

# **PUBLIC ADMINISTRATION BILL, 2014**

## **EXPLANATORY MEMORANDUM**

The purpose of the Bill is to provide for the efficient and effective operation of the public service of Montserrat.

### **Part 1 of the Bill sets out the preliminary provisions.**

Clause 1 sets out the short title of the Bill. It allows for the Bill to come into force on a date appointed by the Governor acting on the advice of Cabinet. It also allows for different clauses to come into force on different dates.

Clause 2 sets out the interpretation clause of the Bill. It defines a number of key terms used in the Bill. The defined terms include:

- “collective agreement”;
- “department”;
- “divisional head”;
- “Executive Member”;
- “head of department”; and
- “open and fair employment process”.

### **Part 2 of the Bill provides for the Public Service Code of Conduct.**

Clause 3 places a duty on public officers to comply with the Public Service Code of Conduct, which is set out in Schedule 1. 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.

Clause 3 also places a duty on the Deputy Governor to uphold and promote the Code of Conduct throughout the public service and to inquire into the investigation of an alleged breach of the Code of Conduct and the resolution of the breach. The Deputy Governor is empowered to recommend to the Governor an amendment to Schedule 1. He may only make the recommendation after consultation with the recognised association of public officers and in accordance with the terms of the collective agreement.

### **Part 3 of the Bill sets out the personnel authorities of the Governor.**

Clause 4 empowers the Governor to appoint the following persons in accordance with the Constitution:

- an Executive Member in accordance with sections 39 and 85 of the Constitution;
- the Director of Public Prosecutions, the Registrar of the High Court and a public officer requiring legal qualifications in accordance with section 85(2) of the Constitution; and
- the Auditor General in accordance with section 101 of the Constitution.

**Part 4 of the Bill addresses the personnel arrangements for Executive Members.**

Clause 5 sets out the procedure for appointment of Executive Members. The Deputy Governor is appointed by the Governor acting in accordance with sections 23 and 85 of the Constitution, the Attorney General is appointed by the Governor acting after consultation with the Chief Justice in accordance with section 85(2) of the Constitution and the Financial Secretary is appointed by the Governor acting after consultation with the Premier in accordance with section 85(1) of the Constitution. Clause 5 also empowers the Governor, in accordance with section 23(3) of the Constitution, to appoint a person to act as Deputy Governor.

Clause 6 makes provision for the employment of Executive Members. An Executive 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. An Executive Member is also, subject to the Constitution, employed under terms and conditions of employment prescribed in the regulations.

Clause 7 makes provision for the remuneration of Executive Members. An Executive Member's salary is within the salary scale specified pursuant to sections 92 and 93 of the Constitution and shall be agreed between the Governor and the Executive Member. Further, remuneration must be paid to the Executive Member in accordance with section 97(1) of the Constitution and may be altered to an Executive Member's disadvantage only in accordance with section 97(6) of the Constitution. The payment of that portion of an Executive Member's remuneration which comprises increment and/or gratuity is based on the Executive Member's performance.

Clause 8, in accordance with the Constitution empowers the Governor, with the prior approval of the Secretary of State, to remove an Executive Member from office for misbehaviour or for inability to discharge the functions of his office, whether arising from infirmity of body, mind or any other cause.

Clause 9 requires the Governor to enter into a performance agreement with an Executive Member for each financial year. The performance agreement must specify the performance expected of the Executive Member for that financial year.

Clause 10 makes provision for the Governor's assessment of the performance of an Executive Member at the end of each financial year. Before a performance assessment is carried out, the Governor is required to consult with the Executive Member about the extent to which he has achieved the performance specified in the performance agreement for the financial year. The Governor is required to 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.

**Part 5 of the Bill sets out the duties, responsibilities and powers of the Deputy Governor.**

Clause 11 sets out the responsibilities of the Deputy Governor under section 24 of the Constitution, including the leadership and management of the public service and under sections 24 and 84 of the Constitution, including the appointment, termination of appointment, suspension, dismissal, retirement and the taking of disciplinary action in respect of a public officer.

