



MONTSERRAT

CHAPTER 4.02

THE PENAL CODE and Subsidiary Legislation

Revised Edition
showing the law as at 1 January 2002

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 4.02

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CHAPTER 4.02

THE PENAL CODE

(Acts 12 of 1983, 2 of 1991, 3 of 1992 and 9 of 2000)

AN ACT TO AMEND AND CODIFY THE PENAL LAWS OF MONTSERRAT AND FOR MATTERS CONNECTED THEREWITH.

Commencement

[1 June 1990]

PART I

PRELIMINARY

Short title

1. This Act (hereinafter referred to as this Code) may be cited as the Penal Code.

Saving of certain other laws

2. Except as hereinafter expressly provided, nothing in this Code shall affect—

- (a) the liability, trial or punishment of a person for any offence against the common law or against any other law in force in Montserrat other than this Code; or
- (b) the power of any court to punish a person for contempt of such court; or
- (c) the liability or trial of a person or the punishment of a person under any sentence passed or to be passed in respect of any act done or commenced before the commencement of this Code; or
- (d) any power of Her Majesty, or of the Governor vested in him as the representative of Her Majesty, to grant any pardon or to remit or commute, in whole or in part, or to respite the execution of any sentence passed or to be passed; or
- (e) any law for the time being in force for the government of Her Majesty's naval, military or air forces:

Provided that if a person does an act which is punishable under this Code and is also punishable under any other law, he shall not be punishable for that act both under this Code and also under such other law.

Interpretation

3. (1) Except as otherwise in this Code, or in the Interpretation Act, expressly provided, this Code shall be interpreted in accordance with the principles of legal interpretation obtaining in England, and expressions used in it shall be presumed, so far as is consistent with their context, to be used in accordance with the meanings attached to them in the criminal law of England, and shall be construed in accordance therewith.

(2) In this Code, unless the context otherwise requires—

“**arrestable offence**” means an offence for which a person may be arrested without a warrant, under the provisions of section 320;

“**court**” means the High Court or the Magistrate’s Court as the context requires;

“**knowingly**” used in connection with any term denoting uttering or using, implies knowledge of the character of the thing uttered or used;

“**money**” includes bank notes, bank drafts, cheques and any other orders, warrants or requests for the payment of money;

“**night**” or “**night-time**” means the interval between 1900 hours in the evening and 0600 hours in the morning of the following day;

“**oath**” includes an affirmation or statutory declaration;

“**offence**” is an act, attempt or omission punishable by law;

“**Ordinance**” includes any Act and any subsidiary legislation made under that Ordinance or Act;

“**person employed in the public service**” includes—

- (a) a person holding any public office, whether temporarily or permanently, by appointment, by election or by operation of law;
- (b) an arbitrator, umpire or referee in any proceeding or matter acting with the sanction of any court or in pursuance of any law;
- (c) any magistrate or justice of the peace;
- (d) any member of any statutory body, tribunal or commission appointed under or in pursuance of any law; and
- (e) any marriage officer, appointed under the Marriage Act when acting in performance of his functions as such;

“**possession**” includes not only having in one’s own personal possession, but knowingly having anything in the actual or personal possession or custody of any other person, or having anything in any place (whether belonging to or occupied by oneself or not) for the use or benefit of oneself or any other person; and if there are two or more persons and any one or more of them with the knowledge and

consent of all or any of the others has or have anything in his or their custody or possession it shall be deemed to be in the custody and possession of each and all of them;

“property” includes any description of real or personal property, money, debts and legacies and any deeds, instruments or other documents relating to or evidencing the title or right to any property or giving a right to recover or receive any money or goods;

“public” includes not only all persons in Montserrat but also persons inhabiting or using any particular place, or any number of persons and also such indeterminate persons as may happen to be affected by the conduct in respect of which such expression is used;

“public place” includes any place to which the public have access either unconditionally or upon payment, or which is for the time being used for any public or religious meetings or as an open Court;

“public way” includes any highway, market place, square, street, bridge or other way which is lawfully used by the public as of right;

“publicly” when applied to acts done means either that they are so done in any public place as to be seen by any person, whether such person be or be not in a public place, or that they are so done in any place which is not a public place as to be likely to be seen by any person in a public place;

“utter” includes using or dealing with or attempting to use or deal with, or attempting to induce any person to use, deal with or act upon the thing in question;

“valuable security” includes any document which is the property of any person and which is evidence of the ownership of any property or of the right to recover or receive any property;

“vessel” includes any thing or device capable of being used for the conveyance of goods or passengers on water from one place to another and includes a hovercraft and any vessel being towed or carried by another vessel;

“wound” means any incision or puncture which breaks the continuity of the whole skin and not merely the cuticle or upper skin.

(3) Whenever in this Code a power is given to a court, upon conviction of any person for an offence, to pass a sentence of imprisonment or to impose a fine, such provision, unless the contrary intention appears, shall be construed as fixing the maximum penalty and shall confer a power to pass any sentence not exceeding the term of imprisonment or the amount of the fine prescribed for that offence.

(4) In this Code—

(a) where there is a reference to a section, Part or Schedule by number or letter only, and not in conjunction with the title or short title of any other Act or other enactment, such reference

shall be construed as a reference to the section, Part or Schedule of that number or letter contained in this Code; and

- (b) where in any subsection there is a reference to a subsection, paragraph or subparagraph or other division by number or letter only, and not in conjunction with the number of any other section of this Code or any other Act or other enactment, such reference shall be construed as a reference to the subsection, paragraph, subparagraph or other division of that number or letter in the section in which such reference occurs.

Offences committed partly within and partly beyond the jurisdiction

4. When an act which, if done wholly within the jurisdiction of the court, would be an offence against this Code, is done partly within and partly beyond the jurisdiction, every person who within the jurisdiction does or takes any part in such act may be tried and punished under this Code in the same manner as if such act had been done wholly within the jurisdiction.

PART II

GENERAL RULES AS TO CRIMINAL LIABILITY

Ignorance of the law

5. Ignorance of the law does not afford any excuse for any act or omission which would otherwise constitute an offence unless knowledge of the law by the person concerned is expressly declared to be an element of the offence.

Bona fide claim of right

6. A person is not criminally responsible in respect of an offence relating to property, if the act done or omitted to be done by him with respect to the property was done in the exercise of an honest claim of right and without intention to defraud.

Intention and motive

7. (1) Subject to the express provisions of this Code or any other law, a person is not criminally responsible for an act or omission which occurs independently of the exercise of his will, or for an event which occurs by accident.

(2) Unless the intention to cause a particular result is expressly declared to be an element of an offence constituted in whole or in part by an act or omission, the result intended to be caused by an act or omission is wholly immaterial.

(3) Unless otherwise expressly declared, the motive by which a person is induced to do or omit to do an act, or to form an intention, is immaterial as regards criminal responsibility.

(4) In determining whether a person has committed an offence, a court—

(a) shall not be bound in law to infer that he intended or foresaw a result of his actions by reason only of its being a natural and probable consequence of those actions; but

(b) shall decide whether he did intend or foresee that result by reference to all the evidence, drawing such inference from the evidence as appears proper in the circumstances.

Mistake of fact

8. Subject to the express or implied provisions of any law, a person who does or omits to do an act under an honest and reasonable, but mistaken, belief in the existence of any state of things is not criminally responsible for the act or omission to any greater extent than if the real state of things had been such as he believed to exist.

Presumption of sanity

9. Every person is presumed to be of sound mind, and to have been of sound mind at any material time, until the contrary is proved.

Insanity

10. Subject to the provisions of this Code with regard to persons suffering from diminished responsibility, a person shall not be criminally responsible for an act or omission if at the time of doing the act or making the omission he is through any disease affecting his mind incapable of understanding what he is doing or of knowing that he ought not to do the act or make the omission:

Provided that a person may be criminally responsible for an act or omission, although his mind is affected by disease; if such disease does not in fact produce upon his mind one or other of the effects above mentioned in reference to that act or omission.

Intoxication

11. (1) Save as provided in this section, intoxication shall not constitute a defence to a criminal charge.

(2) Intoxication shall be a defence to a criminal charge if by reason thereof, at the time of the act or omission complained of, the person

charged did not know that such act or omission was wrong or did not know what he was doing; and—

- (a) the state of intoxication was caused without his consent by the malicious or negligent act of another person; or
 - (b) the person charged was by reason of intoxication insane, temporarily or otherwise, at the time of such act or omission.
- (3) Where a defence under subsection (2) is established, then—
- (a) in a case falling within paragraph (a) of subsection (2), the accused shall be discharged;
 - (b) in a case falling within paragraph (b) of subsection (2), the provisions of section 10 shall apply and the person charged shall be dealt with in accordance with the provisions relating to insanity contained in the Criminal Procedure Code.

(4) Intoxication shall be taken into account for the purpose of determining whether the person charged had formed any specific intention, in the absence of which he would not be guilty of the offence.

(5) For the purpose of this section “**intoxication**” shall be deemed to include a state produced by narcotics or drugs.

Immature age

12. (1) A person under the age of ten years is not criminally responsible for any act or omission.

(2) A person under the age of fourteen years is not criminally responsible for an act or omission unless it is proved that at the time of doing the act or making the omission he had capacity to know that he ought not to do the act or make the omission.

(3) A male person under the age of twelve is presumed to be incapable of having carnal knowledge.

Surgical operations

13. A person is not criminally responsible for performing, in good faith and with reasonable care and skill, a surgical operation upon any person for his benefit or intended benefit, or upon an unborn child for the purpose of the preservation of the mother’s life, if the performance of the operation is reasonable having regard to the patient’s state at the time and all the circumstances of the case.

Duress

14. (1) A person is not criminally responsible for an offence if the act is done or omitted to be done only because during the time in which it is being done or omitted to be done the person is compelled to do or not to do the act by threats on the part of another person.

(2) For the purpose of subsection (1) a threat must consist of immediate or proximate death or grievous bodily harm upon refusal to comply therewith to that person or any third party.

Compulsion by husband

15. A married woman is not free from criminal responsibility for doing or omitting to do any act merely because the act or omission takes place in the presence of her husband; but on a charge against a wife, other than for treason or murder, it shall be a good defence to prove that the offence was committed in the presence of and under the coercion of the husband.

Defence of person or property

16. Subject to the express provisions of this Code or any other law for the time being in force in Montserrat, criminal responsibility for the use of force in the defence of person or property shall be determined according to the common law.

Use of force in effecting arrest

17. (1) A person may use such force as is reasonable in the circumstances in the preventing of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large.

(2) Subsection (1) shall replace the rules of the common law on the question when force used for a purpose mentioned in that subsection is justified by that purpose.

Person not to be punished twice for same offence

18. A person shall not be punished twice, either under the provisions of this Code or under the provisions of any other law, for the same offence.

Principal offenders

19. (1) When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say—

- (a) every person who actually does the act or makes the omission which constitutes the offence;
- (b) every person who does or omits to do any act for the purpose of enabling or aiding any other person to commit the offence;
- (c) every person who aids or abets another person in committing the offence; and
- (d) any person who counsels or procures any person to commit the offence.

(2) In a case arising out of paragraph (d) of subsection (1), the accused may be charged with himself committing the offence or with counselling or procuring its commission.

(3) A conviction of counselling or procuring the commission of an offence entails the same consequences in all respects as a conviction of committing the offence.

(4) Any person who procures another to do or omit to do any act of such a nature that, if he had himself done the act or made the omission the act or omission would have constituted an offence on his part, is guilty of an offence of the same kind, and is liable to the same punishment, as if he himself had done the act or made the omission, and he may be charged with himself doing the act or making the omission.

Offences committed by joint offenders in prosecution of common purpose

20. When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence.

Counselling another to commit an offence

21. When a person counsels another to commit an offence, and an offence is actually committed after such counsel by the person to whom it is given, it is immaterial whether the offence actually committed is the same as that counselled or a different one, or whether the offence is committed in the way counselled or in a different way, provided in either case that the facts constituting the offence actually committed are a probable consequence of the carrying out of the counsel. In either case the person who gave the counsel is deemed to have counselled the other person to commit the offence actually committed by him.

PART III

PUNISHMENTS

Kinds of punishments

22. Subject to the provisions of this Code and of any other law in force relating to the jurisdiction of particular courts, the following kinds of punishments may be imposed by a court on persons convicted of offences under this Code—

(a) *repealed by Act 9 of 2000*

- (b) imprisonment;
- (c) fine;
- (d) payment of compensation to injured party;
- (e) finding security to keep the peace and be of good behaviour or to come up for judgment;
- (f) probation under the Probation of Offenders Act;
- (g) forfeiture of articles involved in an offence;
- (h) *repealed by Act 11 of 1991*
- (i) any other punishment expressly provided for by law for the time being in force.

23. *repealed by Act 9 of 2000*

Imprisonment

24. (1) A person liable to imprisonment for life or any other period may be sentenced to a shorter term, except in the case of a sentence of imprisonment for life passed in pursuance of subsection (3) of section 23.

(2) Subject to the provisions of this Code or any other law a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment.

(3) Every sentence of imprisonment shall be served in accordance with the appropriate provisions of the Prison Act or the Community Service Orders Act.

(4) Notwithstanding the provisions of subsection (3), a court which, in respect of an offence to which this subsection applies, imposes a sentence of imprisonment for a term not exceeding two years, may order that the sentence shall not take effect unless, within a period of two years from the date of the sentence, the offender commits within Montserrat another offence punishable with imprisonment.

(5) The provisions of subsection (4) shall apply only in respect of such offences as may be prescribed by the Governor in Council by order.

Fines

25. Where a fine is imposed under any law then, in the absence of express provisions relating to such fine in such law, the following provisions shall apply—

- (a) where no limit is expressed as regards the amount of the fine, the amount of the fine which may be imposed is unlimited but shall not be excessive;

- (b) in the case of an offence punishable by a fine or a term of imprisonment or both, the imposition of a fine or of a term of imprisonment or both, shall be in the discretion of the court;
- (c) in the case of an offence punishable with imprisonment as well as a fine, and in which the offender is sentenced to a fine (with or without imprisonment) and in every case of an offence punishable with a fine only in which the offender is sentenced to a fine, the court imposing the fine may, in its discretion direct by its sentence that in default of payment of the fine, within such time (if any) as the court may direct, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in addition to and consecutive with any other imprisonment to which he may have been sentenced or may be liable under a commutation of sentence:

Provided that if the sentence directs that in default of payment of the fine the offender shall be imprisoned, and if such person has undergone the whole of such imprisonment in default, no court shall issue a distress warrant unless for special reasons, to be recorded in writing by the court, it considers it necessary so to do.

Imprisonment in lieu of fine

26. (1) In the absence of express provisions in any law relating thereto, the term of imprisonment which may be ordered by a court in respect of the non-payment of any sum adjudged to be paid for costs under section 29 or compensation under section 28 or in respect of the non-payment of a fine or of any sum adjudged to be paid under any law relating to the offence of which the offender has been convicted, shall be such term as in the opinion of the court will satisfy the justice of the case, but shall not exceed a maximum of six months:

Provided that the High Court may impose a term not exceeding one year in any case in which it is satisfied that the offender has the means to pay the sum concerned and refuses so to do.

(2) Imprisonment imposed in default of the payment of any sum payable in respect of a fine, costs or compensation shall terminate immediately the fine is paid or levied by process of law; and in a case where part of the amount payable is paid, the term of the imprisonment shall be reduced in proportion to the amount so paid.

Forfeiture of proceeds of offence

27. When any person is convicted of an offence under section 78, 79, 80, 100 or 101, the court may, in addition to or *in lieu* of any other penalty which may be imposed, order the forfeiture to the Crown of any property which has passed in connection with the commission of the offence or, if such property cannot be forfeited or cannot be found, of such sum as the court shall assess as the value of the property; and any property or sum so forfeited shall be dealt with in such manner as the Governor may direct.

Payment of any sum so ordered to be forfeited may be enforced in the same manner and subject to the same incidents as in the case of the payment of a fine.

Compensation

28. Any person who is convicted of an offence may be adjudged to make compensation to any person injured by his offence. Any such compensation may be in addition to or in substitution for any other punishment.

Costs

29. Subject to limitations imposed by any other law, a court may order any person convicted of an offence to pay costs of and incidental to the prosecution or any part thereof.

Security for keeping the peace

30. A person convicted of an offence not punishable with death may, instead of, or in addition to, any punishment to which he is liable, be ordered to enter into his own recognizances, with or without sureties, in such amount as the court thinks fit, that he shall keep the peace and be of good behaviour for a time to be fixed by the court, and may be ordered to be imprisoned until such recognizance, with sureties if so directed, is entered into; but so that the imprisonment for not entering into the recognizance shall not extend for a period longer than one year and shall not, together with the fixed term of imprisonment if any, extend for a term longer than the longest term for which he might be sentenced to be imprisoned without fine.

Security for coming up for judgment

31. When a person is convicted of any offence not punishable with death, the court may instead of passing sentence, discharge the offender upon his entering upon his own recognizance, with or without sureties, in such sum as the court thinks fit, conditioned that he shall appear and receive judgment at some future sitting of the court or when called upon.

General punishment for offences

32. When in this Code or any other law no punishment is specially provided for any offence it shall be punishable with imprisonment for a term not exceeding two years or with a fine or with both such fine and such imprisonment.

Sentence cumulative unless otherwise ordered

33. Where a person after conviction for an offence is convicted of another offence, either before sentence is passed upon him under the first conviction or before the expiration of that sentence, any sentence other than corporal punishment, which is passed upon him under the subsequent

conviction, shall be executed after the expiration of the former sentence, unless the court directs that it shall be executed concurrently with the former sentence or of any part thereof:

Provided that it shall not be lawful for a court to direct that a sentence of imprisonment in default of payment of a fine shall be executed concurrently with a former sentence imposed under section 25(c) of this Code or of any part thereof. (*Amended by Act 9 of 2000*)

Escaped convicts to serve unexpired sentences when recaptured

34. If a sentence is passed under this Code upon an escaped convict, such sentence shall run consecutively or concurrently, as the court may order, with the unexpired portion of the sentence which the convict was undergoing when he escaped.

Discharge of offender without punishment

35. (1) Where in any trial before the Magistrate's Court the court thinks that the charge is proved, but is of opinion that, having regard to the character, antecedents, age, health or mental condition of the accused, or to the trivial nature of the offence or to the extenuating circumstances in which the offence was committed, it is inexpedient to inflict any punishment, the court may, without proceeding to conviction, make an order dismissing the charge.

(2) An order made under subsection (1) shall, for the purpose of revesting or restoring stolen property and of enabling a court to make any order in that behalf, have the like effect as a conviction.

(3) Where any charge is dismissed under subsection (1) the court may order the accused person to pay the whole or any part of the costs of and incidental to the prosecution.

PART IV

OFFENCES AGAINST GOVERNMENT AND PUBLIC ORDER

Treason

36. (1) Any person who—

- (a) expresses, utters, declares or publishes in any manner or who by any overt act manifests an intention so to publish, any matter, thing or intention whatsoever which, if done in England, is treason by the law of England for the time being in force; or

(b) does, in Montserrat, any act which if done in England would be treason by the law of England for the time being in force, shall be guilty of treason and liable on conviction to imprisonment for life.

(2) Any person who instigates any other person to invade Montserrat with armed force shall be guilty of treason and liable on conviction to imprisonment for life.

