



MONTSERRAT

CHAPTER 10.07

DEFENCE FORCE 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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CHAPTER 10.07

DEFENCE FORCE ACT

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CHAPTER 10.07

DEFENCE FORCE ACT

(Acts 8 of 1954, 11 of 1955, 8 of 1958 and 9 of 2011)

Commencement

[1 June 1955]

Short title

1. This Act may be cited as the Defence Force Act.

Interpretation

2. In this Act—

“**appointments**” includes accoutrements and equipment of every kind other than clothing;

“**Army Act**” means the Army Act, 1955, of the Imperial Parliament and includes all Acts amending or replacing the same;

“**army reserve**” shall have the same meaning as in the Army Reserve Act, 1950, of the Imperial Parliament;

“**Commandant**” means Commandant of the Force;

“**Commanding Officer**” means the Commanding Officer of the Force;

“**the Force**” means the Montserrat Defence Force as heretofore established;

“**member of the Force**” includes an Officer, a warrant officer, a non-commissioned officer and a volunteer;

“**Officer**” means a member of the Force holding the Governor’s Commission as an officer of the Force;

“**other ranks**” means warrant officers, non-commissioned officers and volunteers;

“**Regulations**” means Regulations made under section 26.

Continuance of Defence Force

3. The Force shall continue to be maintained under the provisions of this Act.

Service in Force to be voluntary

4. Subject to the provisions of this Act and of the Regulations no person shall be under any obligation to serve in the Force and no person

who serves in the Force shall receive any pay or allowance in respect of such service.

Commandant of the Force

5. The Governor may, by commission under his hand, appoint a Commandant of the Force who shall hold such rank in the Force as the Governor may direct and who shall, during such appointment, be responsible to the Governor for the efficient conduct of the Force, and for the proper expenditure of all public money appropriated for the service thereof.

Commanding Officer

6. (1) The Governor shall, by commission under his hand, appoint a fit and proper person to be the Commanding Officer of the Force.

(2) The Commanding Officer shall hold such rank in the Force as the Governor may confer on him.

(3) The Commanding Officer—

- (a) where no Commandant is appointed, shall, subject to any general orders and directions which the Governor may give, be responsible to the Governor for the efficient conduct of the Force, and for the proper expenditure of all public moneys appropriated for the service thereof; and
- (b) shall, at all times, be responsible for the maintenance of discipline, and for the training of the Force and its readiness for duty in an emergency.

Officers

7. The Governor shall, by commission under his hand, appoint fit and proper persons to be Officers of the Force and such Officers shall hold such rank as the Governor may from time to time think proper.

Warrant officers

8. The Commanding Officer, with the approval of the Governor, shall from time to time appoint such number of warrant officers of the Force as may be necessary.

Non-commissioned officers

9. The Commanding Officer shall, with the approval of the Governor, from time to time appoint such number of non-commissioned officers of the Force as may be necessary and may promote any non-commissioned officer to any vacancy as a non-commissioned officer.

Volunteers

10. There shall be such number of volunteers of the Force as the Governor may from time to time direct.

Clerks, storekeepers and other employees

11. The Commanding Officer may, with the approval of the Governor, appoint from members of the Force such clerks, store-keepers and other employees as may be necessary.

Resignation of Officer

12. The conditions under which an Officer may cease to be an Officer, either by resignation or by removal of his name from the list of officers, shall be as are prescribed.

Enlistment, term of service and discharge

13. (1) Subject to the provisions of this Act and of the Regulations, any male British subject who—

- (a) has attained the age of eighteen years and has not attained the age of thirty eight years; or
- (b) has attained the age of seventeen years and has not attained the age of eighteen years, and has obtained the consent of his parent or guardian to his enlistment; and
- (c) is of good character; and
- (d) is passed in the prescribed manner as being physically fit for general service,

may be enlisted in the Force.

