



MONTSERRAT

CHAPTER 4.15

COMMUNITY SERVICE ORDERS ACT and Subsidiary Legislation

Revised Edition

showing the law as at 1 January 2013

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—

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COMMUNITY SERVICE ORDERS REGULATIONS – Section 16

S.R.O. 50/1996 .. in force 27 June 1996

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CHAPTER 4.15

COMMUNITY SERVICE ORDERS ACT

ARRANGEMENT OF SECTIONS

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2. Interpretation
3. Community Service Order
4. Person convicted may inform Court of his willingness to perform Community Services
5. Number of hours of work and court supervision
6. Place and time for presentation for work and conditions of the Order
7. Court to explain the nature of the Order
8. Court to serve Order
9. Obligations of persons in respect of whom Orders are in force
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11. Duration of Community Service Order
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15. Breach of requirement as to Community Service Order
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CHAPTER 4.15

COMMUNITY SERVICE ORDERS ACT

(Acts 18 of 1994 and 9 of 2011)

AN ACT TO MAKE PROVISION WITH RESPECT TO THE PERFORMANCE OF COMMUNITY SERVICE BY PERSONS CONVICTED OF CERTAIN OFFENCES.

Commencement

[31 December 1994]

Short title

1. This Act may be cited as the Community Service Orders Act.

Interpretation

2. In this Act unless the context otherwise requires—

“**assigned officer**”, in relation to a Community Service Order, means a probation officer, a Community Service Officer or any other person who may be assigned the function of implementing a Community Service Order;

“**Community Service Order**” means an order made under section 3;

“**community service work**” means unpaid work performed by a convicted person;

“**Regulation**” means a regulation made under this Act;

“**work**” includes any form of services or activity.

Community Service Order

3. (1) Where a person is before the court for sentencing after being convicted of an offence punishable by imprisonment other than an offence the sentence for which is fixed by law the court may, instead of imposing a penalty of imprisonment, and whether or not it imposes any fine also make an Order requiring the person to perform community service work for a number of hours not exceeding the number of hours determined on the basis of thirty two hours for one month.

(2) Where a court, in respect of a person convicted of an offence makes a Community Service Order in respect of the offence, the court may in addition impose any other punishment which it may impose under the law other than imprisonment.

Person convicted may inform Court of his willingness to perform Community Services

4. A court may not make a Community Service Order in respect of a person unless the person informs the Court of his willingness to perform Community Service as an alternative to imprisonment and the court—

- (a) is satisfied after considering reports from an assigned officer that the person is a suitable person to perform community service work under such Order; and
- (b) is satisfied that suitable community service work is available.

Number of hours of work and court supervision

5. (1) Where a court makes a Community Service Order, it shall also specify in the Order the total number of hours work required to be performed and the number of hours work required to be performed on days when work is assigned.

(2) A person in respect of whom a Community Service Order is made will not be required to work on Sundays, public holidays and such other days as he is certified by a medical officer to be unfit to do physical work or on such days when performance of physical work is inconsistent with the religious persuasion to which he belongs.

(3) The Magistrate's Court shall be the supervising court in respect of Community Service Orders whether or not such Orders are made by the Magistrate's Court.

Place and time for presentation for work and conditions of the Order

6. Where a court makes a Community Service Order, it shall specify in the Order—

- (a) a place at which and the assigned officer to whom the person subject to the Order shall present himself, for the purpose of enabling the administration of the Order to be commenced;
- (b) a period within which the person in respect of whom the Order is made shall so present himself; and
- (c) conditions subject to which the Community Service Order is made as the court may deem it appropriate.

Court to explain the nature of the Order

7. Where a court proposes to make a Community Service Order it shall, before making the Order, explain or cause to be explained to the person in respect of whom it is proposed to make the Order, in language readily to be understood by him—

- (a) the purpose and effect of the proposed Order;

- (b) the consequences that may follow if he fails to comply with the proposed Order or any requirement made by or under this Act or the regulations in respect of the proposed Order; and
- (c) that the proposed Order may be amended or revoked.

