
- (3) In undertaking an Executive Member's performance assessment and determining the amount of any performance-related remuneration payable to him, the Governor shall base his assessment on a factual comparison of the Executive Member's actual performance with that specified in his performance agreement for the financial year, together with any modification of the performance agreement.
- (4) The Governor shall complete an Executive Member's performance assessment within thirty days after the end of a financial year.
- (5) The performance of—
 - (a) the Attorney General is to be reviewed at the end of each financial year by means of an annual performance assessment undertaken by the Governor after consultation with the Chief Justice;
 - (b) the Deputy Governor is to be reviewed at the end of each financial year by means of an annual performance assessment undertaken by the Governor after consultation with the Premier; and
 - (c) the Financial Secretary is to be reviewed at the end of each financial year by means of an annual performance assessment undertaken by the Governor after consultation with the Minister responsible for Finance.

**PART 5—DUTIES, RESPONSIBILITIES AND POWERS OF
DEPUTY GOVERNOR**

11 Duties and powers of Deputy Governor

- (1) The Deputy Governor, under the authority of the Governor, is responsible for—
- (a) in accordance with section 24 of the Constitution—
 - (i) the leadership and management of the public service;
 - (ii) the organisation of the public service in so far as it does not involve new financial provision;
 - (iii) the application to a 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;
 - (b) in accordance with sections 24 and 84 of the Constitution, the appointment, termination of appointment, suspension, dismissal, retirement and the taking of disciplinary action in respect of a staff member.
- (2) In addition to the powers imposed on him under the Constitution, the Deputy Governor shall—
- (a) administer the regulations, orders and policies with respect to the public service;
 - (b) maintain the classification of the public service and be responsible for the conduct of job evaluations to be carried out for the positions within the public service;
 - (c) review, in consultation with the Financial Secretary, the remuneration payable to staff member;
 - (d) develop, promote, review and evaluate the human resource policies and practices for the public service;

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- (e)* develop and promote the administration of the Government's succession planning systems;
- (f)* provide for and establish, in consultation with the recognised association of public officers; procedures for—
 - (i)* dealing with issues relating to discipline in the public service;
 - (ii)* the management and resolution of grievances within the public service;
- (g)* provide for the establishment of a performance management system in the public service;
- (h)* undertake the management of the annual performance assessment of a permanent secretary;
- (i)* undertake the conduct of periodic audits of the human resource processes in the public service to establish compliance with this Act and any other applicable law, regulation, order or policy;
- (j)* establish systems to allow for regular meetings with heads of department and for the coordination of activities and policies of departments;
- (k)* develop, in consultation with heads of department—
 - (i)* the overall strategic direction for the public service including developing and providing advice on policies and programmes including business plans, objectives and outputs;
 - (ii)* training and development plan for the public service;
- (l)* implement the administrative rearrangement of departments;
- (m)* take steps to resolve a situation where a public officer is subject to political pressure;
- (n)* be responsible for the appointment and promotion of a permanent secretary and a staff member;

- (o)* approve the secondment of a public officer in the public service to a Government entity outside of the public service;
 - (p)* determine the recruitment policy for the public service;
 - (q)* enter into employment agreements with public officers;
 - (r)* negotiate and enter into collective agreements with the recognised association of public officers; and
 - (s)* conduct all things for the efficient and effective functioning of the public service as delegated by the Governor in accordance with section 24 of the Constitution.
- (3) The Deputy Governor may transfer a staff member in the public interest.

12 Performance agreement responsibilities of Deputy Governor

- (1) The Deputy Governor shall—
- (a)* enter into a performance agreement with each permanent secretary for each financial year; and
 - (b)* ensure that the performance agreement is sufficiently detailed and clear that it provides a proper basis for the assessment of a permanent secretary's performance at the end of a financial year.
- (2) Before signing a permanent secretary's performance agreement the Deputy Governor shall satisfy himself that it is fair and achievable.

13 Performance assessment responsibilities of Deputy Governor

- (1) The Deputy Governor shall undertake an annual performance assessment for a permanent secretary at the end of each financial year.

- (2) In undertaking a performance assessment for a permanent secretary and determining the amount of any performance related remuneration payable to the permanent secretary the Deputy Governor shall—
- (a) act on the basis of the facts before him; and
 - (b) base his assessment on a factual comparison of, permanent secretary's actual performance with that specified in his performance agreement for the financial year, together with any modification of the performance agreement.
- (3) The Deputy Governor shall complete a permanent secretary's performance assessment within thirty days after the end of a financial year.