(2) Such enlistment shall be to serve for a period of three years, reckoned from the date of his taking and subscribing to the Oath of Allegiance and Service.

(3) Any warrant officer, non-commissioned officer or volunteer of the Force may, within twelve months before the end of his current term of service, from time to time be re-engaged to serve for a period of one year, two years, or three years, from the end of that term as he thinks fit.

(4) Every warrant officer, non-commissioned officer or volunteer of the Force shall, until duly discharged in the prescribed manner, remain subject to this Act as a warrant officer, non-commissioned officer or volunteer of the Force.

(5) Any warrant officer, non-commissioned officer or volunteer of the Force shall, except when a proclamation under section 15(1) is in force, be entitled to be discharged before the end of his current term of service on complying with the following conditions—

- (a) giving to the Commanding Officer three months' notice in writing, or such less notice as may be prescribed, of his desire to be discharged; and
- (b) delivering up in good order, fair wear and tear only excepted, all arms, clothing and appointments being public property, issued to him, or, in cases when for any good or sufficient cause the delivery of such property is impossible, on paying the value thereof:

Provided that, the Commanding Officer may, in any case in which it appears that the reasons for which the discharge is claimed are of sufficient urgency or weight, dispense either wholly or in part with the above conditions or any of them.

(6) Any warrant officer, non-commissioned officer or volunteer of the Force may be discharged by the Commanding Officer, after due investigation of the charge, for disobedience to orders by such warrant officer, non-commissioned officer or volunteer while doing any military duty, or for neglect of duty, or for misconduct by him as a warrant officer, non-commissioned officer or volunteer of the Force, or for other sufficient cause:

Provided that, any warrant officer, non-commissioned officer or volunteer so discharged shall be entitled to appeal to the Governor who may give such directions in any such case as he may think just and proper.

(7) Where any such appeal is made the notes of evidence taken at the investigation, together with any statement which may be made by the offender in his defence, shall be forwarded to the Governor.

(8) Where the time at which a warrant officer, non-commissioned officer or volunteer of the Force would otherwise be entitled to be discharged occurs while a proclamation under section 15(1) is in force, he may be required to prolong his service for such further period, not exceeding twelve months, as the Governor may order.

(9) A recruit may be attested by any Officer, and re-engagement may take place before any Officer not below the rank of Captain.

Annual training

14. (1) Subject to the provisions of this section, every officer, warrant officer, non-commissioned officer and volunteer of the Force shall, by way of annual training—

- (a) be trained for such period in every year and at such times and places, in any part of Montserrat as the Commanding Officer may direct and may for that purpose be called out once or more often in every year:

Provided that, the Governor may dispense in any year with such training;

(b) attend such number of drills and fulfil such other conditions relating to training as the Commanding Officer may direct:

Provided that, the requirements of this section may be dispensed with by the Commanding Officer, in whole or in part, in relation to any Officer, warrant officer, non-commissioned officer or volunteer.

(2) Nothing in this section shall be construed as preventing an Officer, warrant officer, non-commissioned officer or volunteer, with his own consent, in addition to annual training, being called up by the Commanding Officer for the purpose of duty or instruction.

Embodiment of the Force

15. (1) When the Governor is satisfied—

- (a) that there is imminent national danger or great emergency; or
- (b) that there is actual or apprehended civil disturbance in Montserrat,

he may, by proclamation published in such manner as he may deem sufficient for informing the persons concerned, order the Commandant from time to time to give, and when given to revoke or vary, such directions as may seem necessary or proper for embodying all or any part of the Force, and in particular to make such special arrangements as the Commandant may think proper with regard to units or individuals whose services may be required in other than a military capacity.

(2) Where such directions for the time being direct the embodiment of any part of the Force, every Officer, warrant officer, non-commissioned officer and volunteer belonging to that part shall attend at the place and time fixed by those directions, and after the expiration of that time shall be deemed to be embodied; and such Officers, warrant officers, non-commissioned officers and volunteers are in this Act referred to as embodied or as the embodied part of the Force.

