

MONTSERAT

NATIONAL AUDIT OFFICE ACT 2024

No. 21 of 2024

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I ASSENT

(Sgd.) Sarah Tucker
Governor

DATE: 31.07.24

M O N T S E R R A T

No. 21 of 2024

AN ACT TO REFORM THE LAW RELATING TO THE AUDIT OF PUBLIC SECTOR ORGANISATIONS BY PROVIDING FOR THE ESTABLISHMENT OF AN INDEPENDENT NATIONAL AUDIT OFFICE AND FOR RELATED MATTERS.

BE IT ENACTED by The King'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 National Audit Office Act, 2024.

- (2) This Act comes into force on the date appointed by Order of the Governor acting on the advice of Cabinet.

2 Interpretation

In this Act—

“**Auditor-General**” means the person appointed as Auditor-General under section 101(2) of the Constitution;

“**Constitution**” means the Montserrat Constitution Order (Cap. 1.01);

“**external auditor**” means the auditor appointed by the Legislative Assembly under section 104(3) of the Constitution;

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

“**Government**” means the Government of Montserrat;

“**Minister**” means the Minister responsible for finance;

“**Public Accounts Committee**” means the Standing Committee of the Legislative Assembly charged with responsibility for monitoring public accounts under section 63 of the Constitution;

“**public funds**” has the meaning assigned in section 2 of the Public Finance (Management and Accountability) Act (Cap. 17.07);

“**public officer**” has the same meaning assigned to it under section 107(1) of the Constitution;

“**resources**” includes moneys, stores, property, assets, loans and investments; and

“**staff**” means the staff of the National Audit Office.

3 Act binds the Crown

This Act binds the Crown.

PART 2—NATIONAL AUDIT OFFICE

4 Establishment of the National Audit Office

- (1) There is established a National Audit Office for Montserrat.
- (2) The National Audit Office consists of—
 - (a) the Auditor-General, who is the head of the National Audit Office; and
 - (b) staff appointed by the Governor under section 5, who shall be public officers.

5 Staff of the National Audit Office

- (1) The Governor shall appoint staff, to the extent that is reasonable and necessary, to enable the performance of the functions conferred on the Auditor-General by the Constitution, the Act or any other law.
- (2) The Governor shall consult the Auditor-General prior to appointing staff under subsection (1).
- (3) Directions to staff relating to the performance of the Auditor-General's functions may only be given by—
 - (a) the Auditor-General; or
 - (b) a member of staff authorised by the Auditor-General to give directions.
- (4) A member of staff shall not hold a position, be party to a contract or engage in an activity which may constitute a conflict of interest or which, in the opinion of the Auditor-General—
 - (a) may interfere with the proper performance of duties as a member of staff; or
 - (b) is prejudicial to the operation of the National Audit Office.

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- (5) The Governor, acting after consultation with the Public Accounts Committee of the Legislative Assembly, shall appoint a person to act as Auditor-General if the Auditor-General is—
- (a) temporarily absent from Montserrat or for any other reason is temporarily unable to perform the functions of the office; or
 - (b) suspended under section 101(7) of the Constitution.
- (6) A person appointed to act as Auditor-General under subsection (5) shall, for the period the person acts as Auditor-General, be paid—
- (a) if that person is substantively appointed as staff or to any other public office, an allowance at a rate equal to the difference between the salary and allowances of the substantive appointment and the salary and allowances paid to the Auditor-General under section 102 of the Constitution; or
 - (b) if that person is not substantively appointed as staff or to any other public office, the salary and allowances paid to the Auditor-General under section 102 of the Constitution.

6 Budget of National Audit Office

- (1) The Auditor-General shall submit—
- (a) a budget for the National Audit Office to the Minister; and
 - (b) a copy of the budget under paragraph (a) to the Public Accounts Committee,
- at least five months before the end of each financial year.
- (2) The budget under subsection (1) shall include—
- (a) estimates of revenue and expenditure for the financial year to which it relates;

- (b)* projected revenue and expenditure for the two financial years following the financial year to which it relates; and
 - (c)* the basis on which audit fees for the financial year to which the budget relates and the following two financial years are to be calculated.
- (3) The Minister shall cause the estimates of revenue and expenditure under subsection 2(*a*) to be laid before the Legislative Assembly in accordance with section 92(1) of the Constitution.