14 Secondment

- (1) The Governor or Deputy Governor as the case may be, may with the consent of a public officer, other than an Executive Member, second that public officer.
- (2) If a public officer is to be seconded under subsection (1) the Governor or Deputy Governor as the case may be, shall ensure that the terms and conditions of the secondment are set out in an agreement among—
- (a) the Governor or Deputy Governor as the case may be;
 - (b) the public officer; and
 - (c) the statutory body or Government company to which the public officer is being seconded.
- (3) The Governor or Deputy Governor as the case may be, shall ensure that an agreement for secondment under subsection (2) provides for the public officer on secondment—
- (a) to be paid the full salary of the position to which he is seconded; and
 - (b) to be eligible for—

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- (i) the remuneration applicable to the position to which he is seconded; and
 - (ii) leave and other conditions of employment,
- that are no less favourable than what he received as a public officer before and up to the effective date of his secondment.
- (4) A public officer on secondment—
- (a) remains on the establishment of the public service; and
 - (b) may apply for another position within the public service.
- (5) The service of a public officer while on secondment counts for pension purposes.
- (6) If a person is to be seconded to a public office, the Deputy Governor shall ensure that the terms and conditions of the secondment are set out in an agreement among—
- (a) the Deputy Governor;
 - (b) the person being seconded; and
 - (c) the statutory body or Government company from which the person is being seconded.
- (7) A person on secondment to a public office shall, unless the Deputy Governor in accordance with an agreement under subsection (6), otherwise directs—
- (a) be paid the full salary of the public office to which he is seconded; and
 - (b) is eligible to—
 - (i) the remuneration applicable to the public office to which he is seconded; and
 - (ii) leave applicable to the public office to which he is seconded,
- that are no less favourable than what he received as a public officer before and up to the effective date of his secondment.

15 Political pressure from Ministers

- (1) If, at any time, the Deputy Governor is satisfied, either personally or on the basis of information received, that political pressure is being exerted on a public officer by the Premier, the Deputy Governor shall advise the Governor of his concerns and request that the Governor discuss the matter with the Premier.
- (2) If following the action required under subsection (1) the Deputy Governor is still of the opinion that political pressure is being exerted on a public officer, the Deputy Governor shall advise the Governor of his concerns and the Governor may constitute a Commission of Inquiry to inquire into the matter.
- (3) If, at any time, the Deputy Governor is satisfied, either personally or on the basis of information received, that political pressure is being exerted on a public officer by a Minister, the Deputy Governor shall advise the Premier of his concerns and request that the Premier discuss the matter with the Minister concerned.
- (4) If following the actions required by subsection (3) the Deputy Governor is still of the opinion that political pressure is being exerted on the public officer, the Deputy Governor shall advise the Governor of his concerns and the Governor, after consultation with the Premier, may constitute a Commission of Inquiry to inquire into the matter.

16 Political pressure from a Member of Legislative Assembly

- (1) If the Deputy Governor is of the opinion that political pressure is being exerted on a public officer by a Member of the Legislative Assembly other than a Minister, the Deputy Governor shall advise the Premier or the Leader of the Opposition, as the case may be, of his concerns and request that the Premier or the Leader of the Opposition, discuss the matter with the Member of Legislative Assembly concerned.

- (2) If, following the actions required by subsection (1), the Deputy Governor is still of the opinion that political pressure is being exerted on a public officer, by a Member of the Legislative Assembly other than a Minister, the Deputy Governor shall advise the Governor of his concerns and the Governor, after consultation with the Premier, or the Leader of the Opposition, as the case may be, may issue an instruction to the relevant Member of the Legislative Assembly to desist and he shall do so.

17 Independence and obligations of Deputy Governor

In carrying out his duties under this Part, the Deputy Governor shall—

- (a) act independently;
- (b) not be subject to the direction a person or authority other than the Governor to the extent specified in this Act and the Constitution; and
- (c) ensure that an open and fair employment process operates in the public service.