(Amended by Act 9 of 2000)

Concealment of treason

37. Any person who—

(a) knowing that any person intends to commit treason, does not give information thereof with all reasonable despatch to the Governor, the Magistrate, a justice of the peace or a police officer, or use other reasonable endeavours to prevent the commission of the offence; or

(b) knowing or believing that any person is guilty of treason does any act with intent to impede his apprehension or prosecution for that offence,

shall be guilty of an offence and liable on conviction to imprisonment for life.

Treason felony

38. Any person who, in Montserrat, does any act or publishes anything which by the law of England for the time being in force if done in England constitutes an offence under the Treason Felony Act, 1848, shall be guilty of an offence and liable on conviction in Montserrat to imprisonment for life.

Limitation on prosecution for treason, etc

39. (1) No person shall be tried for an offence, committed within Montserrat, under section 36, 37 or 38 unless the prosecution is commenced within three years after the date of the commission of the offence.

(2) A person charged with an offence to which this section refers shall not be convicted, otherwise than on his own plea of guilty, except on the evidence in open court of two witnesses at least to one overt act of the kind alleged or the evidence of one witness to one overt act and one other witness to another act relevant to the same kind of offence.

(3) This section shall not apply in any case in which the act of treason alleged is the killing of Her Majesty or a direct attempt to endanger the life or injure the person of Her Majesty.

Definition of overt act

40. For the purposes of any offences referred to in this Part, when the manifestation by an overt act of an intention to effect any purpose is an element of the offence, in addition to any other act which may be held to constitute an overt act, every act of conspiring with any person to effect that purpose, and every act done in furtherance of the purpose by any of the persons conspiring, shall be deemed to be an overt act manifesting the intention.

Incitement to mutiny

41. (1) Any person who deliberately attempts—

- (a) to seduce any person serving in Her Majesty's naval, military or air forces, or any police officer or member of the Defence Force from his duty or allegiance to Her Majesty; or
- (b) to incite any such persons to commit an act of mutiny or any traitorous or mutinous act; or
- (c) to incite any such persons to make or endeavour to make a mutinous assembly,

shall be guilty of an offence and liable on conviction to imprisonment for life.

(2) For the purposes of this section and of sections 42 and 43 the Defence Force means the Force established under the provisions of the Defence Force Act.

Aiding, etc acts of mutiny

42. Any person who—

- (a) aids, abets or is accessory to any act of mutiny by;
or
- (b) incites to sedition or to disobedience to any lawful order given by a superior officer,

any member of Her Majesty's naval, military or air forces or any police officer or member of the Defence Force, shall be guilty of an offence and liable on summary conviction to imprisonment for one year or on conviction before the High Court to imprisonment for five years.

Inducing police officer, etc, to desert

43. Any person who—

- (a) procures or persuades or attempts to procure or persuade to desert; or
- (b) aids, abets or is accessory to desertion of; or

- (c) having reason to believe that he is a deserter, harbours or aids in concealing,

any member of Her Majesty's naval, military or air forces or any police officer or member of the Defence Force, shall be guilty of an offence and liable on summary conviction imprisonment for six months.

Piracy *jure gentium*

44. (1) Any person who is guilty of piracy *jure gentium* shall be liable on conviction to imprisonment for life.

(2) For the purposes of this section piracy *jure gentium* means piracy as defined in the Schedule to the Tokyo Convention Act 1967, as applied to Montserrat by the Tokyo Convention Act 1967 (Overseas Territories) Order 1968.

Piracy in other cases

45. Any person who is guilty of piracy, or of any crime connected with, relating to or akin to piracy, in circumstances not constituting an offence under section 44, shall be liable to be tried and punished according to the law of England for the time being in force.

Definitions

46. For the purposes of the eight next following sections of this Part—

“import” includes—

- (a) to bring into Montserrat; and
(b) to bring into the territorial waters of Montserrat, whether or not the matter so brought is brought ashore or whether there is or is not an intention to bring the same ashore;

“publication” includes all written and printed matter, and any gramophone or other record, perforated roll, recording tape, cinematograph film or other contrivance by means of which any words or ideas may be mechanically produced, represented or conveyed and everything, whether of a nature similar to the foregoing or not, containing any visible representation, or by its form, shape or other characteristics, or in any manner is capable of producing, representing or conveying words or ideas and every copy or reproduction of any publication;

“periodical publication” includes every publication issued periodically or in parts or numbers at intervals whether regular or irregular;

“restricted publication” means any publication, the sale or public display of which has been prohibited by order under section 47;

“seditious publication” means a publication having a seditious intention within the meaning of section 51;

“seditious words” means words having a seditious intention.

Power to prohibit importation of publications

47. If the Governor in Council is of the opinion that any publication, or all publications published by any particular person, would be contrary to the public interest, he may by order prohibit the importation of such publication or publications and, in the case of a periodical publication may, by the same or a subsequent order, prohibit the importation of any past or future issue thereof.

Offences in relation to publications the importation of which is prohibited or restricted

48. (1) Any person who imports, sells, offers for sale, distributes or reproduces any publication, the importation of which is prohibited under section 47, or any extract therefrom, or who sells or publicly displays any restricted publication or any extract therefrom, shall be guilty of an offence and liable to imprisonment for three years or to a fine of \$2,000 or to both such imprisonment and fine and such publication shall be forfeited to the Crown.

(2) Any person who, without lawful excuse, has in his possession any publication the importation of which is prohibited under section 47 or any extract therefrom, shall be guilty of an offence and liable to imprisonment for two years or to a fine of \$500 or to both such imprisonment and fine and such publication shall be forfeited to the Crown.

Delivery of prohibited publication to police officer

49. (1) Any person to whom any publication the importation of which is prohibited under section 47, or any extract therefrom, is sent without his knowledge or privity, and not in response to a request made before the prohibition of the importation of such publication came into effect, shall forthwith if or as soon as the nature of its contents have become known to him, or in the case of a publication or extract therefrom coming into the possession of such person before an order prohibiting its importation has been made, forthwith upon the coming into effect of an order prohibiting the importation of such publication, deliver such publication or extract therefrom to the nearest police officer, and in default thereof shall be guilty of an offence and liable to imprisonment for two years or to a fine of \$2,000 or to both such imprisonment and fine and such publication shall be forfeited to the Crown.

(2) Any person who complies with the provisions of subsection (1) or is convicted of an offence under that subsection shall not be liable to be convicted for having imported or having in his possession the same publication or an extract therefrom.

Power to examine suspected package, etc

50. (1) Any person employed in the public service and authorized in that behalf by the Governor may detain, open and examine any package or

article which he suspects to contain any publication or extract therefrom which it is an offence under the provisions of section 48 to import and during such examination may detain, any person importing, distributing or posting such package or article or in whose possession such package or article is found.

(2) If any such publication or extract therefrom is found in such package or article, the whole package or article may be impounded and retained and the person importing, distributing or posting it, or in whose possession it is found may forthwith be arrested and proceeded against.

Seditious intention

51. (1) A “**seditious intention**” is an intention—

- (a) to bring into hatred or contempt or to excite disaffection against the person of the Sovereign, Her heirs or successors, the Governor, or the Government of Montserrat by law established; or
- (b) to excite the inhabitants of Montserrat to attempt to procure the alteration, otherwise than by lawful means, of any matter in Montserrat as by law established; or
- (c) to bring into hatred or contempt or to excite disaffection against the administration of justice in Montserrat; or
- (d) to raise discontent or disaffection amongst the inhabitants of Montserrat; or
- (e) to promote ill-will or hostility between different classes of the population of Montserrat:

Provided that an act, speech or publication is not seditious by reason only that it intends—

- (i) to show that the Crown has been misled or mistaken in any of its measures; or
- (ii) to point out errors or defects in the Government or Constitution of Montserrat; or
- (iii) to persuade the inhabitants of Montserrat to attempt to procure by lawful means the alteration of any matter in Montserrat as by law established; or
- (iv) to point out, with a view to their removal, any matters which are producing or have a tendency to produce feelings of ill-will or enmity between different classes of the population.

(2) In determining whether the intention with which any act was done, any words were spoken or any document was published, was or was not seditious, every person shall be deemed to intend the consequences

which would naturally flow from his conduct at the time and under the circumstances in which he so conducted himself.

Seditious offences

52. (1) Any person who—

- (a) does or attempts to do, or makes any preparation to do any act with a seditious intention;
- (b) utters any seditious words;
- (c) prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication; or
- (d) imports any seditious publication, unless he has no reason to believe it is seditious,

shall be guilty of an offence and liable to imprisonment for three years or to a fine of \$3,000 or to both such imprisonment and fine; and any seditious matter shall be forfeited to the Crown.

(2) Any person who without lawful excuse has in his possession any seditious publication shall be guilty of an offence and liable to imprisonment for two years or to a fine of \$2,000 or to both such imprisonment and fine and any such publication shall be forfeited to the Crown.

(3) It shall be a defence to a charge under the preceding subsection that, if the person charged did not know that the publication was seditious when it came into his possession, he did as soon as the nature of the publication became known to him, deliver it to the nearest police officer.

Legal proceedings

53. (1) No prosecution for any offence under section 52 shall be begun except within six months after the offence is committed, save that where a person leaves Montserrat within six months of committing such offence, the prosecution may be begun within six months from the date when such person returns to Montserrat after so leaving it.

(2) No person shall be prosecuted for an offence under section 52 without the written consent of the Attorney General.

Evidence

54. No person shall be convicted of an offence under section 52 upon the uncorroborated testimony of one witness.

Unlawful oaths to commit capital offences

55. Any person who—

- (a) administers or is present at and consents to the administration of any oath or engagement in the nature of an oath,

purporting to bind the person who takes it to commit any offence punishable with life imprisonment; or

(b) takes any such oath or engagement, not being compelled so to do,

shall be guilty of an offence and liable to imprisonment for life. (*Amended by Act 9 of 2000*)

Other unlawful oaths to commit offences

56. Any person who—

(a) administers or is present at and consents to the administration of, any oath or engagement in the nature of an oath, purporting to bind the person who takes it to act in any of the ways following, that is to say—

(i) to engage in any enterprise having a mutinous or seditious intention;

(ii) to commit any offence not punishable with death;

(iii) to disturb the public peace;

(iv) to be a member of any association, society or confederacy, formed for the purpose of doing any such act as aforesaid;

(v) to obey the orders or commands of any committee or body of men not lawfully constituted, or any leader or commander or other person not having authority by law for that purpose;

(vi) not to inform or give evidence against an associate, confederate or other person;

(vii) not to reveal or discover any unlawful association, society or confederacy, or any illegal act done or to be done or any illegal oath or engagement that may have been administered or tendered to or taken by himself or any other person, or the import of such oath or engagement; or

(b) takes any such oath or engagement, not being compelled so to do,

shall be guilty of an offence and liable to imprisonment for ten years.

Unlawful drilling

57. (1) Any person who—

(a) without the permission of the Governor trains or drills any other persons to the use of arms or the practice of military exercises, movements or evolutions; or

- (b) is present at any meeting or assembly of persons, held without the permission of the Governor, for the purpose of training or drilling any other persons in the use of arms or the practice of military exercises, movements or evolutions,

shall be guilty of an offence and liable to imprisonment for seven years.

(2) Any person who at any meeting or assembly held without the permission of the Governor, is trained or drilled in the use of arms or the practice of military exercises, movements or evolutions, or who is present at any such meeting or assembly for the purpose of being so trained or drilled shall be guilty of an offence and liable to imprisonment for two years.

(3) The powers of the Governor under this section shall be exercised in his discretion.

Publication of false news likely to cause fear and alarm to the public

58. (1) Any person who publishes any false statement, rumour or report which is likely to cause fear or alarm or to disturb the public peace shall be guilty of an offence and liable on summary conviction to imprisonment for one year or to a fine of \$1,000 or to both such imprisonment and fine.

(2) It shall be a defence to a charge under subsection (1) if the accused proves that, prior to the publication, he took such measures to verify the accuracy of such statement, rumour or report as to lead him reasonably to believe that it was true.

Defamation of foreign personages, etc

59. Any person who, without such justification or excuse as would be sufficient on the defamation of a private person, publishes in any manner whatsoever anything tending to degrade, revile or expose to hatred or contempt any foreign prince, potentate, ambassador or other foreign dignitary with intent to disturb peace and friendship between the United Kingdom or Montserrat and the country to which such prince, potentate, ambassador or dignitary belongs shall be guilty of an offence and liable on conviction to imprisonment for two years.

Foreign enlistment

60. Any person who, not being licensed in writing by the Governor, acting in his discretion, in that behalf—

- (a) being a British subject, accepts or agrees to accept any commission or engagement in the air, military or naval service of any foreign state at war with any friendly state or whether a British subject or not, induces any other person to accept or agree to accept any commission or engagement in the air, military or naval service of any foreign state as aforesaid; or

(b) being a British subject, quits or goes on board any ship or aircraft with a view to quitting Montserrat, with intent to accept any commission, or engagement in the air, military or naval service of any foreign state at war with a friendly state, or whether a British subject or not, induces any other person to quit or go on board any ship or aircraft with a view to quitting Montserrat with the like intent,

shall be guilty of an offence and liable on conviction to imprisonment for two years.

Unlawful assembly

61. (1) When three or more persons assemble with intent to commit an offence, or being assembled with intent to carry out some common purpose, conduct themselves in such a manner as to cause persons in the neighbourhood reasonably to fear that the persons so assembled will commit a breach of the peace, or will by such assembly needlessly and without any reasonable occasion provoke other persons to commit a breach of the peace, they shall be guilty of unlawful assembly. It is immaterial that the original assembling was lawful if, being assembled, they conduct themselves with a common purpose in such manner as aforesaid.

(2) Any person who takes part in an unlawful assembly shall be guilty of an offence and liable on summary conviction to imprisonment for one year.

Riot

62. (1) When an unlawful assembly has begun to execute the purpose for which it is assembled, by a breach of the peace and to the terror of the public, the assembly becomes a riot and the persons assembled are said to be riotously assembled.

(2) Any person who takes part in a riot shall be guilty of an offence and liable to imprisonment for two years.

Powers for dispersal of rioters

63. (1) The Magistrate or any justice of the peace, in whose view twelve or more persons are riotously assembled or who apprehends that a riot is about to be committed by twelve or more persons assembled within his view, may make or cause to be made a proclamation, in the Queen's name, in such form as he thinks fit, commanding the rioters or persons so assembled to disperse peaceably.

(2) If upon the expiration of a reasonable time after such proclamation being made, or if, the making thereof having been prevented by force, twelve or more persons continue riotously assembled together, any person authorized to make such proclamation or any police officer, or any person acting in aid of such person or police officer, may do all things necessary for dispersing the persons so continuing assembled, or for

apprehending them or any of them; and if any person makes resistance, may use all such force and is reasonably necessary for overcoming such resistance and shall not be liable in any criminal or civil proceeding for having, by the use of such force, caused harm or death to any person.

Rioting after proclamation made

64. If a proclamation is made, as provided in section 63, any person who, after the expiration of a reasonable time after the making of the proclamation for the dispersal of the persons assembled, takes or continues to take part in the riot or assembly, shall be guilty of an offence and liable to imprisonment for ten years.

Obstructing making of proclamation

65. (1) Any person who forcibly prevents or obstructs the making of a proclamation, as mentioned in subsection (1) of section 63, shall be guilty of an offence and liable to imprisonment for ten years.

(2) Any persons who, knowing that the making of such proclamation has been so prevented, take or continue to take part in the riot or assembly, shall each be guilty of an offence and liable to imprisonment for five years.

Rioters destroying or damaging certain property

66. Any persons who, being riotously assembled together, unlawfully pull down, destroy or burn, or begin to pull down, destroy, burn or unlawfully damage any building, machinery or structure shall each be guilty of an offence and shall be liable to imprisonment for fourteen years.

Rioters interfering with aircraft, vehicle or vessel

67. Any persons who, being riotously assembled together, unlawfully and with force prevent, hinder or obstruct the loading or unloading of any aircraft, vehicle or vessel, or the starting or transit of any aircraft, vehicle or vessel or the sailing operations or navigation of any aircraft or vessel, or unlawfully and with force board any aircraft, vehicle or vessel with intent so to do, shall each be guilty of an offence and liable to imprisonment for two years.

Definition of prohibited and offensive weapons

68. For the purpose of sections 69, 70, 71 and 72 the following definitions apply—

“automatic rifle” means any rifle so designed or adapted that if pressure is applied to the trigger missiles continue to be discharged until the pressure is removed from the trigger or until the magazine containing the missiles is empty;

“dagger” includes any sword, or any knife or other instrument having a blade ending in a sharp point, which is not primarily designed for use in a profession, craft or business, or for domestic use:

Provided that any such sword, knife or other instrument when worn or carried by any person shall be deemed to be a dagger unless it is designed primarily for use in a profession, craft or business exercised or carried on by such person or for domestic use, and is being worn or carried by such person for the purpose of its use in such profession, craft or business, or for domestic use;

“firearm” means any machine gun, sub-machine gun, rifle, shot gun, revolver, pistol, air gun, air pistol or any lethal barrelled weapon from which any shot, bullet or other missile can be discharged or noxious fumes can be emitted (except any air rifle, air gun or air pistol of a type prescribed by the Governor in Council and of a calibre so prescribed) and includes any component part of any such weapon and accessory to any such weapon designed or adapted to diminish the noise or flash caused by firing the weapon;

“flick knife” or **“flick gun”** means any knife which has a blade which opens automatically by hand pressure applied to a button, spring or other device in or attached to the handle of the knife;

“gravity knife” means any knife which has a blade which is released from the handle or sheath thereof by the force of gravity or the application of centrifugal force and which, when released, is locked in place by means of a button, spring, lever or other device;

“knife” includes any cutting instrument, not being a dagger, whether ending in a sharp point or not;

“offensive weapon” includes any automatic rifle, bale hook, black jack, bludgeon, cutlass, dagger, flick knife, firearm, gravity knife, ice pick, iron bar of any description, knife, knuckle duster, open razor, pick handle, razor or razor blade, staff, stick, stone or sword and any object adapted for use as a weapon;

“prohibited weapon” means any machine gun, sub-machine gun, automatic rifle or any weapon of any description or design, adapted for the discharge of any noxious liquid or gas and also any black jack, bludgeon, flick knife, gravity knife or knuckle duster.

Restriction on importation etc of prohibited weapons

69. Any person who—

- (a) imports into Montserrat, manufactures, sells or hires or offers for sale or hire, or exposes or has in his possession for the purpose of sale or hire; or
- (b) wears or carries in public,

any prohibited weapon shall be guilty of an offence and liable to imprisonment for five years or to a fine of \$5,000, or to both such imprisonment and fine.

Restriction on carrying offensive weapons, etc

70. (1) Any person who carries or has in his possession any offensive weapon, or any explosive or incendiary device, outside his own house or premises shall be guilty of an offence and liable on summary conviction to imprisonment for two years or to a fine of \$2,000 or to both such imprisonment and fine:

Provided that, if the offensive weapon is a firearm, no person shall be deemed to have committed an offence against this section if such person is in possession of a firearm licence, issued under the Arms and Ammunition Act, and a permit in writing, signed by the Commissioner of Police, giving such person permission to carry such firearm outside his house or premises:

Provided further that if the offensive weapon is a knife no person shall be deemed to have committed an offence against this section if he shall prove that he was wearing or carrying such knife outside his own house and premises for some lawful purpose, for which such knife was necessary.

(2) For the purpose of this section an imitation firearm shall be deemed to be an offensive weapon and “**imitation firearm**” means anything which has the appearance of a firearm, whether or not the same is capable of being fired.