The Deputy Governor is also empowered to, among other things:

- administer the regulations, orders and policies with respect to the public service;
- 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;
- review, in consultation with the Financial Secretary, the remuneration payable to public officers;
- develop, promote, review and evaluate the human resource policies and practices for the public service;
- develop and promote the administration of the Government's succession planning systems;
- provide for and establish, in consultation with the recognised association of public officers; procedures for dealing with issues relating to discipline in the public service;
- provide for and establish, in consultation with the recognised association of public officers; procedures for the management and resolution of grievances within the public service;
- provide for the establishment of a performance management system in the public service;
- develop, in consultation with the heads of department, a training and development plan for the public service;
- implement the administrative rearrangement of departments;
- transfer a staff member in the public interest;
- take steps to resolve a situation where a public officer is subject to political pressure;
- approve the secondment of public officers in the public service to Government entities outside of the public service;
- determine the recruitment policy for the public service;
- enter into employment agreements with public officers;
- negotiate and enter into collective agreements with the recognised association of public officers; and
- subject to the Constitution, conduct all things for the efficient and effective functioning of the public service.

Clause 12 requires the Deputy Governor to enter into a performance agreement with a permanent secretary at the end of each financial year. The performance agreement must be sufficiently detailed and clear enough to provide a proper basis for the assessment of the permanent secretary's performance at the end of a financial year.

Clause 13 places a duty on the Deputy Governor to prepare an annual performance assessment for a permanent secretary at the end of each financial year. In preparing an annual performance assessment for a permanent secretary, the Deputy Governor must act on the basis of the facts before him and base his assessment on a factual comparison of the permanent secretary's actual performance with that specified in his performance agreement for the financial year, together with any modification of the performance agreement.

Clause 14 addresses the secondment of public officers to a Government company or statutory body and the secondment of a person from a statutory body or Government company to a public office.

If a public officer is to be seconded the Deputy Governor must ensure that the terms and conditions of the secondment are set out in an agreement among the Deputy Governor, the public officer and the statutory body or Government company to which the public officer is being seconded. Further, the Deputy Governor must ensure that an agreement for secondment of a public officer provides for the public officer to be paid the full monthly salary of the position to which he is seconded and to be eligible for the remuneration applicable to the position to which he is seconded and leave and other conditions of employment. The remuneration, leave and other conditions of employment for which the public officer is eligible on secondment, must be no less favourable than what he received as a public officer before and up to the effective date of his secondment. Clause 14 also provides for the public officer to remain on the establishment of the public service and permits the public officer to apply for another position within the public service. The service of a public officer while on secondment counts for pension purposes.

If a person is seconded to a public office, the Deputy Governor must ensure that the terms and conditions of the secondment are set out in an agreement among the Deputy Governor, the person being seconded and the statutory body or Government company from which the person is being seconded. Further, a person on secondment must, unless the Deputy Governor directs otherwise, be paid the full monthly salary of the public office to which he is seconded and is eligible to the remuneration applicable to the public office to which he is seconded and leave applicable to the public office to which he is seconded. The remuneration, leave and other conditions of employment for which the person is eligible must be no less favourable than what he received as an employee of a statutory body or Government before and up to the effective date of his secondment.

Clause 15 addresses the exertion of political pressure by Ministers, and Executive Members on public officers. If a Minister exerts political pressure on a public officer, the Deputy Governor is

required to advise the Premier of his concerns and request that the Premier discuss the matter with the Minister concerned. If an Executive Member exerts political pressure on a public officer, the Deputy Governor is required to discuss the matter with the Executive Member concerned and request that he desist.

Clause 16 addresses the exertion of political pressure by Members of Legislative Assembly on public officers. If a Member of the Legislative Assembly exerts political pressure on a public officer, the Deputy Governor is required to advise the Premier or the Leader of the Opposition of his concerns and request that the Premier or the Leader of the Opposition discuss the matter with the Member of Legislative Assembly concerned.

Clause 17 requires that the Deputy Governor act independently in carrying out his duties, without the direction of any other person or authority other than the Governor to the extent specified in this Act and the Constitution. He is also required to ensure that an open and fair employment process operates in the public service.