(3) Where by proclamation of the Governor as provided by section 16 it is ordered that the Force be disembodied, the Commandant may from time to time, as he may think expedient, give such directions as may seem necessary or proper for disembodiment any embodied part or parts of the Force.

(4) Every order made and all directions given under this section shall be obeyed as if enacted in this Act.

(5) In the case of a proclamation under subsection (1)(b), the members of the embodied Force, or the embodied part or parts of the Force, as the case may be, shall have all the rights, powers, functions, duties, privileges and immunities for the time being possessed by a member of the Police Service. (*Amended by Act 9 of 2011*)

Disembodiment of the Force

16. (1) The Governor may by proclamation published in like manner as a proclamation made under section 15(1), order that the Force be disembodied.

(2) After the date fixed by such directions as the Commandant may give by virtue of section 15(3) for the disembodiment of the Force or any part or parts thereof, the Officers, warrant officers, non-commissioned officers and volunteers of the Force or belonging to that part or those parts of the Force, as the case may be, which are ordered to be disembodied, shall thereupon be in the position of Officers, warrant officers, non-commissioned officers and volunteers of the Force not embodied.

Uniform, arms and equipment

17. Every member of the Force shall be provided with the prescribed uniform, arms and equipment.

Oath of allegiance and service

18. (1) Every member of the Force shall on appointment or enlistment or as soon thereafter as is possible, take and subscribe the following oath of allegiance and service—

“I do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second Her heirs and successors according to law, and that I will faithfully serve Her Majesty in Montserrat for the defence thereof against all Her enemies and opposers whatsoever according to the conditions of my service as a member of the Defence Force—So help me God!”

(Amended by Act 9 of 2011)

(2) The oath shall be taken—

- (a)* in the case of the Commandant and the Commanding Officer, before the Governor; and
- (b)* in the case of any other Officer of the Force and other ranks, before the Commanding Officer.

(3) Any person who would by law be permitted to make a solemn affirmation instead of taking an oath may make an affirmation, and the affirmation shall, to all intents and purposes, be of the same force and effect as if he had taken the oath.

Force to be subject to military law when being trained, instructed or exercised or when embodied

19. (1) The Officers and other ranks of the Force shall be subject to military law, practice and procedure—

- (a)* when they are being trained, instructed or exercised;

(b) when they are embodied in which case they shall be deemed to be on active service for the purposes of the Queen's Regulations.

(2) Subject to the provisions of this Act, Regulations may be made prescribing what shall be military law, practice and procedure for the purposes of this section and where such Regulations are not made or where on any particular point they are silent, the military law, practice and procedure as contained in the Army Act and in the Queen's Regulations for the time being in force shall be military law, practice and procedure for the purposes of this section.

Service and publication of notices

20. Notices required in pursuance of this Act or of the Regulations to be given to Officers or other ranks of the Force shall be served or published, in such manner as may be prescribed, and, if so served or published, shall be deemed to be sufficient notice.

Failure to attend embodiment

21. (1) Any Officer, warrant officer, non-commissioned officer or volunteer of the Force who, without leave lawfully granted or such sickness or other reasonable excuse as may be allowed in the prescribed manner, fails to appear at the time and place appointed or assembling on embodiment, shall be guilty, according to the circumstances, of desertion within the meaning of section 37, or of absenting himself without leave within the meaning of section 38, of the Army Act and shall whether otherwise subject to military law or not, be liable to be tried by court-martial, and convicted and punished accordingly, and may be taken into military custody.

(2) Sections 186, 187, 188, 189, 190 and 192 of the Army Act shall apply with respect to deserters and desertion and with respect to absentees without leave and absence without leave within the meaning of this section in like manner as they apply with respect to deserters and desertion within the meaning of those sections and any person who, knowing any Officer, warrant officer, non-commissioned officer or volunteer of the Force to be a deserter within the meaning of this section or of the Army act, employs or continues to employ him, shall be deemed to assist him in concealing himself within the meaning of section 192 of the Army Act.