(3) Nothing in this section shall be deemed to prevent any police officer or member of the Defence Force from wearing or carrying any firearm or sword, staff or other weapon issued for the purposes of his duty.

Power of search

71. Any police officer who suspects that any person has concealed about his person any offensive or prohibited weapon may request such person to accompany him to the nearest police station where the senior police officer on duty may cause the person to be searched. Any person who refuses to accompany a police officer when so required for the purpose of this section shall be guilty of an offence and may be arrested without a warrant and shall be liable to a fine of \$50.

Forfeiture, etc

72. Any offensive or prohibited weapon or explosive or incendiary device in respect of which any person has been convicted under this Part shall be forfeited to the Crown.

Forcible detainer

73. Any person who, being in actual possession of any building or land without colour of right, holds possession of it, in a manner likely to cause a breach of the peace, against a person lawfully entitled to the possession thereof, shall be guilty of the offence of forcible detainer and liable to imprisonment for two years.

Challenging or offering to fight

74. Any person who does any act with intent to provoke any other person to fight, whether in a public place or not, with any deadly or dangerous instrument, and any person who agrees or offers so to fight, shall be guilty of an offence and liable on summary conviction to imprisonment for two years or to a fine of \$2,000, or to both such imprisonment and fine.

Affray

75. Any person who takes part in a fight in a public place shall be guilty of an offence and liable on summary conviction to imprisonment for one year or to a fine of \$1,000, or to both such imprisonment and fine.

Threatening violence

76. (1) Any person who—

- (a) with intent to intimidate or annoy any person, threatens to break or damage a dwelling-house; or
- (b) with intent to alarm any person in a dwelling-house, discharges any firearm or commits any breach of the peace,

shall be guilty of an offence and liable on summary conviction to imprisonment for one year.

(2) If an offence under subsection (1) is committed in the night, the offender shall be liable to imprisonment for two years.

Assembling for the purpose of smuggling

77. Any persons who assemble together, to the number of two or more, for the purposes of unshipping, carrying or concealing any goods subject to customs duty and liable to forfeiture under any law relating to customs, shall be guilty of an offence and each of them shall be liable to imprisonment for two years or to a fine of \$2,000, or to both such imprisonment and fine.

PART V

OFFENCES AGAINST THE ADMINISTRATION OF LAWFUL AUTHORITY

Official corruption

78. Any person who—

- (a) being employed in the public service, and being charged with the performance of any duty by virtue of such employment, corruptly solicits, receives or obtains, or agrees or attempts to receive or retain, any property or benefit of any kind for himself or any other person on account of anything already done or omitted to be done by him in the discharge of the duties of his office, or to be afterwards done or omitted to be done; or
- (b) corruptly gives, confers or procures, or promises or offers to give or confer, or to procure or attempt to procure, to, upon or for any person employed in the public service, or to, upon or for any other person, any property or benefit of any kind on account of such act or omission on the part of the person so employed,

shall be guilty of an offence and liable to imprisonment for three years.

Extortion by public officers

79. Any person who, being employed in the public service, takes or accepts from any person for the performance of his duty as such officer, any reward beyond his proper pay and emoluments, or any promise of such reward, shall be guilty of an offence, and liable to imprisonment for three years.

Public officers receiving property to show favour

80. Any person who, being employed in the public service, receives any property or benefit of any kind for himself, on the understanding, express or implied, that he shall favour the person giving the property or conferring the benefit, or any one in whom that person is interested, in any transaction then pending or likely to take place, between the person giving the property or conferring the benefit, or any one in whom he is interested, and any person employed in the public service, shall be guilty of an offence and liable on summary conviction to imprisonment for six months.

Officers charged with special duties

81. Any person who, being employed in the public service, and being charged by virtue of his employment with any judicial or administrative duties respecting property of a special character, or respecting the carrying on of any manufacture, trade or business of a special character, and having

acquired or holding, directly or indirectly, a private interest in such property, manufacture, trade or business, discharges any such duties with respect to the property, manufacture, trade, or business in which he has such interest or with respect to the conduct of any person in relation thereto, shall be guilty of an offence and liable to imprisonment for one year.

False claims by officials

82. Any person who, being employed in the public service in such a capacity as to require him or enable him to furnish returns or statements touching any sum payable or claimed to be payable to himself or to any other person, or touching any other matter required to be certified for the purpose of any payment of money or delivery of goods to be made to any person, makes a return or statement touching any such matter which is, to his knowledge, false in any material particular, shall be guilty of an offence and liable to imprisonment for two years.

Abuse of office

83. (1) Any person who, being employed in the public service, does or directs to be done, in abuse of the authority of his office, any arbitrary act prejudicial to the rights of another shall be guilty of an offence and liable to imprisonment for two years, and if such act is done or directed to be done for purposes of gain, such person shall be guilty of an offence and liable to imprisonment for three years.

(2) A prosecution for an offence under this section or under section 81 or 82 shall not be instituted except by or with the sanction of the Attorney General.

False certificates by public officers

84. Any person employed in the public service, who, being authorized or required by law to give any certificate touching any matter by virtue whereof the rights of any person may be prejudicially affected, gives a certificate which is, to his knowledge, false in any material particular shall be guilty of an offence and liable to imprisonment for two years.

Unauthorized administration of oaths

85. Any person who administers an oath, or takes a solemn declaration or affidavit touching any matter with respect to which he has not by law any authority so to do shall be guilty of an offence and liable on summary conviction to imprisonment for one year.

False assumption of authority

86. (1) Any person who—

(a) not being a judicial officer assumes to act as such; or

- (b) falsely represents himself to be a person authorized by law to sign a document testifying to the contents of any register or record kept by a lawful authority, or testifying to any fact or event and signs such document as being so authorized,

shall be guilty of an offence and liable to imprisonment for two years.

Personating public officers

87. Any person who—

- (a) personates any person employed in the public service on an occasion when the latter is required to do any act or attend in any place by virtue of his employment; or
- (b) falsely represents himself to be a person employed in the public service and assumes to do an act or attend in any place for the purpose of doing any act by virtue of such employment,

shall be guilty of an offence and liable to imprisonment for three years.

Threat to injure person employed in the public service

88. Any person who holds out any threat of injury to any person employed in the public service, or to any person in whom he believes that person employed in the public service to be interested, for the purpose of inducing that person employed in the public service to do any act or to forbear or delay to do any act connected with the exercise of the public functions of such person employed in the public service shall be guilty of an offence and liable to imprisonment for two years.

PART VI

OFFENCES RELATING TO THE ADMINISTRATION OF JUSTICE

Deceiving witness

89. Any person who practises any fraud or deceit, or knowingly makes or exhibits any false statement or representation to any person called, or to be called, as a witness in any judicial proceeding, with intent to affect the testimony of such person as a witness, shall be guilty of an offence and liable to imprisonment for two years.

Destroying evidence

90. Any person who, knowing that any book, document or thing, of any kind whatsoever, is or may be required in evidence in any judicial proceeding, wilfully removes or destroys it or renders it illegible or

undecipherable or incapable of identification, with intent thereby to prevent it from being used in evidence, shall be guilty of an offence and liable to imprisonment for two years.

False swearing

91. Any person who swears falsely or makes a false affirmation or declaration before any person authorized to administer an oath or take a declaration upon a matter of public concern or private legal rights under such circumstances that the false swearing or declaration, if committed in a judicial proceeding would have amounted to perjury, shall be guilty of an offence and liable to imprisonment for two years.

Conspiracy to defeat justice and interference with witness

92. Any person who—

- (a) conspires with any other person to accuse any person falsely of any crime or to do anything to obstruct prevent, pervert or defeat the course of justice; or
- (b) in order to obstruct the due course of justice dissuades, hinders or prevents any person lawfully bound to appear and give evidence as a witness from so appearing and giving evidence, or endeavours so to do; or
- (c) obstructs or in any way interests with or knowingly prevents the execution of any legal process, civil or criminal,

shall be guilty of an offence and liable to imprisonment for five years.

Offences relating to judicial proceedings

93. (1) Any person who—

- (a) within the premises in which any judicial proceeding is being held, or within the precincts of the same, shows disrespect, in speech or manner, to or with reference to such proceeding, or any person before whom such proceeding is being held; or
- (b) having been summoned to give evidence in a judicial proceeding, fails to attend; or
- (c) being present at a judicial proceeding and being called upon to give evidence, refuses to be sworn or to make an affirmation; or
- (d) having been sworn or affirmed, refuses without lawful excuse to answer a question or to produce a document which it is within his power to produce; or
- (e) having attended a judicial proceeding to give evidence, remains in the room in which the proceeding is being held after the witnesses have been ordered to leave the room; or

- (f) causes an obstruction or disturbance in the course of a judicial proceeding; or
- (g) while a judicial proceeding is pending, makes use of any speech or writing misrepresenting such proceeding or capable of prejudicing any person in favour of or against any parties to such proceeding, or calculated to lower the authority of any person before whom the proceeding is to be held; or
- (h) publishes a report of the evidence taken in any judicial proceeding which has been directed to be held in private; or
- (i) attempts wrongfully to interfere with or influence a witness in any judicial proceeding, either before or after he has given evidence; or
- (j) dismisses any employee because he has given evidence on behalf of a certain party to a judicial proceeding; or
- (k) wrongfully retakes possession of any land from any person to whom possession has recently been awarded by writ or order of a Court; or
- (l) commits any other act of intentional disrespect to any court or any judicial proceeding or to any person before whom the proceeding is being held,

shall be guilty of an offence and liable to imprisonment for two years.

(2) When any offence against paragraphs (a), (c), (d), (e), (f), (g) or (l) of subsection (1) is committed in view of the court, the court may cause the offender to be detained in custody, and at any time before the rising of the court on the same day may take cognizance of the offence and summarily sentence the offender to a fine of \$200 or to imprisonment for one month.

(3) The provisions of this section shall be deemed to be in addition to and not in derogation of the powers conferred by the Contempt of Court Act, the Magistrate's Court Act, and any other powers of the High Court or the Court of Appeal to punish for contempt of court.

Perjury

94. (1) Any person lawfully sworn as a witness, or as an interpreter, in a judicial proceeding who wilfully makes a statement, material in that proceeding, which he knows to be false or does not believe to be true shall be guilty of an offence and liable on conviction to imprisonment for seven years.

(2) Where a statement made for the purpose of a judicial proceeding is not made before the court or tribunal itself but is made on oath before a person authorized by law to administer an oath to the person who makes the statement and to record or authenticate the statement it shall, for the

purpose of this section be treated as having been made in a judicial proceeding. It is immaterial whether the person making the statement is or is not competent to be a witness and whether or not his evidence is admissible. It is also immaterial whether the false testimony is given orally or in writing.

(3) The question whether a statement, in respect of which a charge of perjury is made, was material is a question of law to be determined by the court of trial.

(4) A person shall not be liable to be convicted of an offence under this section, or of any offence declared by any law to be perjury or subornation of perjury or to be punishable as perjury or subornation of perjury, solely upon the evidence of one witness as to the falsity of any statement alleged to be false.

(5) For the purpose of this section proceedings before any statutory body or tribunal which is empowered to take evidence on oath shall be deemed to be judicial proceedings.

Subornation of perjury

95. Any person who aids, abets, counsels, procures or suborns another person to commit an offence under this Part shall be guilty of an offence and liable on conviction to imprisonment for seven years.

Fabrication of evidence

96. (1) A person fabricates evidence if he causes any circumstances to exist, or makes any false entry in any book, account or record or makes any document containing a false statement, or forges any document with intent to mislead any judicial proceedings or any person who is a juror or is taking part in any judicial proceedings as a member of any tribunal, or as an arbitrator or referee.

(2) Any person who fabricates evidence, with intent to defeat, obstruct or pervert the course of justice in any judicial proceeding shall be guilty of an offence and liable to imprisonment for seven years.

Contradictory statements by witnesses

97. (1) Subject to subsection (2), where two or more inconsistent or contradictory statements of fact or alleged fact, material to the issue or matter in question, have been wilfully made on oath by the same witness in any judicial proceeding or proceedings, whether before the same court or tribunal or person or not, that witness shall be guilty of an offence and liable to imprisonment for six months.

(2) A person shall not be convicted of an offence under this section unless the court is satisfied that the statements or either of them, were or was made with the intent to deceive the court, tribunal or person before whom the statements or either of them were or was made.

(3) Upon the trial of any person for an offence under this section, it shall not be necessary to prove the falsity of either of the inconsistent or contradictory statements, but upon proof that both the statements were made by the accused, and being satisfied that the accused had the intent referred to in subsection (2), the court may convict the accused.

Evidence in trial for perjury

98. On the trial of any person—

(a) for perjury; or

(b) for procuring or suborning the commission of perjury,

the fact of a former trial before the High Court shall be sufficiently proved by the production of a certificate containing the substance and effect (omitting the formal parts) of the proceedings at the former trial purporting to be signed by the registrar or other person having custody of the records of the court without proof of the signature or official status of the person appearing to have signed the certificate.

Form of oath etc, not material

99. For the purposes of this Part, the form and ceremonies used in administering an oath are immaterial if the court or person before whom the oath is taken has power to administer an oath for the purpose of verifying the statement in question and if the oath has been administered in a form and with the ceremonies which the person taking the oath has accepted without objection or has declared to be binding on him.

Compounding of offences

100. Any person who asks, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person upon any agreement or understanding that he will compound or conceal an offence, or will abstain from, discontinue or delay a prosecution for an offence, or will withhold any evidence thereof, shall be guilty of an offence and liable to imprisonment for two years.

Compounding penal actions

101. Any person who, having brought or under the pretence of bringing an action against any person under a penal law in order to obtain from him compensation or damages for an offence committed or alleged to have been committed by such person, compounds the action without the order or consent of the court in which the action is brought or to be brought, shall be guilty of an offence and liable to imprisonment for two years.

Advertisements for stolen property

102. Any person who—

- (a) publicly offers a reward for the return of any property which has been stolen or lost, and in the offer makes use of any words purporting that no question will be asked, or that the person producing such property will not be seized or molested; or
- (b) publicly offers to return to any person who may have bought or advanced money by way of loan upon any stolen or lost property the money so paid or advanced, or any other sum of money or reward for the return of such property; or
- (c) prints or publishes such an offer,

shall be guilty of an offence and liable on summary conviction to a fine of \$1,000 or to imprisonment for one year.

Rescue

103. Any person who, by force, rescues or attempts to rescue from lawful custody any person—

- (a) if such person is under sentence of imprisonment for life or charged with an offence punishable with imprisonment for life, shall be guilty of an offence and liable to imprisonment for life; or
- (b) if such person is imprisoned on a charge or under sentence for an offence other than those specified in paragraph (a), shall be guilty of an offence and liable to imprisonment for a term not exceeding seven years; or
- (c) in any other case,

shall be guilty of an offence and liable to imprisonment for two years:

Provided that if the person rescued is in the custody of a private person, the offender must have been aware of the fact that the person rescued is in lawful custody. *(Amended by Act 9 of 2000)*

Escape

104. Any person who, being in lawful custody, escapes from such custody shall be guilty of an offence and liable to imprisonment for two years.

Permitting prisoner to escape

105. Any person who, having another person in his custody, intentionally or negligently permits him to escape shall be guilty of an offence and liable to imprisonment for two years.

Aiding prisoner to escape

106. (1) Any person who—

- (a) aids a prisoner in escaping or attempting to escape from lawful custody; or
- (b) conveys anything or causes anything to be conveyed into a prison with intent to facilitate the escape of a prisoner,

shall be guilty of an offence and liable to imprisonment for seven years.

(2) Any person who harbours or assists in any manner any other person in harbouring any prisoner who has escaped from lawful custody shall be guilty of an offence and on conviction on indictment be liable to imprisonment for twenty years. *(Inserted by Act 3 of 1992)*

Removal etc of property under lawful seizure

107. Any person who, when any property has been attached or taken under the process or authority of any court, knowingly and with intent to hinder or defeat the attachment process receives, removes, retains, conceals or disposes of such property shall be guilty of an offence and liable to imprisonment for three years.

Obstructing court officers

108. Any person who wilfully obstructs or resists any person lawfully charged with the execution of an order or warrant of any court, shall be guilty of an offence and liable to imprisonment for two years.

Frauds and breaches of trust by public officers

109. Any person who, being employed in the public service, in the discharge of his duties, commits any fraud or breach of trust affecting the public, whether such fraud or breach of trust would have been criminal or not if committed against a private person, shall be guilty of an offence and liable to imprisonment for three years.

False information to person employed in public service

110. Any person who gives to any person employed in the public service any information in the truth of which he does not believe, intending thereby to cause, or knowing it to be likely that he will thereby cause such person employed in the public service—

- (a) to do or omit anything which such person employed in the public service ought not to do or omit if the true state of facts respecting which such information is given were known to him; or
- (b) to use the lawful power of such person employed in the public service to the injury or annoyance of any person,

shall be guilty of an offence and liable to imprisonment for three years or to a fine of \$3,000 or to both such imprisonment and fine.

PART VII

OFFENCES RELATING TO RELIGION

Insulting any religion

111. Any person who destroys, damages or defiles any place of worship or any object which is held sacred by any group or class of persons with the intention of thereby insulting the religion of those persons or with the knowledge that any group or class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be guilty of an offence and liable to imprisonment for two years.

Disturbing religious assembly

112. Any person who voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship or ceremony shall be guilty of an offence and liable to imprisonment for one year.

Writing or uttering words, etc with intent to wound religious feeling

113. Any person who with the deliberate intention of wounding the religious feelings of any other person, writes any word or any person who, with the like intention, utters any word or makes any sound in the hearing of any other person or makes any gesture or places any object in the sight of any other person shall be guilty of an offence and liable to imprisonment for one year.

Hindering burial, etc

114. Any person who unlawfully hinders the burial of the dead body of any person, or without lawful authority in that behalf, disinters, dissects or harms the dead body of any person, or being under a duty to cause the dead body of any person to be buried, fails to perform such duty, shall be guilty of an offence and liable to imprisonment for two years.

Trespassing on burial place

115. Any person who, with the intention of wounding the feelings of any person or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded or that any person is likely to consider that his religion has been insulted thereby, trespasses in any place of worship or of sepulture, or which is set apart for the performance of funeral rites or for the burial or depository of the remains of the dead, or who offers any indignity to any human corpse or disturbs any persons assembled for any funeral ceremony, shall be guilty of an offence and liable to imprisonment for two years.

PART VIII

SEXUAL OFFENCES

Construction of certain provisions of this Part

116.(1) The use in this Part of the word “man” without the addition, or alternative, of the word “boy” or *vice versa*, shall not prevent the provision applying to any person to whom it would have applied if both words, or the other word, had been used, and similarly with the words “woman” and “girl”.

(2) Where upon the trial of an offence under this Part it is necessary to prove intercourse (whether natural or unnatural) it shall not be necessary to prove the completion of the intercourse by the emission of seed, but the intercourse shall be deemed to be complete upon proof of penetration only.

(3) In this Part the expression “**unlawful sexual intercourse**” means sexual intercourse outside the bond of marriage.

Rape

117.(1) A man who rapes a woman shall be guilty of an offence and liable to imprisonment for life.

(2) A man commits rape if—

- (a)* he has unlawful sexual intercourse with a woman who at the time of the intercourse did not consent to it; and
- (b)* at that time he knows that she does not consent to the intercourse or he is reckless as to whether she consents to it.

(3) For the purposes of subsection (1), a woman is deemed not to have consented to sexual intercourse if her acquiescence is obtained by threat of force or use of force or by means of threats or intimidation of any kind or by fear of bodily harm or by means of false representations as to the nature of the act or, in the case of a married woman, by personating her husband.