Court to serve Order

8. A court which makes a Community Service Order shall, as soon as practicable after the Order is made, cause the Order to be reduced to writing in the prescribed form and serve copies to—

- (a) the person in respect of whom such Order is made;
- (b) the “**assigned officer**” who will be responsible for the administration of such Order; and
- (c) the Magistrate’s Court which will be the supervising Court in respect of such Order if the Order is made by the High Court.

Obligations of persons in respect of whom Orders are in force

9. A person in respect of whom a Community Service Order is in force shall, in addition to complying with any other requirement made by or under this Act—

- (a) perform for the number of hours specified in the Order such community service work at such time as may be directed by the assigned officer;
- (b) perform that work in a satisfactory manner;
- (c) while performing that work, comply with any reasonable direction of the assigned officer; and
- (d) inform the assigned officer of any change in his place of residence.

Assigned officer to avoid conflict

10. In giving directions to a person under section 9 the assigned officer shall, as far as practicable, avoid—

- (a) any conflict with the person’s religious beliefs, if any; and
- (b) any interference with the times, if any, at which the person normally works or attends a school or other educational establishment.

Duration of Community Service Order

11. A Community Service Order shall remain in force until—

- (a) the person in respect of whom the Order is made has performed community service work in accordance with any

requirement made by or under this Act in respect of the Order for the number of hours specified in the Order; or

(b) the Order is revoked,

whichever first occurs.

Variation of the Order

12. (1) Where, on the application of a person in respect of whom a Community Service Order is in force or on the application by the assigned officer, it appears to the court which made the Order that it would, having regard to circumstances that have arisen since the Order was made, be in the interest of justice to do so, the court may vary the period during which the Order remains in force.

(2) Where the application is made under subsection (1) the person in respect of whom the Community Service Order is in force shall be summoned to appear before the court on the day his application or application in respect of him is to be heard.

Commission of an offence while the Order is in force

13. Where a person in respect of whom a Community Service Order is in force appears before a court, being a court of equal jurisdiction to or higher jurisdiction than the court that made the Order, for sentencing in respect of an offence other than the offence in respect of which the Order was made, that court may revoke the Order and deal with the person, for the offence in respect of which the Order was made in any manner in which he could have been dealt with for that offence by the court that made the Order as if that Order had not been made.

Notification of change in Orders

14. Where a court—

(a) pursuant to section 12 vary the duration of the Order; or

(b) pursuant to section 13 revokes the Order,

the court shall order notice to be served as regards such variation or revocation, as the case may be, to the person in respect of whom such Order was made to the assigned officer and the supervising Court.

Breach of requirement as to Community Service Order

15. (1) If at any time while a Community Service Order is in force in respect of an offender it appears on information to the Magistrate that the offender has failed to comply with any of the requirements made by or under section 9 in respect of the Order the Magistrate may issue a summons requiring the offender to appear before him at the time specified therein, or may, if the information is in writing and on oath, issue a warrant for his arrest.

(2) Any summons or warrant issued under this section shall direct the offender to appear or be brought before the Magistrate.

(3) If it is proved to the satisfaction of the Magistrate before whom the offender appears or is brought under this section that he has failed without reasonable excuse to comply with any of the requirements imposed on him by or under section 9 the Magistrate may, without prejudice to the continuance of the Order, impose on him a fine of \$1,000 or may—

(a) if the Community Service Order was made by the Magistrate's Court, revoke the Order and deal with the offender for the offence in respect of which the Order was made, in any manner in which he could have been dealt with for that offence by the Court which made the Order as if the Order had not been made;

(b) if the Order was made by the High Court, commit him to custody or release him on bail until he can be brought or appear before the High Court.

(4) The Magistrate's Court shall deal with an offender's case under subsection (3)(b) by sending a certificate to the High Court certifying that the offender has failed to comply with the requirements of section 9 in the respect specified in the certificate, together with such other particulars of the case as may be desirable; and the certificate purporting to be so signed shall be admissible as evidence of the failure before the High Court.