Human Resources Management Unit

18 Duties of Human Resources Management Unit

The Human Resources Management Unit is responsible for—

- (a) processing the recruitment and selection of public officers;
- (b) establishing policies to support performance management and evaluation of public officers;
- (c) delivering learning and development interventions to facilitate the achievement of the Government's strategic goals;
- (d) developing and operating remuneration policies and reward mechanisms to ensure that individual contribution and responsibility are valued and recognised in the public service;

- (e)* fostering and maintaining a work environment within the public service that supports the active engagement and involvement of public officers;
- (f)* researching, reviewing and developing human resource policy to support the Government's objectives in accordance with legislative requirements and best practices;
- (g)* providing administrative support and technical advice to the Governor and the Deputy Governor in undertaking their duties under this Act;
- (h)* assisting the Deputy Governor to promote the Code of Conduct;
- (i)* assisting with the appointment of a public officer; and
- (j)* such other investigations and human resource-related services as the Governor or the Deputy Governor may request.

19 Powers of the Human Resources Management Unit

For the purposes of undertaking its duties under section 18, the Human Resources Management Unit may request information concerning human resource practices from any public office.

PART 6—PERSONNEL ARRANGEMENTS FOR HEADS OF DEPARTMENT

20 Procedure for appointing permanent secretaries

A permanent secretary shall be appointed by the Deputy Governor after considering the recommendations of the Commission and in accordance with section 84(2) of the Constitution and the regulations.

21 Terms and conditions of employment of permanent secretary

- (1) A permanent secretary is to be employed in accordance with the terms and conditions of the office of heads of department specified in the regulations.
- (2) A permanent secretary is an employee of the Government who is employed on the basis of an employment agreement prepared in accordance with the regulations and the collective agreement.
- (3) If a permanent secretary's service is terminated or if the permanent secretary is retired early on medical grounds or retired in the public interest, the permanent secretary's employment with the Government is terminated concurrently.

22 Remuneration of permanent secretaries

- (1) A permanent secretary's salary shall be within the salary scale prescribed in accordance with section 93 of the Constitution.
- (2) A permanent secretary's remuneration shall include a performance-related portion established in accordance with the regulations, the payment of which shall be based on the permanent secretary's performance as determined by the Deputy Governor for the duration of his employment agreement.

23 Dismissal and early retirement of permanent secretaries

- (1) The Deputy Governor may, after consultation with the Premier and in accordance with the procedures set out in the regulations and the collective agreement, dismiss a permanent secretary who engages in an act of misconduct.
- (2) Before dismissing a permanent secretary, the Deputy Governor shall give the permanent secretary an opportunity to improve his conduct to the required level.
- (3) Subject to subsections (4) and (5), the Deputy Governor may—

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- (a) require a permanent secretary to take early retirement on medical grounds, if the permanent secretary has a permanent disability;
 - (b) retire a permanent secretary in the public interest, but shall do so in accordance with the procedures set out in the regulations and the collective agreement.
- (4) The Deputy Governor shall consult with the Minister responsible for a ministry to which a permanent secretary is appointed before—
 - (a) requiring the permanent secretary to take early retirement on medical grounds; or
 - (b) retiring the permanent secretary in the public interest.
- (5) The Deputy Governor shall ensure that an open and fair process is used in taking action relating to a permanent secretary involving his—
 - (a) dismissal;
 - (b) early retirement on medical grounds; or
 - (c) retirement in the public interest.

Performance Management Arrangements for heads of department

24 Annual performance agreements for head of departments

- (1) Subject to subsection (2), within thirty days of the annual budget approved by the Legislative Assembly a head of department shall agree on an annual performance agreement with the Deputy Governor.
- (2) Within thirty days of the annual budget approved by the Legislative Assembly, the Governor shall agree on an annual performance agreement with—
 - (a) an Executive Member;
 - (b) the Director of Public Prosecutions;
 - (c) the Cabinet Secretary.