PART 3—POWERS AND DUTIES OF THE AUDITOR-GENERAL

7 Duties of Auditor-General

- (1) The Auditor-General shall audit and report on the public accounts of Montserrat and of all public offices, including the courts, the central and local government administrations, universities and higher education institutions, and any public corporations or other bodies or organisations established by an Act of the Legislature, and may conduct financial and value for money audits in respect of any project involving public funds.
- (2) If the Auditor-General has reasonable cause to believe that an authority, organisation or body other than an authority, organisation or body under subsection (1) has in any of its financial years received more than half of its income from public funds, he may conduct financial and value for money audits in respect of the authority, organisation or body for those financial years.
- (3) In exercise of the functions under section 103 of the Constitution, the Auditor-General shall—
- (a)* prepare an annual budget and business plan for the National Audit Office;

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- (b)* conduct an audit in accordance with international auditing standards;
 - (c)* inquire into whether the financial affairs of a person, body or organisation he is authorised to audit have been conducted with regularity;
 - (d)* submit to the Legislative Assembly an annual report on audits undertaken;
 - (e)* make enquiries and conduct investigations, on behalf of the Legislative Assembly, as he considers necessary to determine whether resources have been used with proper regard to economy, efficiency and effectiveness;
 - (f)* effectively manage funds budgeted to the National Audit Office;
 - (g)* identify training needs and design training programmes for staff; and
 - (h)* do anything incidental or conducive to the exercise of the functions of the Auditor-General.
- (4)** The Auditor-General may include in the annual report to the Legislative Assembly, details of—
- (a)* an instance in which—
 - (i)* he did not receive information, reports or explanations he requested;
 - (ii)* the collection, receipt or disbursement of public funds has not been—
 - (A)* effected in accordance with applicable laws and policies;
 - (B)* fully accounted for; or
 - (C)* properly reflected in the accounts;
 - (iii)* an asset acquired, administered or otherwise held has not been adequately safeguarded or accounted for;

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- (iv) an accounting or management control system including a system designed to ensure economy, efficiency and effectiveness, that relates to revenue, disbursements, the preservation or use of assets or the determination of liabilities, did not exist, was inadequate or was not complied with; or
 - (v) an appropriate and reasonable procedure could have been used to measure and report on the effectiveness of a programme and that procedure was not established or complied with; and
 - (b) any other thing the Auditor-General considers should be brought to the attention of the Legislative Assembly.
- (5) In the exercise of the functions of the Auditor-General, the Auditor-General shall not be subject to the direction or control of any other person or authority.
- (6) For the purposes of this section, “**project**” means an undertaking by a person, body or organisation.

8 Power to submit special report to Legislative Assembly

- (1) The Auditor-General may submit a special report to the Legislative Assembly if satisfied that a matter of urgency or importance should not be deferred until submission of the annual report to the Legislative Assembly under section 7 of this Act and section 103(2) of the Constitution.
- (2) Section 7(3) applies with the necessary modifications to a special report under subsection (1).

9 Power to delegate functions, powers and duties

- (1) Subject to this section, the Auditor-General may delegate functions, powers and duties of the Auditor-General to staff.

- (2) The Auditor-General shall not delegate the power to certify and report on public accounts to the Legislative Assembly.
- (3) A delegation by the Auditor-General—
 - (a) shall be in writing;
 - (b) may be subject to conditions the Auditor-General thinks fit;
 - (c) is revocable at any time, in writing; and
 - (d) does not prevent the Auditor-General from exercising the functions, powers or duties of the Auditor-General.
- (4) In the exercise of functions delegated by the Auditor-General, staff is subject to the direction or control of the Auditor-General only.

10 External audit support

The Auditor-General may contract external support, if he determines it is necessary, to assist in the conduct of an audit under section 7.

11 Power to charge fees for certain audits

- (1) Subject to subsection (2), if the Auditor-General is empowered under an enactment to audit the accounts of an organisation, the Auditor-General may charge a fee for the audit of the accounts of the organisation.
- (2) Fees charged by the Auditor-General under this section shall be—
 - (a) reasonable; and
 - (b) paid into the Consolidated Fund.

