

TRANSLATION OF THE OFFICIAL PUBLICATION OF SINT MAARTEN (AB 2010, GT no. 13)

EXPLANATORY MEMORANDUM accompanying the Regulation of the Legal status of the Clerk to Parliament

General Section

The national ordinance regulates the Legal status of the Clerk to Parliament. For the purposes of the preparation of the draft, legislators drew on the regulation applying for the Clerk to Parliament of the Netherlands Antilles and the National Ordinance on the Ombudsman.

The Clerk to Parliament plays a key role on the proper functioning of Parliament. The Clerk to Parliament supports the President and manages the Department of the Clerk to Parliament. Pursuant to the Parliamentary Rules of Order, far-reaching powers are assigned to the Clerk to Parliament with regard to the Department of the Clerk to Parliament. Not only is the Clerk to Parliament responsible for the management of the Department of the Clerk to Parliament, he is also mandated to make nominations to the Presidium for the appointment, suspension or dismissal of the staff of the Department of the Clerk to Parliament. The Clerk to Parliament also acts as the competent authority for the performance of the other powers relating to the legal status of the staff of the Department of the Clerk to Parliament.

The management of the Department of the Clerk to Parliament not only involves the preparation and finalisation of the meetings of Parliament, but also the management of a library and archives. The archives are public, as the majority of the Parliamentary records are public. In this way, the archives not only serve Parliament but also the community as a whole.

Article by Article Section

Article 1

In the first Article, the appointment requirements for the Clerk to Parliament are recorded. The Clerk to Parliament must be a Dutch citizen and of course, also a resident of Sint Maarten. The Clerk to Parliament must have sufficient knowledge and experience in a comparable position. As a lynchpin in the operations of Parliament, it is necessary for the Clerk to Parliament to have sufficient knowledge of the law, in particular of constitutional law. In view of the small scale of the Sint Maarten society, in contrast to the regulations for the Netherlands Antilles, the requirement that the proposed candidate should have an academic education in law was not imposed, but an academic education is required.

Furthermore, in contrast to the regulation for the Clerk to Parliament of the Netherlands Antilles, no age requirement is included. In view of the requirement of equal treatment and the development of the society, setting an age requirement can no longer be objectively justified.

Article 2

Article 2 contains the incompatibilities with the position of Clerk to Parliament. Article 57(3) of the Constitution already provides that the Clerk to Parliament may not also be a Member of Parliament. Rules are also imposed for the acceptance of secondary positions by the Clerk to Parliament. In outline, these are derived from the National Ordinance on the Ombudsman and are comparable to those for other officials in High Councils of State.

Article 3, 4 and 5

These Articles always form part of all national ordinances regulating a High Council of State and are standard as such. The Articles further develop Parliament's powers of suspension and dismissal and provide legal protection for the Clerk to Parliament.

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Articles 6, 7, 8 and 9

These Articles contain the core of the Legal status of the Clerk to Parliament. The amount of the remuneration is related to the highest scale in the official system. This link is also found in Article 8(2). Article 8 regulates that the other regulations on legal status applying to the administrative system also apply for the Clerk to Parliament. In the application of these regulations, the Clerk to Parliament is equated with an official in the highest scale and grade.

Article 7 regulates a percentage of the remuneration as representation costs.

Article 9 affords Parliament the power to grant the Clerk to Parliament an expenses allowance for the use of a personal mobile telephone and motorised vehicle. Parliament can opt to provide a telephone or motorised vehicle for the service. The regulation must be enacted by a Parliamentary Regulation.

Whether this expenses allowance is taxed depends on the development of the legislation on income tax.

Article 10 presents the transitional provision for the remuneration of the Clerk to Parliament. This is consistent with the other High Councils of State.

Article 11 contains the title for quotation. No provision is included for the effectuation of the ordinance as the effectuation is regulated in additional Article II of the Constitution.

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