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- (3)** A performance agreement under subsections (1) and (2) shall contain—
- (a)* the period to be covered by the performance agreement;
 - (b)* the internal outputs that the head of department is to produce during the performance period;
 - (c)* any training, skills or personal development that the head of department is expected to undertake during the performance period;
 - (d)* any other performance expectations as may be specified and agreed between—
 - (i)* the head of department and the Governor; or
 - (ii)* the head of department and the Deputy Governor;
 - (e)* the procedures for changing the performance agreement during the financial year;
 - (f)* a signed acknowledgement by both parties to the agreement that they have discussed and agreed the performance agreement, together with the date on which that discussion and agreement occurred; and
 - (g)* any other matter as may be prescribed in regulations to be included in the performance agreement.
- (4)** The performance agreement of—
- (a)* a permanent secretary shall be signed by the permanent secretary and the Deputy Governor;
 - (b)* the head of department of—
 - (i)* the Office of the Deputy Governor - the Deputy Governor and the Governor;
 - (ii)* the Attorney General's Chambers - the Attorney General and the Governor;
 - (iii)* the Ministry of Finance-the Financial Secretary and the Governor;
 - (iv)* the Cabinet Secretariat - the Cabinet Secretary and the Governor.

- (5) During a financial year the parties to a performance agreement may agree to modify the performance agreement.

25 Annual performance assessment of head of department

- (1) Subject to subsection (2), the Governor shall review the performance of an Executive Member at the end of each financial year by means of an annual performance assessment.
- (2) The Governor, in consultation with the Chief Justice, shall review the performance of—
- (a) the Attorney General;
 - (b) the Director of Public Prosecutions; and
 - (c) the Registrar of the High Court,
- at the end of each financial year by means of an annual performance assessment.
- (3) The Governor in consultation with the Premier shall review the performance of the Cabinet Secretary at the end of each financial year by means of an annual performance assessment.
- (4) The Deputy Governor acting in consultation with the Premier, shall review the performance of a permanent secretary at the end of each financial year by means of an annual performance assessment.
- (5) The Deputy Governor shall undertake a performance assessment under subsection (4)—
- (a) after consultation with the Minister responsible for the ministry under which the permanent secretary is employed; and
 - (b) shall involve the permanent secretary in the review process.
- (6) In undertaking a performance assessment, the Governor, the Governor acting in consultation with the Chief Justice, the Governor acting in consultation with the Premier, the Deputy Governor or the Deputy Governor

acting in consultation with the Premier as the case may be, is to base his assessment on a factual comparison of actual performance with that specified in the performance agreement for the financial year, together with any modifications of that agreement made during the year.

- (7) Before completing a performance assessment, the Governor, the Governor acting after consultation with the Chief Justice, the Governor acting in consultation with the Premier, the Deputy Governor or the Deputy Governor acting in consultation with the Premier, as the case may be, shall consult with the head of department concerned and any other person the Governor or Deputy Governor thinks relevant about his views on the extent to which the head of department has achieved the performance specified in the performance agreement for the year.
- (8) The Governor, the Governor acting after consultation with the Chief Justice, the Governor acting in consultation with the Premier or Deputy Governor as the case may be, shall complete a performance assessment within thirty days of the annual report of a head of department's ministry or non-ministerial department being tabled in the Legislative Assembly in accordance with section 19 of the Public Finance (Management and Accountability) Act.

Employment arrangements for Director of Public Prosecutions

26 Procedure for appointing Director of Public Prosecutions

The Governor, acting after consultation with the Chief Justice, shall appoint a Director of Public Prosecutions in accordance with section 85(2) of the Constitution.

27 Remuneration and terms and conditions of employment of Director of Public Prosecutions

- (1) The salary of the Director of Public Prosecutions shall be within the salary scale prescribed in accordance with section 93 of the Constitution.

- (2) The remuneration of the Director of Public Prosecutions shall be agreed between the Governor and the Director of Public Prosecutions in accordance with section 97 of the Constitution.
- (3) The remuneration of the Director of Public Prosecutions—
 - (a) shall include a performance-related portion established in accordance with the regulations, the payment of which shall be based on the performance of Director of Public Prosecutions for the term of his fixed-term agreement, as determined by the Governor; and
 - (b) may be altered to his disadvantage only in accordance with section 97(6) of the Constitution.

Employment arrangements for Cabinet Secretary

28 Procedure for appointing Cabinet Secretary

The Governor, acting after consultation with the Premier, shall appoint the Cabinet Secretary.

29 Employment of Cabinet Secretary

- (1) The Cabinet Secretary shall be employed under the terms and conditions of employment prescribed in the regulations.
- (2) The Cabinet Secretary—
 - (i) is an employee of the Government; and
 - (ii) is to be employed on the basis of an employment agreement prepared in accordance with the regulations.