Clause 18 sets out the duties of the Human Resources Management Unit. The Human Resources Management Unit is responsible for -

- providing assistance, administrative support and technical advice to the Governor and the Deputy Governor in undertaking their duties under this Act,
- assisting the Deputy Governor to promote the Public Service Values and the Public Servant's Code of Conduct,
- developing and operating remuneration policies and reward mechanisms to ensure that individual contribution and responsibility are valued and recognised in the public service,
- processing the recruitment of public officers efficiently,
- fostering and maintaining a work environment within the public service that supports the active engagement and involvement of public officers,
- ensuring that the Government's policies, procedures and management practices support its objectives,
- researching, reviewing and developing human resource policy to support the Government's strategic goals in accordance with legislative requirements and best practices,
- establishing policies to support performance management and evaluation of public officers,
- developing and operating effective conflict management principles,
- assisting with the appointment of a public officer, and
- such other investigations and human resource-related services as the Governor or the Deputy Governor may request.

Clause 19 empowers the Human Resources Management Unit to request information concerning human resource practices from any public office for the purposes of undertaking its duties under clause 18.

**Part 6 of the Bill addresses the personnel arrangements for heads of departments.**

Clause 20 sets out the procedure for appointing permanent secretaries by the Deputy Governor. The Deputy Governor is empowered to reappoint a permanent secretary who has reached the end of a fixed-term employment agreement or attained the retirement age for public officers, provided the latter is in accordance with the Government's policy or regulations to the Act.

Clause 21 sets out the terms and conditions of employment of a permanent secretary. A permanent secretary is employed on the basis of an employment agreement prepared in accordance with the regulations and the collective agreement and is employed in accordance with the terms and conditions of the appointment of heads of department specified in the regulations. Further, if a permanent secretary's services are terminated, or if he retires early on medical grounds or retires in the public interest, the permanent secretary's employment with the Government is terminated concurrently.

Clause 22 addresses the remuneration of a permanent secretary. A permanent secretary's salary must be within the salary scale specified pursuant to sections 92 and 93 of the Constitution. The payment of that portion of permanent secretary's remuneration which comprises increment and/or gratuity is based on the permanent secretary's performance.

Clause 23 empowers the Deputy Governor, in accordance with the procedures set out in the regulations, to dismiss a permanent secretary who engages in misconduct. Clause 24 also empowers the Deputy Governor to retire a permanent secretary in the public interest or require a permanent secretary to take early retirement on medical grounds. Before requiring a permanent secretary to take early retirement on medical grounds or retire in the public interest, the Deputy Governor must consult with the Minister responsible for a ministry to which the permanent secretary is appointed.

Clause 24 provides for the creation of annual performance agreements for heads of departments. An Executive Member or the Director of Public Prosecutions must agree on an annual performance agreement with the Governor within thirty days of the approval by the Legislative Assembly of the annual budget. All other heads of departments must agree on an annual performance agreement with the Deputy Governor within thirty days of the approval by the Legislative Assembly of the annual budget. Clause 24 also describes the contents of a performance agreement and permits the parties to a performance agreement, by agreement to modify the performance agreement during the financial year to which it relates.

Clause 25 provides for the completion of annual performance assessment of heads of departments. The Governor is required to review the performance of an Executive Member and

the Director of Public Prosecutions and must complete the performance assessment within thirty days of the annual report of ahead of department's ministry or non-ministerial department being tabled in the Legislative Assembly. The Deputy Governor must review the performance of a permanent secretary at the end of each financial year by means of an annual performance assessment and must complete the performance assessment within thirty days of the annual report of the permanent secretary's ministry being tabled in the Legislative Assembly. In undertaking the performance assessment, the Governor or Deputy Governor is required 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.

Clause 26 addresses the procedure for appointing the Director of Public Prosecutions, in accordance with section 85(2) of the Constitution.

Clause 27 addresses the remuneration and terms and conditions of employment of Director of Public Prosecutions.

Clauses 28 to 31 address employment arrangements for the Cabinet Secretary including the procedure for appointing the Cabinet Secretary, the employment of the Cabinet Secretary, remuneration of the Cabinet Secretary and the dismissal of the Cabinet Secretary.

**Part 7 of the Bill addresses the personnel arrangements for staff.**

Clause 32 provides for the appointment, promotion or transfer of staff by the Deputy Governor. Further, the Deputy Governor is required to set out the duties of a staff member.