(4) On a trial for rape, the jury may find the accused guilty of—

- (a)* sexual intercourse with a girl under the age of thirteen, under section 120; or
- (b)* sexual intercourse with a girl under the age of sixteen, under section 121; or
- (c)* indecent assault on a woman, under section 122; or
- (d)* procurement of a woman by threats, under section 126; or
- (e)* procurement of a woman by false pretences, under section 127; or

- (f) administering drugs to obtain or facilitate intercourse under section 128; or
- (g) common assault under section 184.

(5) Any person who is convicted of attempting to commit rape shall be liable to imprisonment for seven years.

Incest by a man

118.(1) A man who has sexual intercourse with a woman whom he knows to be his grand-daughter, daughter, sister or mother shall be guilty of an offence and liable—

- (a) if the female involved is under the age of thirteen years, to imprisonment for fourteen years; or
- (b) in any other case to imprisonment for five years.

(2) In subsection (1) “**sister**” includes half-sister, and for the purpose of that subsection any expression importing a relationship between two people shall be taken to apply notwithstanding that the relationship is not traced through lawful wedlock.

(3) It is immaterial in the case of a charge for an offence under this section that the intercourse was had with the consent of the woman concerned.

(4) A man convicted of an attempt to commit any offence under this section shall be liable to imprisonment for two years.

Incest by a woman

119.(1) A woman of the age of sixteen years or over who permits a man whom she knows to be her grandfather, father, brother or son to have sexual intercourse with her, with her consent, shall be guilty of an offence and liable to imprisonment for five years.

(2) In subsection (1) “**brother**” includes half-brother, and for the purposes of that subsection any expression importing a relationship between two people shall apply notwithstanding that the relationship is not traced through lawful wedlock.

(3) A woman convicted of an attempt to commit an offence under this section shall be liable to imprisonment for two years.

Sexual intercourse with girl under age of thirteen

120.(1) Any man who has sexual intercourse with a girl under the age of thirteen shall be guilty of an offence and liable to imprisonment for fourteen years.

(2) It is immaterial in the case of a charge for an offence under this section that the intercourse was had with the consent of the girl concerned.

(3) Any man who is convicted of an attempt to commit an offence under this section shall be liable to imprisonment for two years.

Unlawful sexual intercourse with girl under age of sixteen

121.(1) Subject to the provisions of the section, a man who has unlawful sexual intercourse with a girl above the age of thirteen and under the age of sixteen shall be guilty of an offence and liable to imprisonment for two years.

(2) It is immaterial in the case of a charge for an offence under this section that the intercourse was had with the consent of the girl concerned.

(3) Where a marriage is void under subsection (3) of section 25 of the Marriage Act, because the wife is under the age of sixteen years, the invalidity of the marriage does not make the husband guilty of an offence under this section because he had sexual intercourse with her, if at the time he believed her to be his wife and had reasonable cause for that belief.

(4) A man is not guilty of an offence under this section because he has unlawful sexual intercourse with a girl under the age of sixteen years if he is under the age of 24 years, and has not previously been charged with a like offence, and he believes her to be the age of sixteen years or over and has reasonable cause for the belief.

(5) No prosecution for an offence, or for an attempt to commit an offence, under this section shall be commenced more than twelve months after the date of the commission of the offence.

Indecent assault on a woman

122.(1) Subject to the provisions of this section, any man who makes an indecent assault on a woman shall be guilty of an offence and liable—

- (a) if on a girl under the age of thirteen years, to imprisonment for five years; or
- (b) in any other case, to imprisonment for two years.

(2) A girl under the age of sixteen years cannot in law give consent which would prevent an act being an assault for the purposes of this section.

(3) Where a marriage is invalid under subsection (3) of section 25 of the Marriage Act, because the wife is under the age of sixteen years, the invalidity of the marriage does not make the husband guilty of an offence under this section by reason of her incapacity to consent while under that age, if he believes her to be his wife and has reasonable cause for the belief.

(4) A woman who is a person of unsound mind, or a mental defective who is receiving treatment for severe mental disorder, cannot in law give any consent which would prevent an act being an assault for the purposes of this section, but a person is only to be treated as guilty of an indecent assault under this section by reason of such incapacity to consent,

if that person knew or had reason to know that such woman was a person of unsound mind or mental defective receiving treatment as aforesaid.

(5) No prosecution for an offence, or for an attempt to commit an offence, under this section, shall be commenced more than twelve months after the date of the commission of the offence.

Indecency with child

123. Any person who commits an act of gross indecency with or towards a child under the age of fourteen years or who incites a child under that age to such an act with him or another, shall be guilty of an offence and liable—

- (a) on conviction before the High Court, to imprisonment for two years; or
- (b) on summary conviction to imprisonment for six months or to a fine of \$500, or to both such imprisonment and fine.

Permitting girl under thirteen to use premises for sexual intercourse

124. Any person who is the owner or occupier of any premises or who has, or acts or assists in, the management or control of any premises and who induces or knowingly allows a girl under the age of thirteen to resort to or be on those premises for the purpose of having sexual intercourse with men or with a particular man shall be guilty of an offence and liable to imprisonment for life.

Causing or encouraging prostitution etc of girl under sixteen

125. (1) It is an offence for a person to cause or encourage the prostitution of, or the commission of sexual intercourse with or of an indecent assault on, a girl under age of sixteen years for whom he is responsible.

(2) Where a girl has become a prostitute or has had sexual intercourse or has been indecently assaulted, a person shall be deemed for the purposes of this section to have caused or encouraged it if he knowingly allows her to consort with, or to enter or continue in the employment of, any prostitute or person of known immoral character.

(3) The persons who are to be treated for the purposes of this section as responsible for a girl, subject to the next following subsection, are—

- (a) any person who is her parent or legal guardian; and
 - (b) any person who has actual possession or control of her, or to whose charge she has been committed by her parent or legal guardian or by a person having the custody of her; and
 - (c) any other person who has the custody, charge or care of her.
- (4) In the preceding subsection—

- (a) **“parent”** does not include, in relation to any girl, a person deprived of the custody of her by order of any court of competent jurisdiction but (subject to that) in the case of a girl who has been adopted under the Adoption of Children Act means her adopters and, in the case of a girl who is illegitimate, and has not been so adopted, means her mother and any person who has been adjudged to be her putative father:
- (b) **“legal guardian”** means in relation to any girl, any person who is for the time being her guardian having been so appointed according to law by deed or will or by order of a court of competent jurisdiction.

(5) If on a charge for an offence under this section, the girl appears to the court to have been under the age of sixteen years at the time of the offence charged, she shall be presumed for the purposes of this section to have been so unless the contrary is proved.

(6) Any person convicted of an offence under this section shall be liable to imprisonment for two years.

Procurement of woman by threats

126.(1) Any person who, within Montserrat, procures or attempts to procure, a woman by threats or intimidation to have unlawful sexual intercourse, whether within Montserrat or elsewhere, shall be guilty of an offence and liable to imprisonment for two years.

(2) A person shall not be convicted of an offence under this section on the evidence of one witness only, unless that witness is corroborated in some material particular by evidence implicating the accused.

Procurement of woman by false pretences

127.(1) Any person who, within Montserrat, procures or attempts to procure a woman, by false pretences or false representation, to have unlawful sexual intercourse, whether within Montserrat, or elsewhere, shall be guilty of an offence and liable to imprisonment for two years.

(2) A person shall not be convicted of an offence under this section on the evidence of one witness only, unless that witness is corroborated in some material particular by evidence implicating the accused.

Administering drugs to facilitate intercourse

128.(1) Any person who applies or administers to, or causes to be taken by a woman, any drug, matter or thing with intent to stupefy or overpower her so as thereby to enable any man to have unlawful sexual intercourse with her shall be guilty of an offence and liable to imprisonment for two years.

(2) A person shall not be convicted of an offence under this section on the evidence of one witness only, unless that witness is corroborated in some material particular by evidence implicating the accused.

Causing prostitution of woman

129.(1) Any person who, within Montserrat, procures or attempts to procure, a woman—

- (a) to become a common prostitute, whether within Montserrat or elsewhere; or
- (b) to leave Montserrat intending her to become an inmate of or to frequent a brothel elsewhere; or
- (c) to leave her usual place of abode in Montserrat, intending her to become an inmate of or to frequent a brothel in any part of the world for the purposes of prostitution,

shall be guilty of an offence and liable to imprisonment for two years.

(2) A person shall not be convicted of an offence under this section on the evidence of one witness only, unless the witness is corroborated in some material particular by evidence implicating the accused.

Detention of woman in brothel, etc

130.(1) Any person who detains a woman against her will on any premises with the intention that she shall have unlawful sexual intercourse with men or with a particular man, or who detains a woman against her will in a brothel, shall be guilty of an offence and liable to imprisonment for two years.

(2) Where a woman is on any premises for the purpose of having unlawful sexual intercourse or is in a brothel, a person shall be deemed, for the purposes of this section, to detain her there if, with the intention of compelling or inducing her to remain there, he either withholds from her clothes or any other property belonging to her or threatens her with legal proceedings in the event of her taking away clothes provided for her by him or on his directions.

(3) A woman shall not be liable to any legal proceedings, whether civil or criminal, for taking away or being found in possession of any clothes she needed to enable her to leave premises on which she was for the purposes of having unlawful sexual intercourse or to leave a brothel.

Man living on earnings of prostitution

131. (1) A man who knowingly lives wholly or partly on the earnings of prostitution shall be guilty of an offence and liable—

- (a) on conviction before the High Court, to imprisonment for five years;

(b) on summary conviction, to imprisonment for six months or to a fine of \$500, or to both such imprisonment and fine.

(2) For the purposes of this section a man who lives with or is habitually in the company of a prostitute, or who exercises control over a prostitute's movements in a way which shows he is aiding, abetting or compelling her prostitution with others, shall be presumed to be knowingly living on the earnings of prostitution, unless he proves the contrary.

Woman exercising control over prostitute

132. A woman who for purposes of gain exercises control, direction or influence over a prostitute's movements in a way which shows that she is aiding, abetting or compelling her prostitution shall be guilty of an offence and liable—

(a) on conviction before the High Court, to imprisonment for five years;

(b) on summary conviction to imprisonment for six months or to a fine of \$500, or to both such imprisonment and fine.

Living on earnings of male prostitution

133. A man or woman who knowingly lives wholly or in part on the earnings of prostitution of another man shall be guilty of an offence and liable—

(a) on conviction before the High Court, to imprisonment for five years;

(b) on summary conviction, to imprisonment for six months.

Intercourse with defective

134.(1) Subject to the provisions of this section, any man who has unlawful sexual intercourse with a woman who is a mental defective shall be guilty of an offence and liable to imprisonment for two years, and no consent or alleged consent of such woman shall be a defence to a charge for such offence.

(2) A man shall not be convicted of an offence under this section if he establishes to the satisfaction of the court that, on the balance of probabilities he did not know and had no reason to suspect that the woman was a mental defective.

(3) In this section “**a mental defective**” means a person who has been ordered to be detained under the provisions of the Mental Treatment Act or who is shown by the evidence of two medical practitioners to be suffering from serious mental illness, psychopathic disorder or subnormality.

Brothels

135.(1) Any person who keeps a brothel or manages or assists in managing a brothel shall be guilty of an offence and liable on summary conviction to a fine of \$500 or to imprisonment for six months or to both such imprisonment and fine.

(2) For the purposes of this Part of this Code, a brothel is a house, room or any other place resorted to by more than one prostitute for the purposes of prostitution, and the fact that one of the women is the owner or tenant and the occupier of the premises is immaterial.

Letting premises for use as brothel

136. Any person who is the owner or lessor, or who is the occupier or in control of any premises, or his agent, who lets or arranges for the letting of the premises with the knowledge that they are to be used, in whole or in part, as a brothel, or who is a party to the use of such premises as a brothel, shall be guilty of an offence and liable on summary conviction to imprisonment for six months or to a fine of \$500 or to both such imprisonment and fine. Upon the conviction of a person for an offence under this section, after having been previously convicted of an offence under this section, he shall be liable to imprisonment for one year or to a fine of \$2,000, or to both such imprisonment and fine.

Unnatural offences¹

137.(1) Any person who commits buggery with another person or with an animal shall be guilty of an offence and liable on conviction to imprisonment for ten years.

(2) Any person who attempts to commit buggery or commits an assault with intent to commit the same, shall be guilty of an offence and liable on conviction to imprisonment for five years.

(3) No proceedings shall be instituted in respect of an offence under this section except by or with the consent of the Attorney General.

(4) On the trial of an offence under this section, the court may convict the accused of an offence under section 138.

Indecent assault on a man¹

138. Any person who commits or attempts to commit an indecent assault on a male person shall be guilty of an offence and liable to imprisonment for two years.

¹ By Order in Council made the 13th day of December 2000, it is provided, *inter alia*, that "a homosexual act in private shall not be an offence provided that the parties consent thereto and have attained the age of 18 years"

PART IX

ABORTION, ETC

Use of poison, etc, or instruments to cause miscarriage

139.(1) Subject to the provisions of this section, any person who, being with child, with intent to procure her own miscarriage unlawfully administers to herself any poison or other noxious thing, or unlawfully uses any instrument or other means whatsoever with the like intent; and any person who, with intent to procure the miscarriage of any woman (whether she be or be not with child) unlawfully administers to her, or causes her to take, any poison or other noxious thing, or unlawfully uses any instrument or other means whatsoever with the like intent, shall be guilty of an offence and liable on conviction to imprisonment for life.

(2) A person shall not be guilty of an offence under subsection (1) when a pregnancy is terminated in a hospital or other establishment approved for the purposes by the Chief Medical Officer, by a medical practitioner if two medical practitioners are of the opinion, formed in good faith—

- (a)* that the continuance of the pregnancy would involve risk to the life of the pregnant woman, or injury to the physical or mental health of the pregnant woman greater than if the pregnancy were terminated; or
- (b)* that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped:

Provided that the reference to the opinion of two medical practitioners and to an approved hospital or other establishment shall not apply to the termination of a pregnancy by a registered medical practitioner in a case in which he is of the opinion, formed in good faith, that the termination is immediately necessary to save the life or to prevent grave permanent injury to the physical or mental health of the pregnant woman.

(3) Any person who unlawfully supplies or procures any poison or other noxious thing, or any instrument or thing whatsoever, knowing that the same is intended to be unlawfully used or employed with intent to procure the miscarriage of any woman (whether she be or be not with child) shall be guilty of an offence and liable on conviction to imprisonment for five years.

Killing unborn child

140. Any person who, with intent to destroy the life of a child capable of being born alive, by any wilful act or omission causes a child to die before it has an existence independent of its mother, shall be guilty of an offence and liable to imprisonment for life:

Provided that a person shall not be convicted of an offence under this section if it is proved that the act which caused the death of the child was done in good faith for the purpose only of preserving the life of the mother.

PART X

OFFENCES RELATING TO MARRIAGE

Bigamy

141.(1) Subject to the provisions of subsection (2), any person who, being married, marries any other person during the life of the former husband or wife shall be guilty of an offence and liable on conviction to imprisonment for seven years.

(2) A person shall not be guilty of an offence under this section by reason of marrying a second time in any of the following cases—

- (a)* where the husband or wife, as the case may be, of the person marrying a second time has been continually absent from such person for the space of seven years immediately preceding the date of the second marriage, and has not been known to the other party to the first marriage to have been living during any part of such period; or
- (b)* where the husband or wife, as the case may be, who marries a second time, although no such period of seven years as is referred to in paragraph *(a)* has elapsed, in good faith and on reasonable grounds believed at the time of the second marriage that the other party to his first marriage was dead; or
- (c)* where, prior to the date of the second marriage, the first marriage has been dissolved or declared to be void or a decree of nullity made by a court of competent jurisdiction.

(3) The husband or wife of a person charged with bigamy may be called as a witness for the prosecution or the defence without the consent of the person charged.

Fraudulent pretence of marriage

142. Any person who wilfully and by fraud causes any woman, who is not lawfully married to him, to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be guilty of an offence and liable to imprisonment for seven years.

Fraudulently taking part in sham marriage ceremony

143. Any person who dishonestly or with fraudulent intention goes through the ceremony of marriage, knowing that he is not thereby lawfully married, shall be guilty of an offence and liable to imprisonment for five years.

Falsely pretending to be marriage officer

144. Any person who solemnises a marriage under the Marriage Act, falsely pretending to be a marriage officer appointed under the Marriage Act, shall be guilty of an offence and liable to imprisonment for five years.

Personation in marriage ceremony

145. Any person who impersonates another person in a marriage ceremony, or who marries under a false name or description, with intent to deceive the other party to the marriage shall be guilty of an offence and liable to imprisonment for seven years.

PART XI

GENOCIDE

Interpretation of this Part

146. (1) In this Part “**the Genocide Convention**” means the Convention on the Prevention and Punishment of the Crime of Genocide approved by the General Assembly of the United Nations on 9th December, 1948.

(2) A person commits an offence of genocide if he commits any act falling within the definition of “**genocide**” in Article II of the Genocide Convention, the terms of which Article are set out in subsection (3).

(3) Genocide means any of the following acts committed with intent to destroy, in whole or part, a national, ethnical, racial or religious group, as such—

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) imposing measures intended to prevent births within the group;

(e) forcibly transferring children of the group to another group.

Genocide

147. A person who commits the offence of genocide shall be liable—

- (a) if the offence consists of the killing of any person, but subject to the provisions of subsections (2) and (3) of section 23, to imprisonment for life;
- (b) in any other case, to imprisonment for fourteen years.
(Amended by Act 9 of 2000)

Attorney General's fiat

148. Proceedings in respect of an offence of genocide shall not be instituted except by or with the consent of the Attorney General:

Provided that this section shall not prevent the arrest, or the issue of a warrant for the arrest, of a person alleged to have committed such an offence or for the remand of any such person pending the decision of the Attorney General in the matter. A person so remanded shall not be remanded on bail except with the leave of a Judge.

PART XII

HOMICIDE AND OTHER OFFENCES AGAINST THE PERSON

Definition of murder

149.(1) Subject to the provisions of sections 150, 152 and 155, any person who, of malice aforethought express or implied, causes the death of another person by an unlawful act or omission is guilty of murder:

Provided that where on the facts found the offence would, under the law of England be reduced to one of manslaughter, then the offence shall be so reduced.

(2) For the purposes of this section malice aforethought, which may be express or implied, shall be deemed to be established by evidence proving either—

- (a) an intention to cause the death of or to do grievous bodily harm to any person, whether such person is the person actually killed or not; or
- (b) knowledge that the act or omission causing death will probably cause the death of or grievous bodily harm to some person, whether or not such person is the person actually killed, although such knowledge is accompanied by

indifference whether or not death or grievous bodily harm is caused, or by a wish that it may not be caused.

Persons suffering from diminished responsibility

150.(1) Where a person kills or is party to the killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or other inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts in doing or being a party to the killing.

(2) On a charge of murder, it shall be for the defence to prove that the person charged is by virtue of this section not liable to be convicted of murder.

(3) A person who but for this section would be liable, whether as principal or otherwise; to be convicted of murder shall be liable instead to be convicted of manslaughter.

(4) The fact that one party to a killing is by virtue of this section not liable to be convicted of murder shall not affect the question whether the killing amounted to murder in the case of any other party to it.