30 Remuneration of Cabinet Secretary

- (1) The Cabinet Secretary's salary shall be within the salary scale prescribed in accordance with section 93 of the Constitution.
- (2) The Cabinet Secretary's remuneration—

- (a)* shall be agreed between the Cabinet Secretary and the Governor; and
- (b)* shall include a performance related portion established in accordance with the regulations, the payment of which shall be based on the Cabinet Secretary's performance as determined by the Governor for the duration of his employment agreement.

31 Dismissal of Cabinet Secretary

- (1)** The Governor may, after consultation with the Premier and in accordance with the procedures set out in the regulations and the collective agreement, dismiss the Cabinet Secretary if he engages in an act of misconduct.
- (2)** Before dismissing the Cabinet Secretary the Governor shall give the Cabinet Secretary an opportunity to improve his conduct to the required level.
- (3)** Subject to subsections (4) and (5), the Governor may—
 - (a)* require the Cabinet Secretary to take early retirement on medical grounds, if the Cabinet Secretary has a permanent disability;
 - (b)* retire the Cabinet Secretary in the public interest, but shall do so in accordance with the procedures set out in the regulations and the collective agreement.
- (4)** The Governor shall consult with the Premier before—
 - (a)* requiring the Cabinet Secretary to take early retirement on medical grounds; or
 - (b)* retiring the Cabinet Secretary in the public interest.
- (5)** The Governor shall ensure that an open and fair process is used in taking action relating to the Cabinet Secretary involving his –
 - (a)* dismissal;
 - (b)* early retirement on medical grounds;
 - (c)* retirement in the public interest.

PART 7—PERSONNEL ARRANGEMENTS FOR STAFF

Authority to Appoint, Remunerate and Dismiss Staff

32 Power to appoint, promote and transfer staff

- (1) The Deputy Governor after considering the recommendations of the Commission may appoint, promote or transfer staff in accordance with the regulations.
- (2) The Deputy Governor shall on appointment, promotion or transfer—
 - (a) set out the duties of a staff member; and
 - (b) the place at which the staff member is to perform his duties,in the instrument of appointment, promotion or transfer.

33 Procedures and requirements for appointment of staff

Before a staff member is appointed, promoted or transferred the Deputy Governor shall ensure that the procedure set out in the regulations is complied with.

34 Basis of employment of staff

- (1) A staff member is an employee of the Government and is to be employed on the basis of an employment agreement prepared in accordance with the regulations.
- (2) A staff member's employment by the Government is terminated concurrently if—
 - (a) he is dismissed;
 - (b) he is retired early on medical grounds;
 - (c) he is retired in the public interest; or
 - (d) his service is otherwise terminated.
- (3) If a staff member applies for and is appointed to another post in the public service—

- (a) his engagement with the public service continues and remains uninterrupted despite his appointment to the other post; and
- (b) his tenure and other terms and conditions of employment are to be determined by the Deputy Governor as part of the appointment process and in accordance with the collective agreement.

35 Remuneration and other terms and conditions of employment

- (1) The salary of a staff member shall be within the salary scale established in the regulations.
- (2) A staff member's remuneration shall include a performance-related portion established in accordance with regulations, the payment of which is to be based on the staff member's performance at the yearly or other relevant period of his performance assessment.
- (3) The terms and conditions of employment of a staff member shall be agreed between the Deputy Governor and the staff member concerned but shall comply with—
 - (a) the minimum terms and conditions specified for the employment of a public officer in the collective agreement; and
 - (b) the regulations.

36 Power to discipline, dismiss, retire staff early or otherwise terminate

- (1) Subject to this section and the regulations, the Deputy Governor after considering the recommendations of the Commission may—
 - (a) discipline staff;
 - (b) dismiss staff;
 - (c) retire staff early on medical grounds;
 - (d) retire staff in the public interest; or
 - (e) otherwise terminate the service of the staff member.

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- (2) In exercising his power under subsections (1)(a) and (b), the Deputy Governor may discipline or dismiss a staff member who engages in an act of misconduct.
- (3) In exercising his authority under subsection (1)(c), the Deputy Governor may require a staff member to take early retirement on medical grounds if the staff member has a permanent disability.
- (4) In exercising his authorities under subsection (1)(e), the Deputy Governor may make a staff member redundant if—
 - (a) the duties and functions assigned to the staff member are no longer required;
 - (b) those duties and functions will not be substantively transferred to another person or position in the public service; and
 - (c) there is no suitable vacant post in the public service to which the staff member could be transferred.
- (5) Before dismissing a staff member, the Deputy Governor shall give the staff member an opportunity to improve his conduct to the required level.
- (6) The Deputy Governor shall ensure that in taking any action under this section—
 - (a) an open and fair process operates; and
 - (b) he exercises his power in accordance with the regulations and the Public Service Regulations.