(3) Where a warrant officer, non-commissioned officer or volunteer of the Force commits an offence under this section, the time which may elapse between the time of his committing the offence and the time of his apprehension or voluntary surrender shall not be taken into account in reckoning his service for the purpose of discharge.

Failure to fulfil training conditions

22. Any warrant officer, non-commissioned officer or volunteer of the Force who, without leave lawfully granted or such sickness or other

reasonable excuse as may be allowed in the prescribed manner, fails to appear at the time and place directed for annual training under section 14 (1)(a) or fails to attend the number of drills and fulfil the other conditions relating to annual training as are directed, shall on a complaint by the prescribed officer be liable on summary conviction to a penalty of \$25.

Wrongful sale or other disposition of property

23. If any person designedly makes away with, sells, pawns, or wrongfully destroys or damages, or negligently loses any article or thing issued to him as an Officer, warrant officer, non-commissioned officer or volunteer of the Force, or wrongfully refuses or neglects to deliver up on demand any article or thing issued to him as such Officer, warrant officer, non-commissioned officer or volunteer of the Force, the value of such article or thing shall be recoverable from him by suit before a court of competent jurisdiction by the sergeant major of the Force or some person authorised in writing for the purpose by the Commanding Officer; and he shall also, for any such offence, be liable on summary conviction, to a penalty of \$25.

Trial of offences

24. (1) Any offence under this Act which is cognizable by a court-martial shall also be cognizable by a Magistrate's Court.

(2) Any person charged with any such offence shall not be liable to be tried both by a court-martial and by a Magistrate's Court, but may be tried by either of them as may be prescribed:

Provided that, a person who has been dealt with summarily by the Commanding Officer shall be deemed to have been tried summarily by court-martial.

(3) Any person charged with an offence under this Act which, by virtue of this section, is cognizable by a Magistrate's Court, shall, on conviction by such Court, be liable to imprisonment for three months or to a penalty of \$100 or to both such imprisonment and penalty, but nothing in this section shall affect the liability of a person charged with any such offence to be taken into military custody.

(4) Any offence which under this Act is punishable on conviction by court-martial, shall, for all purposes of and incidental to the arrest, trial and punishment of the offender, including the summary dealing with the case by the Commanding Officer, be deemed to be an offence under the Army Act, with this modification, that any reference in that Act to forfeiture and stoppages shall be construed to refer to such forfeiture and stoppages as may be prescribed.

(5) Proceedings against an offender before either a court-martial or the Commanding Officer or a Magistrate's Court, in respect of an offence punishable under this Act, and alleged to have been committed by him when a warrant officer, non-commissioned officer or volunteer of the

Force, may be instituted whether the term of his service in the Force has or has not expired, and may, notwithstanding anything contained to the contrary in any other Act, be instituted at any time within two months after the time at which the offence becomes known to the Commanding Officer if the alleged offender is then apprehended, or, if he is not then apprehended, then within two months after the time at which he is apprehended.

(6) Where a warrant officer, non-commissioned officer or volunteer of the Force is subject to military law and is illegally absent from his duty, a board of inquiry under section 135 of the Army Act may be assembled after the expiration of twenty one days from the date of such absence, notwithstanding that the period during which he was subject to military law is less than twenty one days or has expired before the expiration of twenty one days.

Civil rights and exemptions

25. A member of the Force shall not be deemed, by reason only of being such member and receiving the benefits provided under this Act and the Regulations, to be the holder of a public office within the meaning of the Elections Act, or any enactment amending or substituted for the same.