Penalty for murder

151. Any person who is convicted of murder shall be liable to imprisonment for life:

Provided that in any case in which a woman who is convicted of murder alleges that she is pregnant the court shall proceed in accordance with the provisions of subsection (3) of section 23. *(Amended by Act 9 of 2000)*

Provocation

152.(1) Where on a charge of murder there is evidence on which a jury can find that the person charged was provoked (whether by things done or things said or both) to lose his self-control, the question whether the provocation was enough to make a reasonable man do as he did shall be left to be determined by the jury; and the jury shall take into account everything done and said according to the effect which, in their opinion, it would have on a reasonable man.

(2) Where on a charge of murder, the jury find that all the other elements of the offence have been proved, but there is evidence of provocation, such as is referred to in subsection (1), the jury shall not return a verdict of guilty of murder but shall return a verdict of guilty of manslaughter.

Attempted murder

153. Any person who, by any means, attempts to commit murder shall be liable to imprisonment for life.

Manslaughter

154.(1) Any person who by any unlawful act or omission causes the death of another person is guilty of manslaughter. For the purposes of this section, an unlawful omission is an omission amounting to culpable negligence to discharge a duty tending to the preservation of life or health, whether such omission is or is not accompanied by an intention to cause death or bodily harm.

(2) Any person who is convicted of manslaughter shall be liable to imprisonment for life.

Infanticide

155.(1) Where a woman by any wilful act or omission causes the death of her child, being a child under the age of twelve months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then notwithstanding that the circumstances were such that but for this section the offence would have amounted to murder, she shall be guilty of the offence of infanticide, and may for such offence be dealt with and punished as if she had been guilty of the offence of manslaughter.

(2) Where upon the trial of a woman for the murder of her child, being a child under the age of twelve months, the jury are of the opinion that by any wilful act or omission she caused its death, but that at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then the jury, notwithstanding that the circumstances were such that but for this section they might have returned a verdict of murder, may return in lieu thereof a verdict of manslaughter.

(3) Nothing in this section shall affect the power of the jury upon an indictment for murder of a child to return a verdict of manslaughter or a verdict of guilty but insane or a verdict of concealment of birth in pursuance of section 175.

Threats to murder

156.(1) Any person who maliciously sends, delivers or utters or directly or indirectly causes to be received, knowing the contents thereof, any letter, writing or other document threatening to kill or murder any person, shall be guilty of an offence and shall be liable to imprisonment for ten years.

(2) For the purposes of subsection (1), “**document**” shall be deemed to include any disc, tape, sound track or other device in which sounds or other data are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom.

Conspiracy to murder

157. Any person who conspires with any other person to murder any person, whether such person is within Montserrat or elsewhere, shall be guilty of an offence and liable to imprisonment for ten years.

Abetment of suicide

158.(1) Any person who aids, abets, counsels or procures the suicide of another, or the attempt by another to commit suicide, shall be guilty of an offence and liable to imprisonment for fourteen years.

(2) If on the trial of an indictment for murder or manslaughter it is proved that the accused aided, abetted, counselled or procured the suicide of the person in question, the jury may find him guilty of that offence.

Suicide pacts

159.(1) It shall be manslaughter and not murder for a person acting in pursuance of a suicide pact between him and another person to kill the other person or to be a party to that other person killing himself or being killed by a third person.

(2) Where it is shown that the person charged with the murder of another person killed that other or was a party to his killing himself or being killed, it shall be for the defence to prove that the person charged was acting in pursuance of a suicide pact between him and the other person.

(3) For the purposes of this section “**suicide pact**” means a common agreement between two or more persons having for its object the death of all of them, whether or not each is to take his own life, but nothing done by a person entering into a suicide pact shall be treated as done by him in pursuance of the pact unless it is done while he has a settled intention of dying in pursuance of that pact.

Causing death defined

160. A person shall be deemed to have caused the death of another person, although his act is not the immediate or not the sole cause of death, in any of the following cases—

- (a)* if he inflicts bodily injury on another person in consequence of which that other person undergoes surgical or medical treatment which causes his death. In this case it is immaterial whether the treatment was proper or mistaken, if it was employed in good faith and with common knowledge and skill; but the person inflicting the injury shall not be deemed to have caused the death if the treatment which was the immediate cause of the death was not employed in good faith or was so employed without common knowledge and skill;
- (b)* if he inflicts a bodily injury on another which would not have caused death if the injured person had submitted to proper

surgical or medical treatment or had observed proper precautions as to his mode of living;

- (c) if by actual or threatened violence he causes such other person to perform an act which causes the death of that person, such act being a means of avoiding such violence which in the circumstances would appear natural to the person whose death is so caused;
- (d) if by any act or omission he hastens the death of a person suffering under any disease or injury which apart from such act or omission would have caused death;
- (e) if his act or omission would not have caused death unless accompanied by an act or omission of the person killed or of other persons.

Persons capable of being killed

161. A child becomes a person capable of being killed when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not, whether it has independent circulation or not and whether the navel string is severed or not.

Limitation as to time of death

162. (1) A person shall not be deemed to have killed another person if the death of that other person does not take place within a year and a day of the act or omission alleged to have contributed to the death of that other person.

(2) The period referred to in subsection (1) shall be reckoned inclusive of the day on which the last act or omission contributing to the death occurred.

Wounding or causing grievous bodily harm, with intent so to do

163. Any person who unlawfully and maliciously by any means whatsoever wounds or causes any grievous bodily harm to any person with intent to do some grievous bodily harm to any person or with intent to resist or prevent the lawful apprehension or detainer of any person, shall be guilty of an offence and liable to imprisonment for life.

Inflicting grievous bodily harm

164. Any person who unlawfully and maliciously wounds or inflicts any grievous bodily harm upon any other person, either with or without any weapon or instrument shall be guilty of an offence and liable to imprisonment for five years.

Wounding

164A. Any person wounding any other person shall, if in the opinion of the Magistrate such wounding is not of a serious nature, be liable to imprisonment for a term not exceeding twelve months:

Provided that the Magistrate may, in his discretion abstain from trying the case summarily and may commit the offender for trial for an indictable offence.

(Inserted by Act 2 of 1991)

Attempting to choke, etc in order to commit an offence

165. Any person who by any means whatsoever attempts to choke, suffocate or strangle any other person or who by any means calculated to choke, suffocate or strangle, attempts to render any other person insensible, unconscious or incapable of resistance with intent in any such cases thereby to enable himself or any other person to commit, or with intent in any of such cases thereby to assist any other person in committing, any criminal offence, shall be guilty of an offence and liable to imprisonment for life.

Using anaesthetic, etc, to commit an offence

166. Any person who unlawfully applies or administers to, or causes to be taken by, or who attempts to administer to or attempts to cause to be taken by, any other person any chloroform, laudanum or other anaesthetic or any stupefying or overpowering drug, matter or thing, with intent in any of such cases thereby to enable himself or any other person to commit or with the intent in any of such cases thereby to assist any other person in committing any criminal offence, shall be guilty of an offence and liable to imprisonment for life.

Administering poison so as to endanger life or inflict grievous harm

167. Any person who unlawfully and maliciously administers to, or causes to be administered to or taken by, any other person any poison or other destructive or noxious thing so as thereby to endanger the life of such person, or so as thereby to inflict upon such other person any grievous bodily harm, shall be guilty of an offence and liable to imprisonment for ten years.

Administering poison with intent to injure, etc

168. Any person who unlawfully and maliciously administers to, or causes to be administered to or taken by, any other person any poison or other destructive or noxious thing with intent to injure, aggrieve or annoy such person shall be guilty of an offence and liable to imprisonment for five years.

Impeding escape from shipwreck

169. Any person who unlawfully and maliciously prevents or impedes any person, being on board of or having quitted any ship or vessel which is in distress or wrecked, stranded or cast on shore, in his endeavour to save his life, or unlawfully and maliciously prevents or impedes any other person in his endeavour to save the life of any such person aforesaid, shall be guilty of an offence and liable to imprisonment for life.

Causing bodily harm by corrosive substance or explosive

170. Any person who unlawfully and maliciously, by the use of any corrosive substance or the explosion of any explosive substance, burns, maims, disfigures, disables or causes any grievous bodily harm to any person shall be guilty of an offence and liable to imprisonment for life.

Using explosive or corrosive substance with intent to do grievous harm

171. Any person who unlawfully or maliciously—

- (a) causes any explosive substance to explode; or
- (b) sends or delivers or causes to be taken or received by any person any explosive substance or any other dangerous or noxious thing; or
- (c) puts or lays at any place any corrosive fluid or any destructive or explosive substance; or
- (d) casts or throws at or upon or otherwise applies to any person any corrosive fluid or any destructive or explosive substance,

with intent in any of the cases aforesaid to burn, maim, disfigure or disable any person, or to do some grievous bodily harm to any person, shall be guilty of an offence and liable to imprisonment for life.

Placing explosive near building, etc, with intent to cause bodily harm

172. Any person who unlawfully and maliciously places or throws in, into, upon, against or near any building, aircraft, ship or vessel any explosive substance with intent to do any bodily injury to any person, whether or not any explosion takes place and whether or not any bodily injury be effected, shall be guilty of an offence and liable to imprisonment for life.

Causing explosion likely to endanger life or property

173. Any person who unlawfully and maliciously causes by any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property, whether any injury to person or property has been actually caused or not, shall be guilty of an offence and liable to imprisonment for fourteen years.

Setting traps, etc with intent to inflict grievous bodily harm

174.(1) Any person who sets or places or causes to be set or placed any spring gun, mantrap or other engine or other device (including any electrical device or wiring) calculated to destroy human life or inflict grievous bodily harm, with the intent that the same or whereby the same may kill or inflict grievous bodily harm upon a trespasser or other person coming into contact therewith, shall be guilty of an offence and liable to imprisonment for five years.

(2) Any person who knowingly and wilfully permits any such contrivance, engine or device as is referred to in subsection (1), which may have been set or placed in any place, then being in or afterwards coming into his possession, to continue so set or placed shall be deemed to have set or placed the same with such intent as aforesaid.

(3) Nothing in this section contained shall extend to make it illegal to set or place any trap or other device such as may have been or may be usually set with the intent of destroying vermin.

Concealing the birth of a child

175. Any person who, when a woman is delivered of a child, endeavours by any secret disposition of the dead body of the child, to conceal the birth, whether the child died before, at or after its birth, shall be guilty of the offence of concealment of birth and liable to imprisonment for two years.

Unlawful use of firearms

176. Any person who unlawfully discharges or attempts to discharge any firearm at any person or, being armed with a firearm, unlawfully threatens to discharge such firearm at any person shall be guilty of an offence and liable, in addition to any other liability for any offence he may thereby commit, to imprisonment for five years.

Wounding

177. Any person who unlawfully wounds another shall be guilty of an offence and liable to imprisonment for five years.

Excess use of force

178. Any person who is authorized by law, or by the consent of a person injured by him, to use force shall be criminally responsible for the consequences of the force he may use, if it exceeds what is reasonable, having regard to all the circumstances.

Reckless and negligent acts

179. Any person who in any manner so rash or negligent as to endanger human life or safety—

(a) drives or rides in any public place; or

- (b) navigates or takes part in the navigation or working of any vessel or aircraft; or
- (c) does any act with fire or any combustible matter, or omits to take precautions against any probable danger from any fire or any combustible matter in his possession or control; or
- (d) omits to take precautions against any probable danger from any animal in his control or possession; or
- (e) dispenses, supplies, sells, administers or gives away any medicine or poisonous or dangerous matter; or
- (f) does any act with respect to, or omits to take proper precautions against any probable danger from any machinery of which he is solely or partly in charge; or
- (g) does any act with respect to, or omits to take proper precautions against, any probable danger from any explosive or firearm in his possession or control,

shall be guilty of an offence and liable to imprisonment for two years.

Other negligent acts causing harm

180. Any person who unlawfully does any act, or omits to do any act which it is his duty to do, not being an act or omission specified in section 179, by which act or omission harm is caused to any person, shall be guilty of an offence and liable on summary conviction to imprisonment for six months.

Dealing with poisonous substances in a negligent manner

181. Any person who does with any poisonous substance any act in a manner so rash or negligent as to endanger human life or be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such care with any poisonous substance in his possession or control as is sufficient to guard against probable danger to human life from such poisonous substance, shall be guilty of an offence and liable on summary conviction to imprisonment for six months.

Acts tending to the destruction of aircraft and ships

182.(1) Any person who unlawfully masks, alters, destroys or removes any beacon, light or signal, or unlawfully exhibits any false light or signal with intent to bring any aircraft or vessel into danger or who unlawfully and maliciously does anything tending to the immediate loss or destruction of any aircraft or vessel, shall be guilty of an offence and liable to imprisonment for life.

(2) Any person who unlawfully and maliciously cuts away, casts adrift, alters, defaces, sinks, conceals or destroys any beacon, buoy, rope, perch or mark used or intended for the guidance of seamen or airmen for

the purposes of navigation shall be guilty of an offence and liable to imprisonment for seven years.

(3) For the purposes of this section “**beacon**” includes any radio beacon and “**signal**” includes any radio or similar signal.

Conveying person for hire in unsafe conveyance

183. Any person who knowingly or negligently conveys or causes any person to be conveyed for hire by water or by air in any vessel or aircraft when such vessel or aircraft is in such a state or so loaded as to be unsafe shall be guilty of an offence and liable on summary conviction to imprisonment for one year.

Common assault

184. Any person who unlawfully assaults another is guilty of an offence and, if the assault is not committed in circumstances for which a greater punishment is provided by this or any other law, shall be liable on summary conviction to imprisonment for one year.

Assault causing actual bodily harm

185. Any person who commits an assault occasioning actual bodily harm is guilty of an offence and shall be liable to imprisonment for five years.

Assault on person protecting wreck

186. Any person who assaults and strikes or wounds any magistrate, justice of the peace or police officer or other officer or person lawfully authorized in or on account of the execution of his duty in or concerning the preservation of any vessel or aircraft in distress, or of any vessel or aircraft or goods or effects wrecked, stranded or cast on any land or shore, or lying under water shall be guilty of an offence and liable to imprisonment for seven years.

Assaults specially punishable

187. Any person who—

- (a) assaults any person with intent to commit an offence or to resist or prevent the lawful apprehension or detainer of himself or another for any offence; or
- (b) assaults, resists or obstructs any person engaged in the lawful execution of process, or in making lawful distress, with intent to rescue any property lawfully taken under such process or distress; or
- (c) assaults any person on account of any act done by him in the execution of any duty imposed on him by law,

shall be guilty of an offence and liable to imprisonment for two years.

Assault on female or child

188. Any person who is guilty of an aggravated assault on any female, or on any male child whose age appears to the court not to exceed fourteen years, if the assault is not committed in circumstances for which a greater punishment is provided by this Code, shall be liable on summary conviction to a fine of \$500 or to imprisonment for six months, or to both such fine and imprisonment.

Assault on police officers, etc

189. Any person who assaults, resists or wilfully obstructs any police officer, acting in the due execution of his duty, or any person acting in aid of such officer, or who assaults any person with intent to resist or prevent the lawful apprehension or detainer of himself or any other person for any offence, shall be guilty of an offence and liable—

- (a) on summary conviction to imprisonment for six months or to a fine of \$1,000, or to both such imprisonment and fine;
- (b) on conviction before the High Court to imprisonment for two years or to a fine of \$2,000, or to both such imprisonment and fine.

PART XIII

NEGLECT ENDANGERING LIFE OR HEALTH

Neglecting apprentice or servant

190. Any person who, either as master or as mistress of any apprentice or servant—

- (a) being legally liable to provide for such apprentice or servant necessary food, lodging or clothing, without lawful excuse, refuses or neglects to provide the same: or
- (b) unlawfully or maliciously does, or causes to be done, any bodily harm to any such apprentice or servant,

so that the life of any such apprentice or servant is, endangered or the health of such apprentice or servant is, or is likely to be, thereby seriously or permanently injured, shall be guilty of an offence and liable to imprisonment for five years.

Failure to supply necessities

191. Any person who, being charged with the duty of providing for another the necessities of life, without lawful excuse fails to do so;

whereby the life of that other person is, or is likely to be, endangered, or his health is, or is likely to be, seriously or permanently injured, shall be guilty of an offence and liable to imprisonment for five years.

Abandoning or exposing child under two years

192. Any person who unlawfully abandons or exposes any child, being under the age of two years, whereby the life of such child shall be endangered or the health of such child is, or is likely to be, seriously or permanently injured, shall be guilty of an offence and liable to imprisonment for seven years.

Cruelty to children

193.(1) If any person, who has attained the age of sixteen years and has the custody, charge or care of any child or young person under that age, wilfully assaults, ill-treats, neglects, abandons or exposes him or causes or procures him to be assaulted, ill-treated, neglected, abandoned or exposed in a manner likely to cause him unnecessary suffering or injury to health (including injury to or loss of sight or hearing or organ of the body and any mental derangement), that person shall be guilty of an offence and shall be liable—

- (a) on conviction before the High Court to imprisonment for five years, or to a fine of \$5,000 or to both such imprisonment and fine;
 - (b) on summary conviction to a fine of \$500 or to imprisonment for six months, or to both such fine and imprisonment.
- (2)** For the purposes of this section—
- (a) a parent or other person legally liable to maintain a child or young person shall be deemed to have neglected him in a manner likely to cause injury to his health if he has failed to provide adequate food, clothing, medical aid or lodging for him;
 - (b) where it is proved that the death of an infant under the age of three years was caused by suffocation (not being suffocation caused by disease or the presence of any foreign body in the throat or air passages of the infant) while the infant was in bed with some other person who has attained the age of fifteen years, that other person shall, if he was when he went to bed under the influence of drink, be deemed to have neglected the infant in a manner likely to cause injury to its health;
 - (c) any person, having attained the age of fifteen years, who gives, or causes to be given, or sells or causes to be sold, to any child under the age of ten years any intoxicating liquor, except upon the order of a duly qualified medical practitioner or in case of sickness, apprehended sickness, or other urgent

cause, shall be deemed to have ill-treated that child in a manner likely to cause injury to the child's health;

- (d) any person, having attained the age of fifteen years, and having the custody, charge or care of any child under the age of seven years, who allows that child to be in any room or yard containing a stove, coal-stove or open fire-place, not sufficiently protected to guard against the risk of that child being burnt or scalded, without taking reasonable precautions against the risk, and by reason thereof that child is killed or suffers serious injury, shall be deemed to have neglected that child in a manner likely to cause injury to the child's health.

(3) A person may be convicted under this section—

- (a) notwithstanding that actual suffering or injury to health, or the likelihood of actual suffering or injury to health, was obviated by the action of another person;
- (b) notwithstanding the death of the child or young person in question.

(4) If it is proved that a person convicted under this section was directly or indirectly interested in any sum of money accruing or payable in the event of the death of the child or young person, and had knowledge that such sum of money was accruing or becoming payable, then—

- (a) in the case of a conviction before the High Court, the amount of the fine which may be imposed under this section shall be \$7,000 and the court *in lieu* of any other penalty under this section may sentence the person convicted to imprisonment for seven years; and
- (b) in the case of a summary conviction, the court in determining the sentence shall take into consideration the fact that the person convicted was so interested and had such knowledge.

(5) For the purposes of subsection (4)—

- (a) a person shall be deemed to be directly or indirectly interested in a sum of money if he has any share in or any benefit from the payment of that money, notwithstanding that he may not be a person to whom it is legally payable; and
- (b) a copy of a policy of insurance, certified to be a true copy by an officer or agent of the insurance company granting or issuing the policy, shall be evidence that the child or young person therein stated to be insured has in fact been so insured and that the person in whose favour the policy has been granted is the person to whom the money thereby insured is legally payable.