Performance Management Arrangements for Staff

37 Performance agreements with staff

- (1) A head of department shall enter into a performance agreement with each staff member of his department.
- (2) A performance agreement for a staff member shall contain—
 - (a) the name of the staff member;
 - (b) the name of the head of department;

- (c) the period to be covered by the performance agreement;
 - (d) the external outputs and internal outputs (or parts of the external and internal outputs) that the staff member is to produce during the performance period;
 - (e) any training, skills or personal development that the staff member is expected to undertake during the performance period;
 - (f) the procedures for changing the performance agreement during the year;
 - (g) a signed acknowledgement by both parties to the agreement that they have discussed and agreed the performance agreement, together with the date on which that discussion and agreement occurred; and
 - (h) any other performance expectations as may be specified and agreed between the parties
- (4) The performance agreement shall be signed by the two parties concerned.
- (5) The performance agreement may, with the agreement of the parties to it, be modified during the financial year to which it relates.

38 Annual performance assessment of staff

- (1) The performance of a divisional head is to be reviewed at the end of each financial year by means of an annual performance assessment undertaken by the head of department and involving the divisional head concerned.
- (2) The performance of each staff member, other than a staff member referred to in subsection (1) is to be reviewed at the end of each financial year by means of an annual performance assessment undertaken by the relevant head of department or divisional head and involving the staff member concerned.
- (3) For the purposes of an annual performance assessment, performance is to be assessed against the performance

agreement for that year, together with any modifications to that agreement, for the staff member concerned.

- (4) Before completing a performance assessment, the head of department or divisional head, as the case may be, shall consult with the staff member concerned and any other person he considers relevant, about his views on the extent to which the staff member has achieved the performance specified in his performance agreement for the year.
- (5) A performance assessment is to be completed as soon as possible after information about the performance of the staff member is available and no later than thirty days after the annual report of the department has been tabled in the Legislative Assembly.

39 Application to officers requiring legal qualifications

- (1) Subject to subsection (2), sections 34, 35, 37 and 38 apply to a public officer requiring legal qualifications;
- (2) The duties undertaken by Deputy Governor in sections 34 and 35 are to be undertaken by the Governor in relation to a public officer requiring legal qualifications.

PART 8—MISCELLANEOUS

40 Oath of secrecy and allegiance or affirmation of secrecy and allegiance

- (1) Before assuming the duties of his post, a person appointed to a public office shall take the oath of secrecy and allegiance or the affirmation of secrecy and allegiance as set out in Schedule 2.
- (2) An oath taken under subsection (1) shall be administered in the presence of a Judge, a Magistrate, the Registrar of the High Court, a Justice of the Peace or a Commissioner for Oaths.

41 Recognition of associations and trade unions

- (1) An association or trade union representing public officers shall be governed by the legislation regulating trade unions.
- (2) Subject to any other enactment to the contrary, an existing association or trade union may continue to represent public officers in respect of any matter specified in section 42.
- (3) Public officers may form associations or trade unions, and the associations or trade unions shall, subject to the Code, be accepted by the Deputy Governor as recognised associations or trade unions of public officers for consultation and negotiation in respect of any matter specified in section 42.

42 Consultation and negotiation

The Deputy Governor shall provide for and establish procedures for consultation and negotiation between the Government and the recognised association of public officers in respect of—

- (a) grievances;
- (b) remuneration; and
- (c) terms and conditions of employment.

43 Resignation

- (1) Subject to subsection (2), a head of department who intends to resign his office shall give to the Deputy Governor at least three months written notice of his intention to resign.
- (2) The Deputy Governor, the Attorney General, the Financial Secretary, the Director of Public Prosecutions and the Registrar shall give to the Governor at least three month's written notice of his intention to resign.
- (3) An officer requiring legal qualifications shall give to the Governor at least one month's written notice of his intention to resign.