(5) Where by virtue of subsection (3)(b) the offender is brought or appears before the High Court and it is proved to the satisfaction of the Court that he has failed to comply with any of the requirements of section 9, that Court may either—

(a) without prejudice to the continuance of the Order, impose on him a fine of \$2,000; or

(b) revoke the Order and deal with him for the offence in respect of which the Order was made, in any manner in which he could have been dealt with for that offence by the Court which made the Order as if the Order had not been made.

(6) A person sentenced under subsection (3) for an offence may appeal to the High Court or Court of Appeal against the sentence.

(7) In proceedings before the High Court made under this section any question whether the offender had failed to comply with the requirements of section 9 shall be determined by the Court and not by verdict of the jury.

(8) A fine imposed under this section shall be deemed for the purposes of any enactment to be the sum adjudged to be paid in respect of a conviction.

Regulations

16. The Governor acting on the advice of Cabinet may make regulations not inconsistent with this Act, for the purpose of giving effect to the provisions of this Act and in particular for—

- (a) prescribing requirements to be complied with by persons in respect of whom Community Service Orders are in force;
- (b) providing for appointment of assigned officers to supervise persons in the performance of community service;
- (c) regulating the conduct of assigned officers and persons in respect of whom Community Service Orders are in force;
- (d) prescribing the maximum number of hours of community service work that those persons may be required to work on any one day; and
- (e) prescribing periods to be included or excluded in computing the number of hours of community service work performed by those persons.

(Amended by Act 9 of 2011)

COMMUNITY SERVICE ORDERS REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Short title
2. Interpretation
3. Work descriptions
4. List to be forwarded to Registrar and Magistrate
5. Duty of assigned officer
6. Offender to report to assigned officer
7. Performance of community service work
8. Failure to comply with Order
9. Application to vary Order
10. Form of certificate
11. Notice to Registrar and Magistrate

SCHEDULE

COMMUNITY SERVICE ORDERS REGULATIONS – SECTION 16

(S.R.O. 50/1996 and Act 9 of 2011)

Commencement

[27 June 1996]

Short title

1. These Regulations may be cited as the Community Service Orders Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

“**Act**” means the Community Service Orders Act;

“**assigned officer**” means a Probation Officer, a Community Service Officer or any other person who may be assigned the function of implementing a Community Service Order;

“**certificate**” means a certificate issued by the Magistrate’s Court under section 15(4) of the Act;

“**Community Development Officer**” means the Director of Social Services in the Ministry responsible for the Social Services;

“**Community Service Order**” means an Order for the performance of community service work made under section 3 of the Act;

“**community service work**” means unpaid work performed by an offender, and “**community service**” shall be construed accordingly;

“**Department**” means a department or Ministry of the Public Service;

“**Ministry**” means the Ministry responsible for Social Services;

“**Offender**” means a convicted person in relation to whom a Community Service Order has been made;

“**Registrar**” means Deputy Registrar of the Supreme Court.

Work descriptions

3. (1) The Community Development Officer shall—

- (a) solicit from the head of each department and from charitable organisations in Montserrat, a description of work within their department or organisation which may suitably be performed by community service;
- (b) compile and keep under review a list of work descriptions (herein after referred to as “**the list**”) which in the opinion of the Community Development Officer may be suitably performed by community service; and
- (c) enter, in relation to each work description, the name of the person who will carry out the functions of assigned officer in relation to that work description.

(2) A person whose name is entered on the list pursuant to sub-paragraph (1)(c) shall in relation to the work description against which it is entered be an assigned officer for the purposes of the Act.

(3) Notwithstanding subparagraph (1)(a), where in a department of government or in a charitable organisation there exists work to be done, which work may suitably be performed by community service, the head of that department or charitable organisation may notify the Community Development Officer who shall, if satisfied that the work may suitably be performed by community service, enter a description of that work on the list.

(4) Where in relation to a work description entered on the list the need for community service no longer exists, the relevant head of department or charitable organisation shall immediately notify the Community Development Officer.

List to be forwarded to Registrar and Magistrate

4. The Community Development Officer shall forward copies of the list and all revisions thereto to the Registrar of the Court and to the Magistrate and the forwarding of the list under this Regulation shall by notice to the High Court and the Magistrate’s Court of the several work descriptions which may be the subject of a Community Service Order.