(6) Nothing in this section shall be construed as affecting the right of any parent, teacher or other person having the lawful control or charge of a child or young person to administer punishment to him.

Other negligent acts or omissions causing harm

194. Any person who unlawfully does an act or omits to do any act which it is his duty to do, by which act or omission harm is caused to any other person, in circumstances which do not constitute an offence under any other provision of this Code or any other law, shall be guilty of an offence and liable to a fine of \$1,000 or to imprisonment for one year, or to both such fine and imprisonment.

PART XIV**ABDUCTION, KIDNAPPING AND SIMILAR CRIMES****Definitions of “abduction” and “kidnapping”**

195. For the purposes of this Part—

- (a) any person who, without lawful authority, by force or threats or by any deceitful means, induces any person to go from any place is said to abduct that person; and
- (b) any person—
 - (i) who, without lawful authority, conveys any person beyond the limits of Montserrat without the consent of that person or of some person legally authorized to consent on behalf of that person; or
 - (ii) who, without lawful authority, imprisons any person within Montserrat in such manner as to prevent him from applying to a court for his release or from discovering to any other person the place where he is imprisoned or in such manner as to prevent any person entitled to have access to him from discovering the place where he is so imprisoned,

is said to kidnap that person.

Punishment for kidnapping

196. Any person who kidnaps any person shall be guilty of an offence and liable to imprisonment for ten years.

Abduction with intent to convey out of Montserrat, etc

197. Any person who abducts any person with intent to cause him to be taken beyond the limits of Montserrat or to be secretly and unlawfully confined within Montserrat shall be guilty of an offence and liable to imprisonment for fourteen years.

Abduction or kidnapping female with intent to marry, etc

198. Any person who abducts or kidnaps any female of any age with intent to marry or have sexual intercourse with her, or to cause her to be married or to have sexual intercourse with any other person, shall be guilty of an offence and liable to imprisonment for fourteen years.

Unlawfully taking girl under age of sixteen away from parent

199. Any person who unlawfully takes or causes to be taken any unmarried girl under the age of sixteen years, out of the possession and against the will of her father or mother or other person having the lawful care or charge of her, shall be guilty of an offence and liable to imprisonment for two years.

Child stealing

200. Any person who unlawfully, either by force or fraud, leads or takes away, or decoys or entices away, or detains any child under the age of fourteen years with intent to deprive any parent, guardian or other person having the lawful care or charge of such child, of the possession of such child, or with intent to steal any article upon or about the person of such child, to whomsoever such article may belong; and any person who with any such intent receives or harbours any such child, knowing the same to have been by force or fraud led, taken, decoyed, enticed away or detained as in this section mentioned, shall be guilty of an offence and liable to imprisonment for seven years:

Provided that no person who has claimed in good faith any right to the possession of the child, or is the mother or father or claims to be the father of an illegitimate child, shall be liable to be prosecuted by virtue of this section on account of getting possession of such child or taking such child out of the possession of any person having the lawful charge thereof.

Wrongful confinement

201. Any person who, without lawful authority, confines any person, in circumstances not constituting an offence under any of the other provisions of this Part, shall be guilty of an offence and liable to imprisonment for five years.

Unlawful compulsory labour

202. Any person who unlawfully compels any other person to labour against the will of that other person shall be guilty of an offence and liable to imprisonment for five years.

PART XV

OFFENCES RELATING TO PROPERTY

Construction of this Part

203. For the purposes of this Part—

“**gain**” and “**loss**” are to be construed as extending not only to gain or loss in money or other property, but as extending to any such gain or loss whether temporary or permanent; and

- (a) “**gain**” includes a gain by keeping what one has, as well as gain by getting what one has not; and
- (b) “**loss**” includes a loss by not getting what one might get, as well as a loss by parting with what one has;

“**goods**”, except in so far as the context otherwise requires, includes money and every other description of property except land, and includes things severed from the land by stealing.

Definition of “theft”

204. (1) A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it; and “**thief**” and “**steal**” shall be construed accordingly.

(2) It is immaterial whether or not the appropriation is made with a view to gain or is made for the thief’s own benefit.

(3) The five following sections of this Part shall have effect as regards the interpretation and operation of this section and (except as otherwise provided by this Part), shall apply only for the purposes of this section.

“Dishonestly”

205. (1) A person’s appropriation of property belonging to another is not to be regarded as dishonest—

- (a) if he appropriates the property in the belief that he has in law the right to deprive the other of it on behalf of himself or of a third person; or
- (b) if he appropriates the property in the belief that he would have the other’s consent if the other knew of the appropriation and the circumstances of it; or
- (c) (except where the property came to him as a trustee or personal representative) if he appropriates the property in the belief that the person to whom the property belongs cannot be discovered by taking reasonable steps.

(2) A person's appropriation of property belonging to another may be dishonest notwithstanding that he is willing to pay for the property.

“Appropriates”

206.(1) Any assumption by a person of the rights of an owner amounts to an appropriation, and this includes, where he has come by the property (innocently or not) without stealing it, any later assumption of a right to it by dealing with it as its owner.

(2) Where property or a right or interest in property is or purports to be transferred for value to a person acting in good faith, no later assumption by him of rights which he believed himself to be acquiring shall, by reason of any defect in the transferor's title, amount to theft of the property.

“Property”

207.(1) “Property” includes money and all other property, real or personal, including things in action and other intangible property.

(2) A person cannot steal land, or things forming part of land and severed from it by him or by his directions, except in the following cases—

- (a) when he is a trustee or personal representative, or is authorized by power of attorney, or as a liquidator of a company or otherwise, to sell or dispose of land belonging to another, and he appropriates the land or anything forming part of it by dealing with it in breach of the confidence reposed in him; or
- (b) when he is not in possession of the land and appropriates anything forming part of the land by severing it or causing it to be severed, or after it has been severed; or
- (c) when, being in possession of the land under a tenancy, he appropriates the whole or part of any fixture or structure let to be used with the land.

For the purposes of this subsection, “land” does not include incorporeal hereditaments; “tenancy” means a tenancy for years or any less period and includes an agreement for such tenancy, but a person who after the end of the tenancy remains in possession as statutory tenant or otherwise is to be treated as having possession under the tenancy, and “let” shall be construed accordingly.

(3) A person who picks mushrooms growing wild on any land or who picks flowers, fruit or foliage from a plant growing wild, on any land, does not (although not in possession of the land) steal what he picks, unless he does it for reward or for sale or other commercial purpose.

For the purposes of this subsection “mushroom” includes any fungus, and “plant” includes any shrub or trees.

(4) Wild creatures, tamed or untamed, shall be regarded as property; but a person cannot steal a wild creature not tamed nor ordinarily kept in captivity, or the carcass of any such creature unless it has been reduced into possession by or on behalf of another and possession of it has not since been lost or abandoned, or another person is in the course of reducing it into possession.

“Belonging to another”

208.(1) Property shall be regarded as belonging to any person having possession or control of it, or having in it any proprietary right or interest (not being an equitable interest arising only from an agreement to transfer or grant an interest).

(2) Where property is subject to a trust, the persons to whom it belongs shall be regarded as including any person having a right to enforce the trust, and an intention to defeat the trust shall be regarded accordingly as an intention to deprive of the property any person having that right.

(3) Where a person receives property from or on account of another, and is under an obligation to the other to retain and deal with that property or its proceeds in a particular way, the property or proceeds shall be regarded (as against him) as belonging to the other.

(4) Where a person gets property by another’s mistake, and is under an obligation to make restoration (in whole or in part) of the property or its proceeds or of the value thereof, then to the extent of that obligation the property or proceeds shall be regarded (as against him) as belonging to the person entitled to restoration, and an intention not to make restoration shall be regarded accordingly as an intention to deprive that person of the property or proceeds.

(5) Property of a corporation sole shall be regarded as belonging to the corporation notwithstanding a vacancy in the corporation.

“Intention of permanently depriving the owner”

209.(1) A person appropriating property belonging to another without meaning the other permanently to lose the thing itself is nevertheless to be regarded as having the intention of permanently depriving the other of it if the intention is to treat the thing as his own to dispose of regardless of the other’s rights; and a borrowing or lending of it may amount to so treating it if, but only if, the borrowing or lending is for a period and in circumstances making it equivalent to an outright taking or disposal.

(2) Without prejudice to the generality of subsection (1), where a person, having possession or control (whether lawfully or not) of property belonging to another, parts with the property under a condition as to its return which he may not be able to perform, this (if done for purposes of his own and without the other’s authority) amounts to treating the property as his own to dispose of regardless of the other’s rights.

Punishment for theft

210. Any person who commits theft shall be guilty of an offence and shall be liable to imprisonment—

- (a) on summary conviction, for two years; or
- (b) on conviction before the High Court, for ten years.

Robbery

211. (1) A person is guilty of robbery if he steals and immediately before or at the time of doing so, and in order to do so, he uses force on any person or puts or seeks to put any person in fear of being then and there subjected to force.

(2) A person who commits robbery shall be guilty of an offence and liable to imprisonment for life.

Burglary

212. (1) A person is guilty of burglary if—

- (a) he enters any building or part of a building as a trespasser and with intent to commit any offence mentioned in subsection (2);
- (b) having entered any building or part of a building as a trespasser he steals or attempts to steal any thing in the building or that part of it or attempts to inflict on any person therein any grievous bodily harm.

(2) The offences referred to in paragraph (a) of subsection (1) are offences of stealing anything in the building in question, of inflicting on any person therein any grievous bodily harm or raping any woman therein, and of doing unlawful damage to the building or anything therein.

(3) References in this section to a building shall apply also to any inhabited vehicle or vessel, and shall apply to any such vehicle or vessel at times when the person having a habitation in it is not there as well as at times when he is.

(4) Any person who is guilty of burglary shall be liable to imprisonment for fourteen years.

Aggravated burglary

213. (1) A person is guilty of aggravated burglary if he commits burglary and at the time has with him any firearm or imitation firearm, any weapon of offence or any explosive; and for the purposes of this section—

- (a) “**firearm**” includes an airgun or air pistol, and “**imitation firearm**” means anything which has the appearance of being a firearm, whether capable of being discharged or not; and

- (b) **“weapon of offence”** means any article made or adapted for use for causing injury to or incapacitating a person, or intended by the person having it with him for such use; and
- (c) **“explosive”** means any article manufactured for the purpose of producing a practical effect by explosion, or intended by the person having it with him for that purpose.

(2) Any person who is guilty of aggravated burglary shall be liable to imprisonment for life.

Removing articles from place open to the public

214.(1) Subject to subsections (2) and (3), where the public have access to a building in order to view the building, or part of it, or a collection or part of a collection housed in it, any person who without lawful authority removes from the building or its grounds the whole or any part of any article displayed, or kept for display, to the public in the building or that part of it or in its grounds shall be guilty of an offence and liable to imprisonment for five years.

(2) For the purposes of this section **“collection”** includes any collection got together for a temporary purpose, but does not include a collection made or exhibited for the purpose of effecting sales or other commercial dealings.

(3) It is immaterial for the purposes of subsection (1) that the public’s access to a building is limited to a particular period or occasion; but where anything removed from the building or its grounds is there otherwise than as forming part of, or being on loan for exhibition with, a collection intended for permanent exhibition to the public, the person removing it does not thereby commit an offence under this section unless he removes it on a day when the public have access to the building as mentioned in subsection (1).

(4) A person does not commit an offence under this section if he believes that he has lawful authority for the removal of the thing in question or that he would have that authority if the person entitled to give it knew of the removal and the circumstances of it.

Abstraction of electricity

215. Any person who dishonestly uses without due authority, or dishonestly causes to be wasted or diverted, any electricity shall be guilty of an offence and liable on summary conviction to imprisonment for two years.

Fraudulent use of telephone or telex system

216. Any person who dishonestly uses a telephone or telex system with intent to avoid payment shall be guilty of an offence and liable—

- (a) on summary conviction, to a fine of \$250 or to imprisonment for three months, or to both such fine and imprisonment; or
- (b) on conviction before the High Court, to a fine of \$2,000 or to imprisonment for two years, or to both such fine and such imprisonment.

Taking conveyance without authority

217.(1) Any person who, for his own use or that of another person, takes any conveyance constructed or adapted for the carriage of a person or persons, whether by land, water or air, without having the consent thereto of the owner or hirer thereof (including a hirer under a self-drive or hire-purchase contract) or not having other lawful authority or, knowing that such conveyance has been taken without such consent or authority, drives it or allows himself to be carried in it or on it shall be guilty of an offence and liable on summary conviction to a fine of \$2,000 or to imprisonment for two years, or to both such fine and imprisonment; and the court may order the offender to pay to the owner of the vehicle compensation for the use thereof and for any damage caused to the vehicle.

(2) It shall be a defence to a charge under subsection (1) to show that the person charged had an honest belief that he acted under lawful authority or that in the circumstances the owner or hirer would have given his consent had he been aware of the taking.

(3) On the trial of an indictment for the theft of a conveyance, if of the opinion that the accused was not guilty of the theft of the conveyance, the jury may find him guilty of an offence under this section.

Obtaining property by deception

218.(1) Any person who by any deception dishonestly obtains property belonging to another, with the intention of permanently depriving the other of it, shall be guilty of an offence and liable to imprisonment for ten years.

(2) For the purposes of this section a person shall be treated as obtaining property if he obtains ownership, possession or control of it, and “**obtain**” includes obtaining for another or enabling another to obtain or retain.

(3) Section 209 shall apply for the purposes of this section, with the necessary adaptation of the reference to appropriating, as it applies for the purposes of section 204.

(4) For the purposes of this section and sections 219 and 220 “**deception**” means any deception (whether deliberate or reckless) by words or conduct as to fact or as to law, including a deception as to the present intentions of the person using the deception or any other person.

Evasion of liability by deception

219.(1) Subject to subsection (2), any person who by any deception—

- (a) dishonestly secures the remission of the whole or any part of any existing liability to make a payment, whether his own or another's liability; or
- (b) with intent to make permanent default in whole or in part on any existing liability to make a payment, or with intent to let another do so, dishonestly induces the creditor to wait for payment (whether or not the due date for payment is deferred) or to forego payment; or
- (c) dishonestly obtains any exemption from or abatement of liability to make a payment,

shall be guilty of an offence and liable—

- (i) on summary conviction to imprisonment for one year; or
- (ii) on conviction before the High Court, to imprisonment for five years.

(2) For the purposes of this section “**liability**” means legally enforceable liability; and subsection (1) shall not apply in relation to a liability that has not been accepted or established to pay compensation for a wrongful act or omission.

(3) For the purposes of paragraph (b) of subsection (1), a person induced to take in payment a cheque or other security for money by way of conditional satisfaction of a pre-existing liability is to be treated as not being paid but as induced to wait for payment.

(4) For the purposes of paragraph (c) of subsection (1), “**obtains**” includes obtaining for another or enabling another to obtain.

Obtaining pecuniary advantage or services by deception

220.(1) Any person who by any deception dishonestly obtains for himself or any other person—

- (a) any pecuniary advantage; or
- (b) any services from another, shall be liable—
 - (i) on summary conviction, to imprisonment for one year; or
 - (ii) on conviction before the High Court, to imprisonment for five years.

(2) The cases in which a pecuniary advantage, within the meaning of this section, is to be regarded as obtained for a person are where—

- (a) he is allowed to borrow on overdraft, or to take out a policy of insurance or annuity contract, or obtains an improvement of the terms on which he is allowed to do so; or
- (b) he is given the opportunity to earn a remuneration or greater remuneration in any office or employment, or to win money by betting.

(3) For the purposes of paragraph (b) of subsection (1), the obtaining of services by any person involves circumstances where the other person is induced to confer a benefit by doing some act, or causing or permitting some act to be done, on the understanding that the benefit has been or will be paid for.

Making off without payment

221.(1) Subject to subsection (3) a person who, knowing that payment on the spot for any goods supplied or services done is required or expected of him, dishonestly makes off without having paid as required or expected and with intent to avoid payment of the amount shall be guilty of an offence and liable on summary conviction to imprisonment for six months or to a fine of \$2,000 or to both such fine and imprisonment.

(2) For the purposes of this section “**payment on the spot**” includes payment at the time of collecting goods on which work has been done or in respect of which service has been provided.

(3) Subsection (1) shall not apply where the supply of the goods or the doing of the service is contrary to law, or where the service is such that payment is not legally enforceable.

False accounting

222.(1) Any person who dishonestly, with a view to gain for himself or another or with intent to cause loss to another—

- (a) destroys, defaces, conceals or falsifies any account or any record or document made or required for an accounting purpose; or
- (b) in furnishing information for any purpose produces or makes use of any account or any such record or document as aforesaid, which to his knowledge is or may be misleading, false or deceptive in a material particular,

shall be guilty of an offence and liable to imprisonment for seven years.

(2) For the purposes of this section a person who makes or concurs in making in any account or other document an entry which is or may be misleading, false or deceptive in a material particular, or who omits or concurs in omitting a material particular from an account or other document, is to be treated as falsifying the account or document.

Officers of company liable for certain offences committed by company

223.(1) Where an offence under this Part is committed by a body corporate and is proved to have been committed with the consent or connivance of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, this section shall apply in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate.

False statement by company directors, etc

224.(1) Where a director or officer (by whatever name called) of a body corporate or unincorporated association (or person purporting to act as such), with intent to deceive members or creditors of the body corporate or association about its affairs, publishes or concurs in publishing a written statement, account or other document which to his knowledge is or may be misleading, false or deceptive in a material particular, he shall be guilty of an offence and liable to imprisonment for seven years.

(2) For the purposes of this section a person who has entered into a security for the benefit of a body corporate or association shall be deemed to be a creditor of it.

(3) Where the affairs of a body corporate or association are managed by its members, this section shall apply to any statement, account or other document which a member publishes or concurs in publishing in connection with his functions of management as if he were an officer of that body corporate or association.

Destruction, etc of valuable security, or procuring execution of same by deception

225.(1) Any person who dishonestly, with a view to gain, for himself or another or with intent to cause loss to another destroys, defaces or conceals any valuable security, any will or other testamentary document or any original document of or belonging to, or filed or deposited in, any court of justice or any government department shall be guilty of an offence and liable to imprisonment for seven years.

(2) Any person who dishonestly, with a view to gain for himself or another or with intent to cause loss to another, by any deception procures the execution of a valuable security shall be guilty of an offence and liable to imprisonment for seven years.

This subsection shall apply in relation to the making, acceptance, indorsement, alteration, cancellation or destruction in whole or in part of a valuable security, and in relation to the signing or sealing of any paper or other material in order that it may be made or converted into, or used or dealt with as, a valuable security, as if that were the execution of a valuable security.

(3) For the purposes of this section “**deception**” has the same meaning as in section 218, and “**valuable security**” means any document creating, transferring, surrendering or releasing any right to, in or over property, or authorising the payment of money or delivery of any property or evidencing the creation, transfer, surrender or release of any such right

or the payment of money or the delivery of any property, or the satisfaction of any obligation.

Blackmail

226. (1) A person is guilty of blackmail, if with a view to gain for himself or another, or with intent to cause loss to another, he makes any unwarranted demand with menaces; and for this purpose a demand with menaces is unwarranted unless the person making it does so in the belief—

- (a) that he has reasonable grounds for making the demand; and
- (b) that the use of menaces is a proper means of reinforcing the demand.