- (4) A staff member who intends to resign his office shall give to the Deputy Governor one month's written notice of his intention to resign.
- (5) A public officer employed on a fixed-term employment agreement who intends to resign his office shall notify the Deputy Governor or the Governor as the case may be in accordance with the terms of his fixed-term employment agreement.
- (6) A public officer who fails to comply with this section is liable to pay the full amount of his monthly salary in lieu of notice.
- (7) The amount due under subsection (4) may be recovered as a civil debt.

44 Sick leave

- (1) Subject to this Act, a public officer is entitled to paid sick leave as provided for in the collective agreement.
- (2) Subject to subsection (3), a public officer on sick leave is entitled to his remuneration, less any amount payable to the public officer by the Accountant General under section 31A of the Social Security Act.
- (3) A public officer is entitled to his remuneration during a period of sick leave exceeding two consecutive days only if his incapacity to work resulting from sickness or injury is certified by a registered medical practitioner.

45 Power to make regulations

- (1) The Governor may make regulations for carrying out or giving effect to this Act, and in particular, for the following—
 - (a) to establish procedures for advertising vacancies and appointing public officers;
 - (b) to establish the salary scales of public officers;
 - (c) to establish the minimum contents of performance agreements; and

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- (d) to establish procedures to be applied in the case of redundancy, retirement of public officers, or other termination.
- (2) The Governor acting on the advice of Cabinet may, by Order, amend a Schedule.

46 Transitional provision

Matters related to appointment, promotion, transfer and discipline are governed by the Public Service Act and Regulations until regulations to this Act are enacted.

SCHEDULE 1
Public Service Code of Conduct

(Section 3)

Honesty and Integrity

1. A public officer shall—
 - (a) behave honestly, responsibly and conscientiously, and promptly and effectively discharge his duties with professionalism, integrity and care and shall not wilfully refuse or omit to perform his duties;
 - (b) attend work at the scheduled time, seeking leave only when necessary and in accordance with the Regulations and the collective agreement;
 - (c) not directly or indirectly be involved in any financial or other interest or undertaking, without the written consent of the head of department, which could compromise, or reasonably be said to compromise his job performance or title;
 - (d) use official resources, including electronic or technological resources only for the purposes for which they are authorised;
 - (e) not use official property or facilities without authority for purposes not connected with his official duties;
 - (f) administer public money judiciously and efficiently with a view to obtaining best value for money and in accordance with the Public Finance (Management and Accountability) Act;
 - (g) act with due diligence with regard to public money under his control;
 - (h) declare any conflict that arises between his private interests and official duties;
 - (i) not accept gifts from a person in the form of money, entertainment or any service that may compromise

his integrity; however, gifts that are of minimal value, infrequent and within the normal custom of courtesy and appreciation are permissible and where there is doubt, the matter should be referred to the head of department who would make a determination as to whether the gift could be received. If the gifts are received, a head of department shall ensure that a record is kept within the department;

- (j) not solicit or accept bribes;
- (k) abide by laws, regulations, the collective agreement and established procedures when discharging his duties.

Accountability and Transparency

2. A public officer shall—
 - (a) exercise prudence in the use of public funds, resources and utilities;
 - (b) not engage in unofficial activities during official hours, or conduct such activities on office premises or use public property for the conduct of such activities;
 - (c) be open and transparent when –
 - (i) handling and processing documents under his care in the course of his duties;
 - (ii) executing decision-making processes for the Government of Montserrat; and
 - (iii) serving the public.
 - (d) disclose, and take reasonable steps to avoid any conflict of interest (real or apparent) with his duties as a public officer and shall not use his official position for personal or familial gain.

Impartiality and Objectivity

3. A public officer shall—
- (a) provide courteous and efficient service to all members of the public regardless of colour, creed, gender, age, race or other status;
 - (b) not discriminate against customers including public officers in the execution of his duties;
 - (c) provide honest, timely and impartial advice to Ministers of Government and other members of the Legislative Assembly;
 - (d) be politically neutral in his work and serve the Government of the day in a manner that ensures that he maintains the confidence of the Government, while also ensuring that he is able to establish the same professional and impartial relationship with future Governments;
 - (e) ensure that his participation in political matters or public debate or discussions, does not conflict with the proper performance of his functions as a public officer;
 - (f) comply with the guidelines which have been laid down regarding political activities in Regulations, the collective agreement or any other official document;
 - (g) not, in the course of performance of his duties, use his influence to further personal and other ends which are not part of Government policy;
 - (h) not exercise his authority unreasonably or abuse that authority in the course of performing his duties.