Regulations

26. Subject to the provisions of this Act, the Governor may make regulations—

- (a) with respect to the manner in which enlistment in the Force shall be made;
- (b) with respect to the award of a disability pension, and the conditions upon which such pension may be awarded to any member of the Force, who, without his own default, is permanently injured in the actual discharge of his duty as a member of the Force by some injury specifically attributable to the nature of his duty;
- (c) with respect to the government, discipline, leave, and pay and allowances of the Force;
- (d) generally with respect to all other matters and things relating to the Force.

Orders

27. (1) Subject to the provisions of Regulations made under this Act, the Commandant may make Local Force Orders for the administration, discipline and training of the Force.

(2) Subject to the provisions of Regulations made under this Act, and to Local Force Orders made under subsection (1), the Commanding Officer may from time to time, subject to the general direction of the

Commandant, make such Company Orders as the Commanding Officer may consider necessary for the administration, discipline and training of the Force.

(3) Notice of Local Force Orders and Company Orders shall be given to the Officers and other ranks of the Force affected.

The Reserve

28. (1) There may be established a Reserve which shall consist—

- (a) of any person who was a member of the Force and has ceased to be a member thereof and whose application in writing to become a member of the Reserve has been approved by the Commanding Officer;
- (b) of any person who has served in Her Majesty's Forces, and whose application in writing to become a member of the Reserve has been approved by the Governor;
- (c) of any other person who applies in writing and whom the Governor considers to be a fit and proper person to be a member of the Reserve.

(2) The Commanding Officer shall cause to be kept a register containing the names, addresses and occupations of the members of the Reserve, and there shall be a separate part of the register for a Reserve of Officers.

(3) Section 15 shall apply to the Reserve in the same manner and to the same extent as it applies to the Force; and where a proclamation under section 15(1) as modified by this subsection applies to the Reserve the provisions of this Act relating to the Force shall *mutatis mutandis* apply to the Reserve, but not otherwise.

Army Reservists

29. (1) It shall be lawful for the Governor on the directions of a Secretary of State, to call out the army reserve on permanent service, and to convey, at the cost of the Imperial Government, any men belonging to the army reserve to such place as the Secretary of State may direct.

(2) Every such person, when so called out on permanent service, and pending his delivery on board an aircraft or ship or to the Imperial Authorities, shall, while so awaiting embarkation, be subject to the provisions of this Act and of the Regulations.

DEFENCE FORCE REGULATIONS – SECTION 26

(S.R.O. 12/1999)

Short title

1. These Regulations may be cited as the Defence Force Regulations.

Service pay

2. (1) Whenever the Royal Montserrat Defence Force is embodied for any period of up to one month, members shall be paid their full pay.

(2) Whenever the Royal Montserrat Defence Force is embodied for any period in excess of one month—

(a) any member in full-time employment who is certified by the Commanding Officer to have spent at least fifteen hours a week on duty shall be paid half pay; and

(b) any member who is not in full-time employment shall continue to be paid his full pay.

(3) All payments received for service in the Royal Montserrat Defence Force shall be taxable under the Income and Corporation Tax Act.

Special allowance

3. (1) Members of the Royal Montserrat Defence Force shall be paid a special allowance for hazardous duty whenever they are called upon to perform such duties.

(2) The Commanding Officer shall, with the approval of the Governor, determine what duty is to be considered hazardous duty.

(3) The rate of the allowance shall be determined by the Governor as and when the occasion demands.

(4) The hazardous duty allowances shall be taxable under the Income and Corporation Tax Act.

Rate of pay

4. The following rates of pay on the Government model scale shall apply—

	<i>For periods of 1 month or less</i>	<i>For periods over 1 month</i>
Commanding Officer	MM3	MM3
Captain	M8	M8
Lieutenant	M10	M12
2 Lieutenant	M15	M17
C. Sergeant Major	M19	M20
C. Quarter Master	M20	M21

Sergeant	M22	M23
Corporal	M25	M27
Lance Corporal	M28	M29
Private	M30	M33.