(2) The nature of the act or omission demanded is immaterial, and it is also immaterial whether the menaces relate to action to be taken by the person making the demand.

(3) Any person guilty of blackmail shall be liable to imprisonment for fourteen years.

Handling stolen goods

227. (1) A person handles stolen goods if (otherwise than in the course of stealing) knowing or believing them to be stolen goods he dishonestly receives the goods or dishonestly undertakes or assists in their retention, removal, disposal or realization by or for the benefit of another person or if he arranges so to do.

(2) A person guilty of handling stolen goods shall be liable on conviction to imprisonment for ten years.

Provisions relating to stolen goods

228. (1) The provisions of this Code relating to goods which have been stolen shall apply whether the stealing occurred in Montserrat or elsewhere (and whether it occurred before or after the commencement of this Code), provided that the stealing, if not an offence under this Code, amounted to an offence where and at the time when the goods were stolen; references to stolen goods shall be construed accordingly.

(2) For the purposes of those provisions references to stolen goods shall include, in addition to the goods originally stolen and parts of them (whether in their original state or not)—

- (a) any other goods which directly or indirectly represent or have at any time represented the stolen goods in the hands of the thief as being the proceeds of any disposal or realization of the whole or part of the goods stolen or of goods so representing the stolen goods; and
- (b) any other goods which directly or indirectly represent or have at any time represented the stolen goods in the hands of a

handler of the stolen goods, or any part of them, as being the proceeds of any disposal or realization of the whole or part of the stolen goods handled by him or of goods so representing them.

(3) Notwithstanding the foregoing provisions of this section, no goods shall be regarded as having continued to be stolen goods after they have been restored to the person from whom they were stolen or to other lawful possession or custody, or after that person and any other person claiming through him have otherwise ceased as regards those goods to have any right to restitution in respect of the theft.

(4) For the purposes of the provisions of this Code relating to goods which have been stolen (including the provisions of this section) goods obtained in Montserrat or elsewhere by blackmail, or in the circumstances referred to in subsection (1) of section 218, shall be regarded as stolen, and “steal”, “theft” and “thief” shall be construed accordingly

Procedure and evidence in trial for handling stolen goods

229.(1) Any number of persons may be charged in one information or charge, with reference to the same theft, with having at different times or at the same time handled all or any of the stolen goods, and the persons so charged may be tried together.

(2) On the trial of two or more persons charged for jointly handling any stolen goods the court or the jury (as the case may be) may find any of the accused guilty if satisfied that he handled any of the stolen goods, whether or not he did so jointly with the other accused or any of them.

(3) Where a person is charged with handling stolen goods (but not with any offence other than handling stolen goods), then at any stage of the proceedings, if evidence has been given of his having or arranging to have in his possession the goods the subject of the charge, or of his undertaking or assisting in, or arranging to undertake or assist in their retention, removal, disposal or realization, the following evidence shall be admissible for the purpose of proving that he knew or believed the goods to be stolen goods—

- (a) evidence that he has had in his possession, or has undertaken or assisted in the retention, removal, disposal or realization of, stolen goods from any theft taking place not earlier than twelve months before the offence charged; and
- (b) provided that seven days’ notice in writing has been given to him of the intention to prove the conviction, evidence that he has within the five years preceding the date of the offence charged been convicted of theft or of handling stolen goods.

(4) This section shall be construed in accordance with section 228, and in subsection (3)(b) the references to theft and handling stolen goods shall be construed to include any corresponding offence committed before the date of commencement of this Code.

Evidence by statutory declaration in certain cases

230.(1) In any proceedings for the theft of anything in the course of transmission (whether by post or otherwise), or for handling stolen goods from such a theft, a statutory declaration made by any person that he despatched or received or failed to receive any goods or postal packet, or that any goods or postal packet when despatched or received by him were in a particular state or condition, shall be admissible as evidence of the facts stated in the declaration, subject to the following conditions—

- (a) a statutory declaration shall only be admissible where and to the extent to which oral evidence to the like effect would have been admissible in the proceedings; and
- (b) a statutory declaration shall only be admissible if at least seven days before the trial of the charge a copy of it has been given to the accused person and he has not, at least three days before the trial or within such other time as the court may in any particular case allow, given the prosecutor written notice requiring the attendance at the trial of the person making the declaration.

(2) This section shall be construed in accordance with section 228.

Going equipped to steal, etc

231.(1) A person shall be guilty of an offence if, when not at his place of abode, he has with him any article for use in the course of or in connection with any burglary, theft or cheat, and shall be liable on conviction to imprisonment for three years.

(2) Any person may arrest without warrant anyone who is, or whom he, with reasonable cause, suspects to be committing an offence under this section.

Evidence for the purpose of section 231

232.(1) Where a person is charged with an offence under section 231, proof that he had with him any article made or adapted for use in committing a burglary, theft or cheat shall be evidence that he had it with him for such use.

(2) For the purposes of this section an offence under section 217 shall be treated as theft.

Restitution

233.(1) Where goods have been stolen, and either a person is convicted of an offence under this Part with reference to the theft (whether or not the stealing is the gist of the offence) or a person is convicted of any other offences but such an offence as aforesaid is taken into consideration in determining his sentence, the court by or before which the offender is convicted may on the conviction (whether or not the passing of the

sentence is in other respects deferred) exercise any of the following powers—

- (a) the court may order anyone having possession or control of the goods to restore them to any person entitled to recover them from him; or
- (b) on the application of a person entitled to recover from the person convicted any other goods directly or indirectly representing the first mentioned goods (as being the proceeds of any disposal or realization of the whole or part of them or of goods so representing them) the court may order those other goods to be delivered or transferred to the applicant; or
- (c) the court, whether or not an application is made in that behalf, may order that a sum not exceeding the value of the first-mentioned goods shall be paid, out of any money of the person convicted which has in his possession on his apprehension, to any person, who, if those goods were in the possession of the person convicted, would be entitled to recover them from him.

(2) Where under subsection (1) the court has power on his conviction to make an order against any person both under paragraphs (b) and (c) with reference to the stealing of the same goods, the court may make orders under both paragraphs provided that the person in whose favour the orders are made does not thereby recover more than the value of those goods.

(3) Where under subsection (1) the court on a person's conviction makes an order under paragraph (a) for the restoration of any goods, and it appears to the court that the person convicted has sold the goods to a person acting in good faith, or has borrowed money on the security of them from a person so acting, the court may order that there shall be paid to the purchaser or the lender, out of any money of the person convicted which was taken out of his possession on his apprehension, a sum not exceeding the amount paid for the purchase by the purchaser or, as the case may be, the amount owed to the lender in respect of the loan. The powers conferred by this subsection may be exercised whether or not an application in that behalf is made to the court by or on behalf of any person claiming to be interested in the property concerned.

(4) The court shall not exercise the powers conferred by this section unless in the opinion of the court the relevant facts appear from evidence given at the trial or the available documents, together with admissions made by or on behalf of any person in connection with any proposed exercise of the said powers; and for this purpose “**the available documents**” means any written statements or admissions which were made for use, and would have been admissible, as evidence at the trial, the depositions taken at any committal proceedings and any written statements or admissions used as evidence in those proceedings.

(5) Where a person is committed to the High Court for sentence under the provisions of Part VI of the Criminal Procedure Code, the powers conferred by this section shall be exercisable by the High Court and not by the Magistrate's Court, and the High Court shall be deemed to be the court before which such person is convicted.

(6) Where an order is made under this section and the person convicted successfully appeals against the conviction of the offence on the basis of which the order was made, the order shall cease to have effect, and a person against whom such an order is made may appeal against the order as if it was part of the sentence imposed on the conviction for the offence.

(7) The provisions of this section shall be without prejudice to the powers conferred by sections 55 and 189 of the Criminal Procedure Code.

PART XVI

FORGERY, COINING AND COUNTERFEITING

Definition of forgery

234.(1) For the purposes of this Code, forgery is the making of a false document in order that it may be used as genuine, and in the case of seals and dies referred to in this Part the counterfeiting of a seal or die, and forgery with intent to defraud or deceive shall be punishable as in this Part provided.

(2) A document is false within the meaning of this Part if the whole or any material part thereof purports to be made by or on behalf or on account of a person who did not make it nor authorize its making; or if though made by or on behalf or on account of the person by whom or by whose authority it purports to have been made, the time or place of making, where either is material, or, in the case of a document identified by number or mark, the number or any distinguishing mark identifying the document is falsely stated therein; and in particular a document is false—

- (a) if any material alteration, whether by addition, insertion, obliteration, erasure, removal or otherwise, has been made therein;
- (b) if the whole or some material part of it purports to have been made by or on behalf of a fictitious or deceased person;
- (c) if though made in the name of an existing person, it is made by him or by his authority with the intention that it should pass as having been made by some person, real or fictitious, other than the person who made it or authorized it:

Provided that a document may be a false document for the purposes of this Part notwithstanding that it is not false in such a manner as is described in the foregoing provisions of this subsection.

(3) For the purposes of this Part—

- (a) it is immaterial in what language a document is expressed or in what place, whether within or without Montserrat, it is expressed to take effect;
- (b) forgery of a document may be complete even if the document when forged is incomplete, or is not or does not purport to be such a document as would be binding in law;
- (c) the crossing on any cheque, draft on a banker, post office money order, postal order, coupon or other document the crossing of which is authorized or recognized by law, shall be a material part of such cheque, draft, order, coupon or document.

(4) In this Part “**document**” does not include a trade mark or other sign used in connection with articles of commerce, although written or printed.

Intent to defraud

235. An intent to defraud is presumed to exist if it appears that at the time when the false document was made there was in existence a specific person, ascertained or unascertained, capable of being defrauded thereby, and this presumption is not rebutted by proof that the offender took or intended to take measures to prevent such persons from being defrauded in fact, nor by the fact that he had or thought he had a right to the thing to be obtained by the false document.

Forgery of certain documents with intent to defraud

236.(1) Any person who, with intent to defraud, forges any of the following documents shall be guilty of an offence and liable on conviction to imprisonment for life—

- (a) any will, codicil or other testamentary document, either of a dead or a living person, or any probate or letters of administration, whether with or without the will annexed;
- (b) any deed or bond, or any assignment at law or equity of any deed or bond or any attestation of the execution of any deed or bond;
- (c) any currency or bank note or any endorsement on or assignment of any bank note.

(2) Any person who, with intent to defraud, forges any of the following documents shall be guilty of an offence and liable on conviction to imprisonment for fourteen years—

- (a) any valuable security or assignment thereof or endorsement thereon, or, where the valuable security is a bill of exchange, any acceptance thereof;
- (b) any document of title to lands or any assignment thereof or endorsement thereon;
- (c) any document of title to goods or any assignment thereof or endorsement thereon;
- (d) any power of attorney or other authority to transfer any share or interest in any stock, annuity or public fund of any state or country, or interest in the debt of any public body, company or society (in any country), or in the capital stock of any such company or society, or to receive any dividend or money payable in respect of such share or interest or any attestation of any such power of attorney or other authority;
- (e) any entry in any book or register which is evidence of the title of any person to any share or interest hereinbefore mentioned or to any dividend or interest payable in respect thereof;
- (f) any policy of insurance or any assignment thereof;
- (g) any charter-party or any assignment thereof.

(3) For the purposes of this section “**currency note**” includes any notes, by whatever name called, which are legal tender in the country in which they are issued, and “**bank note**” includes any note or bill of exchange of any person or body carrying on banking business in any part of the world.

Forgery of certain documents with intent to defraud or deceive

237.(1) Any person who, with intent to defraud or deceive, forges any document whatsoever having thereon or affixed thereto the stamp or impression of the Great Seal of the United Kingdom. Her Majesty’s Privy Seal, any privy signet of Her Majesty, Her Majesty’s Royal Sign Manual, or any other of Her Majesty’s official seals, or the seal or signature of the Governor, shall be guilty of an offence and liable to imprisonment for life.

(2) Any person who, with intent to defraud or deceive, forges any of the following documents, shall be guilty of an offence and liable to imprisonment for fourteen years—

- (a) any register or record of births, baptisms, marriages, deaths, burials or cremations, which now is or hereafter may be by law authorized or required to be kept in Montserrat, or any part of such register or any certified copy of any such register or part thereof;

- (b) any copy of any register referred to in paragraph (a) directed or required by law to be transmitted to any registrar or other officer;
- (c) any certified copy of any record or document purporting to be signed by any officer having charge of any public records or documents in Montserrat;
- (d) any wrapper or label provided by or under the authority of any officer of customs.

(3) Any person who, with intent to defraud or deceive, forges any of the following documents shall be guilty of an offence and liable to imprisonment for seven years—

- (a) any official document whatsoever of or belonging to any court of justice, or made or issued by any judge, magistrate, justice of the peace, clerk or officer of any such court;
- (b) any register or book kept under the provisions of any law in or under the authority of any court of justice;
- (c) any certificate, office copy or certified copy of any such document, register or book, or any part thereof, as mentioned in paragraph (a) or (b);
- (d) any other document which any judge, magistrate, or justice of the peace is authorized or required by law to make or issue;
- (e) any document which any person authorized to administer an oath under any law in force in Montserrat is authorized or required by law to make or issue;
- (f) any document made or issued by the head of any department of the Government, or by the Attorney General or any other legal officer in the public service, or any document upon which, by law or usage in force at the time, any court of justice or public officer might act;
- (g) any document or copy of any document used or intended to be used in evidence in any court of justice or any document which is made evidence by law;
- (h) any certificate or consent required by any law for the time being in force relating to the celebration of marriage;
- (i) any licence for the celebration of marriage authorized to be issued by any law for the time being in force relating to the celebration of marriage;
- (j) any certificate, declaration or order under any law relating to the registration of births or deaths;
- (k) any register, book, certificate, declaration, bill of sale, instrument or certificate of mortgage or sale under the

Merchant Shipping Act 1894, or any amendment thereof or any entry or endorsement required by the said Act to be made in or on any of those documents;

- (l) any permit, certificate or similar document made or issued under the Custom Duties and Consumption Tax Act;
- (m) any official certificate not heretofore specified;
- (n) any copy of the *Gazette* or of any Act or subsidiary legislation made thereunder.

Forging or uttering forged court documents

238. Any person who, being the clerk of any court or other officer having the custody of the records of any court or a person acting on behalf of any such clerk or officer, makes or utters any false process or any false copy or certificate of any record knowing the same to be false, and any person who delivers or causes to be delivered to any person any paper falsely purporting to be any such process or a copy thereof or to be any judgment, decree or order of any court, or a copy thereof, knowing the same to be false, or who acts or professes to act under any such false process knowing the same to be false shall be guilty of an offence and liable to imprisonment for seven years.

Forging or uttering forged documents relating to registration of births, marriages and death

239. Any person who knowingly and unlawfully inserts, or causes or permits to be inserted, in any register of births, baptisms, marriages, deaths or burials, which is now or hereafter may be by law authorized or required to be kept in Montserrat, or in any certified copy thereof, any false entry of any matter relating to any birth, baptism, marriage, death or burial, or knowingly gives any false certificate relating to any such occurrence or certifies any writing to be a copy of or extract from any such register, knowing such writing or the part of such register whereof such copy or extract is so given, to be false in any material particular, or offers, utters, disposes of or puts off any such register, entry, certified copy or certificate or a copy thereof knowing the same to be false, shall be guilty of an offence and liable to imprisonment for life.

Forgery of passport

240. Any person who forges any passport, or who makes any statement which to his knowledge is untrue for the purpose of procuring the issue of a passport, whether for himself or for another person, shall be guilty of an offence and liable to imprisonment for two years or to a fine of \$2,000, or to both such imprisonment and fine.

Forgery of other documents with intent to defraud or deceive

241.(1) Any person who forges any public or private document, which is not made an offence under any other provision of this part, with intent to defraud, shall be guilty of an offence under this section and shall be liable to imprisonment for two years or to a fine of \$2,000 or to both such imprisonment and fine.

(2) For the purposes of this section, any person who certifies any document as being a true copy of, or extract from any other document, knowing the same not to be a true copy or extract, in a material respect, shall be deemed to have forged that copy or extract.

Forgery of seals and dies

242.(1) Any person who forges any of the following seals with intent to defraud or deceive, shall be guilty of an offence and shall be liable to imprisonment for life—

- (a)* the Great Seal of the United Kingdom, Her Majesty's Privy Seal, any privy signet of Her Majesty, Her Majesty's Royal Sign Manual, or any other of Her Majesty's seals or the seal of the Governor;
- (b)* the seal of any court of justice.

(2) Any person who forges any of the following seals or dies, with intent to defraud or deceive, shall be guilty of an offence and shall be liable to imprisonment for fourteen years—

- (a)* the seal of any registry office relating to births, baptisms, marriages or deaths;
- (b)* any seal of or belonging to any office for the registry of deeds or of title to land or any interest in land;
- (c)* the seal of a notary public;
- (d)* any die provided for, made or used by the Accountant General or any officer of Customs;
- (e)* any die which is or has been required or authorized by law, whether within Montserrat or elsewhere, to be used for the marking or stamping of any gold or silver plate or any articles made of or containing gold or silver;
- (f)* any stamp or die made or used for the purposes of the Stamp Act or the Post Office Act.

Uttering forged document, etc

243.(1) Any person who knowingly, with intent to deceive or defraud, utters any forged document, seal or die or any document bearing the impression of any forged seal or die, shall be guilty of an offence and shall

be liable to the same punishment as if he had himself forged the document, seal or die.

(2) A person utters a forged document, seal or die, who, knowing the same to be forged, and with either of the intents necessary to constitute the offence of forging the document, seal or die in question, uses, offers, publishes, delivers, disposes of, tenders in payment or in exchange, exposes for sale or exchange, exchanges, tenders, in evidence, or puts off the said forged document, seal or die.

(3) A person may be convicted in Montserrat of an offence under subsection (1) whether the document, seal or die was forged within Montserrat or elsewhere, if it was uttered in Montserrat.

Uttering cancelled or spent document

244. Any person who knowingly utters, as and for a subsisting and effectual document, any document which has by any lawful authority been ordered to be revoked, cancelled or suspended, or the operation of which has ceased by lapse of time, or by death or the happening of any other event, shall be guilty of an offence and liable to the same punishment as if he had himself forged the document.

Demanding property on forged document

245. Any person who, with intent to defraud, demands, receives or obtains, or causes or procures to be delivered, paid or transferred to any person or endeavours to receive or obtain or to cause or procure to be delivered, paid or transferred to any person any money, security for money or other property, real or personal—

- (a) under, upon, or by virtue of any forged instrument whatsoever, knowing the same to be forged; or
- (b) under, upon, or by virtue of any probate or letters of administration, knowing the will, testament, codicil or testamentary writing on which such probate or letters of administration have been obtained to have been forged, or knowing such probate or letters of administration to have been obtained by any false oath, affirmation or affidavit,

shall be guilty of an offence and liable to imprisonment for fourteen years.

Possession of forged notes, documents, seals or dies

246. (1) Any person who, without lawful authority or excuse, the proof whereof shall lie upon the accused, imports into Montserrat, purchases or receives from any person, or has in his custody or possession a forged currency note or bank note, knowing the same to be forged, shall be guilty of an offence and liable on conviction to imprisonment for fourteen years.