Professionalism

4. A public officer shall—
- (a) adhere to the professional Code of Conduct, which applies to a professional body of which he is a member;
 - (b) not be influenced by social and political affiliations in the performance of his duties;
 - (c) treat all customers with respect and dignity and respect their rights under the Constitution;
 - (d) comply with lawful and reasonable directions from his supervisor and work place rules; and
 - (e) behave in a way that brings credit to his position and enhances the reputation of the public service.

Confidentiality

5. A public officer shall—
- (a) not disclose to any unauthorised person any official or confidential information or documents acquired in the execution of his duties unless under proper authority or he is required by law to do so;
 - (b) not attempt to influence or frustrate the policies, decisions or actions of Government by the unauthorised, improper or premature disclosure of any information to which he has or had access as a public officer;
 - (c) respect the confidences of the Government;
 - (d) treat all official information as confidential, and, unless authorised to do so, shall not give or disclose, directly or indirectly, any information about official business.

Department and Behaviour

6. (1) A public officer shall—
- (a) not behave in an immoral, obscene or disorderly way in the office or when representing the Government on official duty;
 - (b) dress in accordance with acceptable norms of the public service as stipulated in Establishment Circulars;
 - (c) not engage in activities that may bring his office into disrepute, such as drug use, gambling or substance abuse or other related activities which may make the public officer liable to judicial action, unfit for duty or affect his performance on the job, or cause a hazard to himself or to others;
 - (d) not engage in behaviour which may amount to—
 - (i) bullying; or
 - (ii) any form of harassment including sexual harassment;
 - (e) not at any time engage in any activity or behaviour that brings the public service or the Government into disrepute including—
 - (i) making excessive noise which disturbs others including colleagues, clients or customers;
 - (ii) the illegal possession or use of firearms, ammunition, weapons or explosives;
 - (iii) fighting or other forms of disruptive behaviour;
 - (iv) any act of sabotage;
 - (v) the careless use, abuse or theft of Government property;
 - (vi) larceny or theft from others, including colleagues, clients, customers;
 - (vii) the use of obscene or threatening language;

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- (viii) the failure to obey a reasonable order from a supervisor;
 - (f) not be absent from office or official duties without leave or a valid excuse and shall not be habitually irregular in the time of arrival or departure from the place of employment;
 - (g) be courteous and respectful to everyone, including other public officers, clients and members of the general public and treat everyone with impartiality, fairness and without harassment of any kind.
- (2) For the purposes of subparagraph (1) sexual harassment includes—
- (i) applying pressure to an officer for sexual activity or sexual favour;
 - (ii) intentional and unwanted physical contact with an officer whether of a sexual nature or not and;
 - (iii) sexually suggestive speech and messages to an officer with a sexual tone or content.
-

SCHEDULE 2
OATH AND AFFIRMATION OF SECRECY
AND ALLEGIANCE
(Section 40)

OATH OF SECRECY AND ALLEGIANCE

I, swear—

- (a) that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to the law;
- (b) that I will faithfully and honestly fulfil the duties that devolve upon me by reason of my employment in the public service; and
- (c) that I will not without due authority in that behalf, in any manner whatsoever disclose or communicate any facts or information being facts or expressions of opinion based on facts that come to my knowledge by reason of my employment.

So help me God!

SWORN before me at the)
Registrar's Office, Brades,)
Montserrat, this day)
of , 20) *(Name of public officer)*

Before me:-

.....

**AFFIRMATION OF SECRECY AND
ALLEGIANCE**

I, affirm and declare—

- (a) that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to the law;
- (b) that I will faithfully and honestly fulfil the duties that devolve upon me by reason of my employment in the public service; and
- (c) that I will not, without due authority in that behalf, in any manner whatsoever disclose or communicate any facts or information being facts or expressions of opinion based on facts that come to my knowledge by reason of my employment.

AFFIRMED before me at)
the Registrar's Office, Brades,)
Montserrat, this day)
of , 20) (*Name of public officer*)

Before me:-

.....

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SPEAKER

Passed by the Legislative Assembly this day of
, 2014.

CLERK OF THE LEGISLATIVE ASSEMBLY