12 Response to audit report

- (1) The Auditor-General shall submit an audit report prepared in accordance with section 103(1) of the Constitution and this Act to—
 - (a) the appropriate Minister; and
 - (b) a public corporation, public office, court, university, higher education institution, body, organisation, person or department to whom the audit report relates.
- (2) The public corporation, public office, court, university, higher education institution, body, organisation, person or department to whom an audit report is submitted under subsection (1) shall, within twenty-one days of receipt of the audit report, submit to the—
 - (a) appropriate Minister; and
 - (b) Auditor-Generalits observations and responses to recommendations in the audit report.
- (3) The Auditor-General shall follow up on recommendations set out in the audit report and report on the results to the Public Accounts Committee.
- (4) For the purposes of this section, “**appropriate Minister**” means, in relation to a public office, public corporation or other body or organisation under section 103(1) of the Constitution, the Minister under whose portfolio the public corporation, public office, court, university, higher education institution, body, organisation, person or department falls.

13 Audit report to be public

The Auditor-General shall, after an audit report is laid before the Legislative Assembly, make the audit report available to the public.

**PART 4—EXTERNAL AUDITOR OF NATIONAL AUDIT
OFFICE**

**14 External auditor to submit audited accounts of the
National Audit Office to the Legislative Assembly**

- (1) The external auditor shall submit to the Legislative Assembly an annual report on the audited accounts of the National Audit Office for the immediately preceding financial year.
- (2) Sections 7(3), 8 and 15, apply, with the necessary modifications, to the performance of the functions of the external auditor.

PART 5—MISCELLANEOUS

15 Confidentiality

- (1) Subject to subsection (2), the Auditor-General and a person authorised by the Auditor-General to carry out a function or duty on behalf of the Auditor-General who obtains information in carrying out their functions and duties, shall not disclose the information.
- (2) Subsection (1) does not apply to the disclosure of information—
 - (a) to an authorised person for the purpose of carrying out functions and duties;
 - (b) in compliance with an order of the High Court; or
 - (c) made with the approval of the person to whom the information relates.

16 Immunity

A person who is authorised under this Act to carry out a function, exercise a power or perform a duty, shall not be held personally liable in a court for or in respect of an act

or matter done or omitted to be done in good faith in the exercise of that function, power or duty.

17 Provision of information or advice relating to functions

Subject to section 15, the Auditor-General may provide information or advice to a person or body relating to the Auditor-General's functions or duties if, the Auditor-General determines that the provision of the information or advice—

- (a) is in the interests of Montserrat; and
- (b) does not compromise the independence of the Auditor-General or the National Audit Office.

18 Interpretation of law applicable to exercise of powers

The Auditor-General may, in writing, seek legal advice from the Attorney General on a question regarding the interpretation of a law applicable to the exercise of powers, functions and duties by the Auditor-General.

19 Auditor-General not to question merits of policy objectives

Nothing in this Act entitles the Auditor-General to question the merits of the policy objectives of an organisation in respect of which an audit is carried out.

20 Offences

- (1) A person commits an offence if the person—
 - (a) without reasonable excuse, fails to provide the Auditor-General, a person authorised by the Auditor-General or the external auditor with information that is reasonably required for the purpose of carrying out a function or duty under this or other Act;
 - (b) knowingly or recklessly provides to a person exercising a function or carrying out a duty under

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this Act a document or information which is false or misleading in any material particular;

(c) wilfully obstructs a person exercising a function or carrying out a duty under this Act;

(d) wilfully discloses to an unauthorised person information obtained in the performance of functions, duties or powers under this Act.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine of \$20,000 or two years' imprisonment or both.

21 References to Auditor General

A reference to 'Auditor General' in any enactment shall be construed as a reference to 'Auditor-General'.

22 Regulations

The Governor acting on the advice of Cabinet and after consultation with the National Audit Office, may make regulations for the better carrying out of this Act.

(Sgd.) Charliena White
SPEAKER

Passed by the Legislative Assembly this 24th day of July, 2024.

(Sgd.) Judith Baker

CLERK OF THE LEGISLATIVE ASSEMBLY