Duty of assigned officer

5. The assigned officer shall arrange with the head of departments and with charitable organisations for the performance of community service work and shall monitor that performance by consulting with the heads of department or charitable organisations as the case may be.

Offender to report to assigned officer

6. Where a Community Service Order is imposed the court shall order the offender to report to the assigned officer responsible for implementing the order.

Performance of community service work

7. (1) The assigned officer shall arrange for the performance of community service work in a manner which does not place undue hardship on the offender.

(2) Any difficulty experienced by an offender in the performance of community service work may be reported to the assigned officer and the assigned officer in consultation with the Community Development Officer shall take such steps as may be necessary to alleviate the difficulty.

(3) The number of hours of community service work to be performed by an offender shall not exceed eight in any one day.

(4) In determining the number of hours of community service work to be performed in a day and the time of day when such work is to be performed, regard shall be had to the age of the offender and to any disability or other circumstance which may render the offender unable to perform community service work throughout a full work day.

(5) Except with his consent an offender shall not be required to perform community service on a public holiday.

(6) Where an offender consents to the performance of community service on a public holiday, each hour of such service shall be computed as two hours of service for the purpose of determining the total number of hours of community service work performed.

Failure to comply with Order

8. Where an offender fails to comply with the requirements of a Community Service Order the assigned officer may lodge a complaint with the Magistrate in Form 1 of the Schedule.

Application to vary Order

9. An application to vary a Community Service Order shall be made in Form 3 of the Schedule.

Form of certificate

10. A certificate from the Magistrate to the High Court certifying that an offender has failed to comply with a Community Service Order shall be made in Form 4 of the Schedule.

Notice to Registrar and Magistrate

11. Where an offender has performed the number of hours of community service stipulated in a Community Service Order, the assigned officer shall notify in writing the Magistrate and the Registrar.

SCHEDULE

FORM 1

COMMUNITY SERVICE ORDERS ACT

INFORMATION ON OATH

MONTSEERRAT

IN THE MAGISTRATE’S COURT

The day of, 20..... .

The Information of of
in Montserrat, who upon oath states that
of on the day of, 20
at in Montserrat of
did

Taken on oath before me theday of,
20..... .

MAGISTRATE

FORM 2

IN THE HIGH COURT OF JUSTICE

MONTSERRAT

SUIT NO. 20.....

IN THE MATTER OF THE COMMUNITY SERVICE ORDERS ACT

AND

IN THE MATTER OF AN APPLICATION TO VARY A COMMUNITY SERVICE ORDER

BETWEEN

A.B.

APPLICANT

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS RESPONDENT

Let all parties concerned attend before a Judge in chambers at the High Court on the day of, 20, at o'clock on the hearing of an application by the applicant that a Community Service Order dated the day of, 20 be varied.

Theday of, 20..... .

MAGISTRATE

(Amended by Act 9 of 2011)

FORM 3
 COMMUNITY SERVICE ORDERS ACT
APPLICATION TO VARY COMMUNITY SERVICE ORDER
 MONTSEERRAT
 IN THE MAGISTRATE’S COURT

The day of, 20..... .

BY

[NAME OF APPLICANT] APPLICANT
 RESPONDENT

The applicant states that by an Order duly made on theday of, 20..... under the Community Services Act by the Magistrate’s Court sitting at Montserrat [*the applicant or if the applicant is the offender, the name of the offender*] was ordered [*state shortly the terms of the original order and of any subsequent order*] and the Applicant now applies for a variation of the Order on the ground that.....

Taken before me

MAGISTRATE

FORM 4

COMMUNITY SERVICE ORDERS ACT

CERTIFICATE OF MAGISTRATE

MONTSEERRAT

IN THE MAGISTRATE'S COURT

IN THE MATTER OF A COMMUNITY SERVICE ORDER DATED

AND

IN THE MATTER OF A HEARING IN THE MAGISTRATE'S COURT

The day of, 20..... .

TO THE HIGH COURT

Take note that in a hearing of the Magistrate's Court dated the day of, 20..... it was found that of failed to comply with a Community Service Order of the High Court dated the day of, 20..... .

Particulars:

MAGISTRATE
