

## **TRANSLATION OF THE OFFICIAL PUBLICATION OF SINT MAARTEN (AB 2010, GT no. 21)**

### **EXPLANATORY MEMORANDUM to the National Ordinance publication and entry into force**

#### **General Section**

Pursuant to Article 89 of the Constitution, national ordinances do not enter into force before they have been published. This provision also applies to national decrees containing general measures, pursuant to Article 91(4) and to ministerial regulations, pursuant to Article 91(5). Finally, the provision regarding publication of orders enacted by public bodies or independent administrative authorities pursuant to the national ordinance, referred to in Articles 97(2) and 98(2) respectively applies before they enter into force.

This draft is based on the Aruban National Ordinance publication and entry into force, the Netherlands-Antillean Publication Decree and the Publication Act of the Netherlands.

#### **Article by Article Section**

Article 1 regulates the existence of an Official Publication and of a National Gazette. The first Article also regulates the official English designations of these publications. This is an elaboration of Article 1(2) of the Constitution. The designation serves as a starting point for the public provision of all legal regulations in English.

Article 3 regulates the manner of publication. Recording in the Official Publication constitutes the publication. This implies that the Official Publication must be generally accessible and that the date on which the publication becomes available to the public must be deemed to be the publication date. Obviously, a publication cannot be reversed. If an error is made in the preparation of an Official Publication, a correction sheet can be published. An error in the regulation itself must be corrected through new decision-making by the body that enacted the regulation.

The layout, design, publication and the like of the Official Publication are regulated by national decree, containing general measures.

#### **Article 4**

Further announcement and explanation of and explanatory memoranda concerning regulations officially published in the Official Publication shall take place in the National Gazette. Other announcements by Parliament, the government and other government bodies, as well as government advisory bodies may be included in this medium, which will appear on a regular basis. The design, publication etc. of the National Gazette will be regulated by national decree containing general measures.

#### **Article 5**

This Article provides for the possibility of a departure from the publication through recording in the Official Publication. This possibility is restricted to appendices. For certain regulations, appendices may be necessary that are of such a size, with such a small part that is relevant to the general public, that a deposit for public inspection is more efficient. This does not mean that the appendix may be less accessible than the regulation itself. The announcement of the deposit for public inspection will also be made generally known through notification of this in the National Gazette.

The third paragraph opens up the possibility of making the Official Publication and the National Gazette available also as an electronic version. This generally means posting on the government's official website. Paragraph 3 contains two frameworks within which the government can impose the rules. These frameworks serve to make and keep the documents generally accessible on electronic publication.

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## **Article 6**

This provides the legal basis for the availability of consolidated texts. The consolidation of legal regulations is of great importance for the public. After all, it is sometimes not feasible for citizens to keep up to date with all amendments of a regulation and to take these into account in their dealings with the government, whether these involve applications for a service or the implementation of a regulation. As consolidated texts are not generally readopted by the competent body, citizens are not assured of the accuracy of the text. This Article makes it possible to provide an official consolidated text, while the caveat still applies that only the text in the Official Publication is the authentic text. An official consolidated text does, however, provide citizens with greater certainty.

## **Articles 7, 8 and 9**

These Articles contain the forms used for the publication of regulations. A distinction is made between a national ordinance enacted on the initiative of the government and one adopted on the initiative of Parliament. With a national ordinance initiated by the government, the Governor will present the draft to the Council of Advice. The Governor will then present the draft to Parliament for approval. The national ordinance is therefore created having heard the Council of Advice and with general consultation of Parliament.

In the case of a national ordinance initiative, Parliament itself requests the recommendations of the Council of Advice directly. The recommendations are therefore issued to Parliament, not to the government. This procedure is laid down in Article 85(3) of the Constitution. During the debate in Parliament, the initiators will defend the draft before fellow Members of Parliament. Following its approval, the draft will be submitted to the government for adoption. The Constitution emphasises the independent position of Parliament in relation to the government. It is obvious that this should be expressed in the announcement of a national ordinance realised at the initiative of one or more Members of Parliament. On the announcement of such a national ordinance, therefore, the form also states that the Governor has noted that the Council of Advice has been heard and that the initiative to establish the national ordinance has been taken by one or more Members of Parliament.

Article 10 delegates the regulation of various aspects relating to the Official Publication and the National Gazette to the government.

The possibilities also include the provision of a subscription to the Official Publication of the National Gazette. It may be appropriate for law firms or civil-law notaries to have a subscription. If there are costs associated with this, the charges will be enacted in a national decree containing general measures. The principle here is coverage of the costs. The same applies to the provision of a paper version of the Official Publication to a citizen. The government will investigate how these possibilities will relate to a more electronic environment in the future.

## **Articles 11 and 12**

According to Article 11 of the draft, national ordinances, national decrees, containing general measures, and ministerial regulations take effect from the third calendar month following the date of the announcement if the regulation contains no designation. This term differs from the term of 15 days after the announcement in the Netherlands Antillean and Aruban regulations. This is related to the power of the Ombudsman to submit a legal regulation to the Constitutional Court for a term of six weeks after its ratification and before its entry into force, as regulated in the Constitution, except in the event of an urgent interest (Article 127(4) of the Constitution). If earlier entry into force is necessary for urgent reasons, as regulated in more detail in the draft national ordinance on the Constitutional Court, a designation must be included in the regulation itself.

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