Clause 33 places a duty on the Deputy Governor to ensure that the procedure set out in the regulations are complied with, before a staff member is appointed, promoted or transferred.

Clause 34 sets out the basis of employment of staff. 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 collective agreement and the regulations. Further, a staff member's employment is terminated if he is dismissed, retired early on medical grounds, retired in the public interest or otherwise.

Clause 35 addresses the remuneration and other terms and conditions of employment of staff members. The salary of a staff member shall be within the salary scale specified pursuant to sections 92 and 93 of the Constitution. The payment of that portion of a staff member's remuneration which comprises increment and/or gratuity remuneration is based on the staff member's performance.

Clause 36 addresses the power of the Deputy Governor to discipline, dismiss, retire staff early or otherwise terminate staff members. The Deputy Governor is empowered to discipline or dismiss a staff member who engages in an act of misconduct. The Deputy Governor may require a staff

member to take early retirement on medical grounds if the staff member has a permanent disability. In exercising his functions under this section, the Deputy Governor must ensure that an open and fair process operates and that he exercises his power in accordance with the regulations.

Clause 37 requires a head of department to enter into a performance agreement with each staff member of his department for each financial year. It sets out the contents of the performance agreement and permits the parties by agreement, to modify the performance agreement during the financial year to which it relates.

Clause 38 addresses the annual performance assessment of staff. A head of department is required to undertake a review of the performance of a divisional head, by means of an annual performance assessment. A head of department or divisional head is required to undertake a review of the performance of all other staff members within his division or department (other than a divisional head), by means of an annual performance assessment.

Before completing a performance assessment, a head of department or divisional head is required to 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.

Clause 39 provides that clauses 34, 35, 37 and 38 apply to public officers requiring legal qualifications.

**Part 8 of the Bill provides for miscellaneous matters.**

Clause 40 requires a person appointed as a public officer to take an oath of secrecy and allegiance or an affirmation of secrecy and allegiance before assuming the duties of his post.

Clause 41 provides for the recognition and continuation of associations or trade unions representing public officers and such associations must be governed by the legislation regulating trade unions.

Clause 42 places a duty on the Deputy Governor to provide for and establish procedures for consultation and negotiation between the Government and the recognised association of public officers in respect of grievances, remuneration and terms and conditions of employment of public officers.

Clause 43 makes provision for the manner of resignation of public officers. If the Attorney General, the Director of Public Prosecutions or the Registrar of the High Court intends to resign his office must give to the Governor at least three month's written notice of his intention to resign. Any other head of department who intends to resign his office must give to the Deputy Governor at least three month's written notice of his intention to resign. A public officer who is a legal officer requiring legal qualifications must give to the Governor one month's notice of his



intention to resign. Any other public officer who intends to resign his office must give to the Deputy Governor one month's notice of his intention to resign. If a public officer who is employed on a fixed-term employment agreement intends to resign his office, he must notify the Deputy Governor in accordance with the terms of his fixed-term employment agreement. Further, if a public officer resigns without giving the requisite notice, he is liable to pay the full amount of his monthly salary in lieu of notice.

Clause 44 (1) of the Bill provides that subject to the Act, a public officer is entitled to paid sick leave as provided for in the collective agreement. Sub-clause (2) provides that subject to sub-clause (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. Sub-clause 3 provides that a public officer is entitled to his remuneration during a period of sick leave exceeding two consecutive only if his capacity to work resulting from his injury or sickness is certified by a registered medical practitioner.

Clause 45 gives the Governor acting on the advice of Cabinet the power to make regulations for:

- establishing procedures for publicising vacancies and appointing public officers,
- establishing the salary scales of public officer, and
- establishing procedures to be applied in the case of redundancy, retirement of public officers or other termination.

Clause 46 provides for the application of the Public Service Act and Regulations in relation to appointment, promotion, transfer and discipline, until the enactment of regulations under the Bill.

Schedule 1 sets out the Public Service Code of Conduct.

Schedule 2 sets out the oath of secrecy and allegiance and the affirmation of secrecy and allegiance, to be taken by a person appointed to a public office.

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