(2) Any person who, without lawful authority or excuse, the proof whereof shall lie upon the accused, knowing the same to be forged, has in his custody or possession—

- (a) any forged die required or authorized by law (including the law of any country outside Montserrat) to be used for the marking of gold or silver plate, or any articles made of or containing gold or silver, or any ware of gold or silver or base metal bearing the impression of any such forged die; or
- (b) any forged stamp or die resembling or purporting to represent any stamp or die made or used for the purposes of the Stamp Act or the Post Office Act; or
- (c) any forged wrapper, label or authority resembling or purporting to represent any such provided by or under the authority of any officer of Customs or the Accountant General,

shall be guilty of an offence and liable to imprisonment for fourteen years.

(3) Where the having any document, seal or die in the custody or possession of any person is an offence under this Part, a person shall be deemed to have that thing in his possession if—

- (a) he has it in his personal custody or possession; or
- (b) knowingly and wilfully he has it in the actual custody or possession of any other person, or in any place (whether open or closed), building or structure, whether belonging to or occupied by himself or not.

It is immaterial whether the thing is had in such custody, possession or place for the use of himself or another person.

Making or having possession of implements or materials for forgery

247.(1) Any person who, without lawful authority or excuse, the proof whereof lies upon the accused—

- (a) makes, uses, or knowingly has in his custody or possession, any paper intended to resemble and pass as—
 - (i) special paper such as is provided and used for making any currency note, banknote or government bill; or
 - (ii) revenue paper; or
- (b) makes, uses or knowingly has in his custody or possession, any frame, mould or instrument for making any revenue paper or for producing in or on such paper any words, figures, letters, marks, lines or devices peculiar to or used in or on any such paper; or
- (c) engraves or in anyway makes on any substance or material any words, figures, letters, marks, lines or devices, the print

whereof resembles in whole or in part any words, figures, letters, marks, lines or devices peculiar to or used in or on any currency note or bank note, or in or on any document entitling or evidencing (or purporting to entitle or evidence) the title of any person to any share or interest in any public stock, annuity, fund or debt, of any body corporate, company or society established in any country; or

- (d) uses or knowingly has in his custody or possession any paper upon which anything referred to in paragraph (c) has been printed or in anyway made as aforesaid,

shall be guilty of an offence and liable to imprisonment for seven years.

(2) In this section “**revenue paper**” means any paper provided by the proper authority for the purpose of being used for stamps, licences, permits, post office money orders or postal orders, or for any purpose connected with the public revenue of Montserrat or of any other country.

Unauthorized possession of paper, etc used for manufacture of currency notes

248. Any person, who without lawful authority or excuse, the proof whereof lies upon the accused, acquires, receives or knowingly has in his custody or possession—

- (a) any such special paper or revenue paper as is referred to in subsection (1) of section 247 before it has been duly stamped, signed and issued for public use; or
- (b) any die peculiarly used in the manufacture of any such paper; or
- (c) any facsimile of the signature on or the design of any currency note which is legal tender in Montserrat; or
- (d) any unfinished or incomplete currency note purporting to be similar to a currency note which is legal tender in Montserrat,

shall be guilty of an offence and liable to imprisonment for two years.

Counterfeiting coin

249.(1) Any person who falsely makes or counterfeits any coin resembling any current coin shall be guilty of an offence and liable—

- (a) in the case where the coin resembles a current gold or silver coin, to imprisonment for life; and
- (b) in the case where the coin resembles a current coin made of any metal other than gold or silver, to imprisonment for seven years.

(2) The offence of falsely making or counterfeiting a coin is deemed to be complete although the coin made or counterfeited is not in a fit state to be uttered or the making or counterfeiting thereof has not been finished or perfected.

Interpretation of terms relating to coining offences

250. For the purposes of this Part—

- (a) a coin shall be deemed to be current if at the material time it is legal tender in Montserrat or elsewhere;
- (b) a coin apparently intended to resemble or pass as a current coin shall be deemed to resemble that coin;
- (c) a current coin which has been gilt, silvered, washed, coloured or cased over or in any manner altered so as to resemble any current coin of a higher denomination shall be deemed to be a false or counterfeit coin resembling a current gold or silver coin;
- (d) references to silver coin shall be deemed to include coin of cupro nickel;
- (e) a thing shall be deemed to be in the possession of any person if—
 - (i) he has it in his personal custody or possession; or
 - (ii) knowingly and wilfully he has it in the actual custody or possession of any other person, or in any place (whether open or enclosed), building or structure, whether belonging to or occupied by himself or not, and

it is immaterial whether the thing is had in such custody, possession or place for the use of himself or another.

Impairing, etc, current coin

251.(1) Any person who impairs, diminishes or lightens any current gold or silver coin with intent that the coin so impaired, diminished or lightened may pass for a current gold or silver coin, shall be guilty of an offence and liable to imprisonment for fourteen years.

(2) Any person who unlawfully has in his possession any filing or clipping, or any gold or silver bullion or any gold or silver dust, solution or otherwise, which has been produced or otherwise obtained by impairing, diminishing or lightening any current gold or silver coin, knowing that it has been so produced or obtained, shall be guilty of an offence and liable to imprisonment for seven years.

Uttering counterfeit coins, etc and possession with intent to utter

252.(1) Any person who tenders, utters or puts off any false or counterfeit coin resembling any current coin, knowing it to be false or

counterfeit, shall be guilty of an offence and liable to imprisonment for one year.

(2) Any person who tenders, utters or puts off any false counterfeit coin resembling any current gold or silver coin, knowing it to be false or counterfeit; and—

- (a) at the time of the tendering, uttering or putting off, has in his possession, beside that coin, any other such false or counterfeit coin; or
- (b) at the date of the tendering, uttering or putting off, or within the period of ten days next following that date, tenders, utters or puts off any other such false or counterfeit coin, knowing it to be false or counterfeit,

shall be guilty of an offence and liable to imprisonment for two years.

(3) Any person who has in his possession three or more false or counterfeit coins resembling any current gold or silver coin, knowing them to be false or counterfeit, and with intent to utter or put off the said coins or any of them, shall be guilty of an offence and liable to imprisonment for five years.

(4) Any person who has in his possession three or more false or counterfeit coins resembling any current coin not made of gold or silver, knowing them to be false or counterfeit, and with intent to utter or put off the said coins or any of them, shall be guilty of an offence and liable to imprisonment for one year.

(5) Any person who commits—

- (a) any offence under subsection (1) in respect of a coin resembling a current gold or silver coin; or
- (b) any offence under subsection (2) or subsection (3),

having previously been convicted of any such offence or of any other offence under this Part, shall be guilty of an offence and liable to imprisonment for fourteen years.

(6) Any person who, with intent to defraud, tenders, utters or puts off as for any current gold or silver coin—

- (a) any coin not being that current coin and being of less value than that current coin; or
- (b) any metal or piece of metal or mixed metals resembling in size, figure or colour that current coin,

shall be guilty of an offence and liable to imprisonment for one year.

(7) The offence of tendering, uttering or putting off a false or counterfeit coin is deemed to be complete although the coin is not in a fit state to be uttered or the counterfeiting thereof has not been finished or perfected.

Dealing in counterfeit coin

253.(1) Any person who, without lawful authority or excuse, the proof whereof lies on the accused, buys, sells, receives, pays or puts off, or offers to buy, sell, receive, pay or put off, any false or counterfeit coin resembling any current coin at or for a lower rate of value than the false or counterfeit coin imports or apparently is intended to import, shall be guilty of an offence and liable to imprisonment for seven years.

(2) An offence under this section shall be deemed to be complete although the coin involved in the offence is not in a fit state to be uttered, or the counterfeiting thereof has not been finished or perfected.

Importing and exporting counterfeit coin

254.(1) Any person who, without lawful authority or excuse, the proof whereof lies on the accused—

- (a)* imports or receives into Montserrat any false or counterfeit coin resembling any current coin, knowing it to be false or counterfeit; or
- (b)* exports from Montserrat or puts on board any aircraft or vessel for the purpose of being so exported, any false or counterfeited coin resembling any current coin, knowing it to be false or counterfeit,

shall be guilty of an offence, and shall be liable to imprisonment for seven years.

(2) The provisions of this section shall be without prejudice to any provisions of any law relating to customs for the time being in force under which there is a prohibition of importation or exportation of false or counterfeit coin, currency or metal tokens resembling coin, or coin which is not of the established standard in weight or fineness.

Making, possessing and selling articles resembling gold or silver coin

255. Any person who, without lawful authority or excuse, the proof whereof lies on the accused, makes, sells, offers for sale or has in his possession for sale, any medal, cast, coin or other thing made wholly or partially of metal or any mixture of metals, and either—

- (a)* resembling in size, figure and colour current gold or silver coin; or
- (b)* having thereon a device resembling a device on any such current coin; or
- (c)* being so formed that it can, by gilding, silvering, colouring, washing or other like process be so dealt with as to resemble any such current coin,

shall be guilty of an offence and liable to imprisonment for one year.

Making, possessing, etc, implements for coining

256.(1) Any person who, without lawful authority or excuse, the proof whereof lies on the accused, knowingly makes or mends, or begins to make or mend or buys or sells or has in his possession, any puncheon, counter puncheon, matrix, stamp, die, pattern or mould in or upon which there is made or impressed, or which will make or impress, or, which is adapted and intended to make or impress, the figure, stamp or apparent resemblance of both or either of the sides of any current gold or silver coin shall be guilty of an offence and liable to imprisonment for fourteen years.

(2) Any person who, without lawful authority or excuse, the proof whereof lies on the accused, makes or mends or begins to make or mend or buys or sells, or has in his possession—

- (a)* any edger, edging or other tool, collar, instrument or engine adapted and intended for the marking of coin round the edges with letters, grainings or other marks or figures apparently resembling those on the edges of any current gold or silver coin, knowing it to be so adapted and intended as aforesaid; or
- (b)* any press for coinage or any cutting engine for cutting by force of a screw or of any contrivance, round blanks out of gold, silver or other metal or mixture of metals, or any other machine, knowing the press to be a press for coinage or knowing the engine or machine to have been used or to be intended to be used for the false making or counterfeiting of any current gold or silver coin,

shall be guilty of an offence and liable to imprisonment for fourteen years.

(3) Any person who, without lawful authority or excuse, the proof whereof lies on the accused, knowingly makes or mends or begins to make or mend, or buys or sells or has in his possession, any instrument, tool or engine adapted and intended for the counterfeiting of any current coin, which is not a current gold or silver coin, shall be guilty of an offence and liable to imprisonment for seven years.

Defacing and uttering defaced coins

257.(1) Any person who defaces any current coin by stamping thereon any names or words, whether or not the coin is thereby diminished or lightened, shall be guilty of an offence and liable on summary conviction to imprisonment for one year.

(2) A tender of payment in money made in any coin which has been defaced as aforesaid is not legal tender.

(3) Any person who tenders, utters or puts off any coin which has been defaced as aforesaid shall be guilty of an offence and shall be liable on summary conviction to a fine of \$100.

(4) No proceedings for an offence under this section shall be instituted without the consent of the Attorney General.

Melting down currency

258. Any person who melts down, breaks up or uses otherwise than as currency any current coin which is for the time being legal tender in Montserrat shall be guilty of an offence and liable on summary conviction to a fine of \$500 or to imprisonment for six months.

Mutilating or defacing currency notes

259. Any person who, without lawful authority or excuse, the proof whereof lies on the accused, mutilates, perforates or in any way defaces any currency note or bank note, which is for the time being legal tender in Montserrat, whether by writing, printing, drawing or stamping thereon, or by attaching or affixing thereto anything in the nature or form of an advertisement, shall be guilty of an offence and liable on summary conviction to a fine of \$200.

Imitation of currency

260.(1) Any person who, without lawful authority or excuse, the proof whereof lies on the accused, sells or offers or exposes for sale any article which bears a design in imitation of any currency note, banknote or coin which is legal tender in Montserrat or elsewhere, shall be guilty of an offence and liable to a fine of \$1,000 or to imprisonment for six months, or both such fine and imprisonment.

(2) Any person who makes or causes to be made or uses for any purpose whatsoever, any document purporting to be or in any way resembling, or so nearly resembling as to be calculated to deceive, any currency note which is legal tender in Montserrat or elsewhere, shall be guilty of an offence and liable to a fine of \$1,000 in respect of each such document or to imprisonment for six months, or both such fine and imprisonment.

(3) Any person whose name appears on any document the making of which is an offence under this section who, when requested so to do by a police officer, refuses to disclose the name and address of the person by whom it was made, shall be guilty of an offence and liable to a fine of \$200.

(4) Where the name of any person appears on any document in respect of which any person is liable to be charged with an offence under this section, or on any other document used or distributed in connection with that document, it shall be *prima facie* evidence that that person caused the document to be made.

Forfeiture of articles used in relation to offences under this Part

261. Where any forged bank note, currency note or any counterfeit coin or any machinery, implement, utensil or material used or intended to be used for the forging of a bank note or currency note or for counterfeiting any coin, is seized under a search warrant or by a police officer, the same shall be forfeited by order of the court before which the offender is tried, or if there is no trial, by order of the court issuing the search warrant, or in the case of seizure by a police officer, otherwise than in exercise of powers conferred by a court, shall be disposed of in such manner as the Governor, or any person authorized by him in that behalf, may direct and shall be deemed forfeit.

PART XVII

PERSONATION

Personation of person named in certificate, etc

262. Any person who utters any document which has been issued by any lawful authority to another person, and whereby that other person is certified to be a person possessed of any qualification recognized by law for any purpose, or to be the holder of any office or to be entitled to exercise any profession, trade or business, or to be entitled to any right or privilege or to enjoy any rank or status, and falsely represents himself to be the person named in the document, shall be guilty of an offence of the same kind and liable to the same punishment as if he had forged the document.

Personation of person named in testimonial

263. Any person who, for the purpose of obtaining any employment for himself, utters any document of a testimonial character given to another person, falsely pretending that he is the person named in the document, shall be guilty of an offence and liable to imprisonment for one year.

Falsely acknowledging recognizances, etc

264. Any person who, without lawful authority or excuse, the proof whereof lies upon him, makes in the name of any other person, before any court or person authorized by law to take such acknowledgment, an acknowledgment of liability of any kind, or an acknowledgment of any deed or other instrument, shall be guilty of an offence and liable to imprisonment for seven years.

PART XVIII

CRIMINAL DAMAGE AND SIMILAR OFFENCES

Destroying or damaging property

265.(1) Any person who, without lawful excuse, destroys or damages any property belonging to another intending to destroy or damage any such property or being reckless as to whether any such property would be destroyed or damaged shall be guilty of an offence.

(2) Any person who, without lawful excuse, destroys or damages any property, whether belonging to himself or another—

- (a)* intending to destroy or damage any property or being reckless as to whether any property would be destroyed or damaged; and
- (b)* intending by the destruction or damage to endanger the life of another, or being reckless as to whether the life of another would thereby be endangered,

shall be guilty of an offence.

(3) Any offence committed under this section by destroying or damaging property by fire shall be charged as arson.

(4) A person convicted of arson under subsection (1) or of any offence under subsection (2) shall be liable to imprisonment for life, and a person convicted of any other offence under this section shall be liable to imprisonment for ten years.

Threats to destroy or damage property

266. Any person who, without lawful excuse, makes to another a threat, intending that that other would fear that it would be carried out—

- (a)* to destroy or damage any property belonging to that other or a third person; or
- (b)* to destroy or damage his own property in a way which he knows is likely to endanger the life of that other or a third person,

shall be guilty of an offence and liable to imprisonment for ten years.

Possessing anything with intent to destroy or damage property

267. Any person who has anything in his custody or under his control intending without lawful excuse to use it or cause or permit another to use it—

- (a)* to destroy or damage any property, belonging to some other person; or

- (b) to destroy or damage any property, whether belonging to himself or another, in a way which he knows is likely to endanger the life of some other person,

shall be guilty of an offence and liable to imprisonment for ten years.

Magistrate to try certain cases

267A. (1) Any person who without lawful excuse—

- (a) destroys or damages any property belonging to another intending to destroy or damage any such property or being reckless as to whether any such property would be destroyed or damaged;
- (b) makes to another any threat intending that other would fear that such threat would be carried out to destroy or damage any property belonging to that other or to a third person;
- (c) use or cause or permit another to use anything in his custody or under his control to destroy or damage any property belonging to some other person,

and the value of such property in the opinion of the Magistrate does not exceed \$2,000 shall be liable on summary conviction by the Magistrate to a fine of \$5,000 or to imprisonment for six months or to both such fine and imprisonment:

Provided that the Magistrate may in his discretion abstain from trying the case summarily, and may commit the offender for trial for an indictable offence.

(2) The provisions of section 268 of the Penal Code shall apply *mutatis mutandis* to any offence under this section.

“Without lawful excuse”

268.(1) This section applies to any offence under section 265 and any offence under section 266 or 267 other than one involving a threat by the person charged to destroy or damage property in a way which he knows is likely to endanger the life of another or involving an intent by the person charged to use or permit the use of something in his custody or under his control so to destroy or damage property.

(2) A person charged with an offence to which this section applies shall, whether or not he would be treated for the purposes of this Part as having a lawful excuse apart from this subsection, be treated for those purposes as having a lawful excuse—

- (a) if at the time of the act or acts alleged to constitute the offence he believed that the person whom he believed to be entitled to consent to the destruction of or damage to the property in question had so consented, or would have so

consented to it if he had known of the destruction or damage and its circumstances; or

(b) if he destroyed or damaged or threatened to destroy or damage the property in question or, in the case of a charge of an offence under section 267, intended to use or cause or permit the use of something to destroy or damage it, in order to protect property belonging to himself or another or a right or interest in property which was, or which he believed to be, vested in himself or another, and at the time of the acts alleged to constitute the offence he believed—

(i) that the property, right or interest was in immediate need of protection; and

(ii) that the means of protection adopted or proposed to be adopted were or would be reasonable having regard to all the circumstances.

(3) For the purposes of this section it is immaterial whether a belief is justified or not if it is honestly held.

(4) For the purposes of subsection (2) a right or interest in property includes any right or privilege in or over land, whether created by grant, licence or otherwise.

(5) This section shall not be construed as casting doubt on any defence recognized by law as a defence to criminal charges.

“Property”

269. (1) For the purposes of this Part—

(a) “**property**” means property of a tangible nature, whether real or personal, including money, growing crops, trees and other vegetable products and wild creatures which have been tamed or are ordinarily kept in captivity, and any other wild creatures or their carcasses if, but only if, they have been reduced into possession, which has not been lost or abandoned, or are in the course of being reduced into possession;

(b) property shall be treated as belonging to any person—

(i) having the custody of it;

(ii) having in it any proprietary right or interest (not being an equitable interest arising only from an agreement to transfer or grant an interest); or

(iii) having a charge on it:

Provided that a tenant, under whatsoever form of tenure, may be convicted of an offence under this Part in respect of the property of his landlord notwithstanding

that at the time of the offence the tenant had the custody of such property;

- (c) placing in, or allowing any noxious substance to enter, any pond, river, well or watercourse shall be deemed to cause damage to the property of the owner or of any other person who has a right to use that pond, river, well or watercourse for any purpose.

(2) Where property is subject to a trust, the persons to whom it belongs shall be deemed to include any persons having a right to enforce the trust.

(3) Property of a corporation sole shall be treated as belonging to the corporation notwithstanding a vacancy in the corporation.

Award of compensation in case of a conviction of an offender under section 265

270. On conviction of any person of an offence of destroying or damaging the property of another, under section 265, the court may make a compensation order requiring him to pay compensation in respect of any injury, loss or damage arising from the offence.

Powers of search

271.(1) Without prejudice to the power to issue a search warrant under section 24 of the Criminal Procedure Code, if it is made to appear by information on oath before the Magistrate or a justice of the peace that there is reasonable cause to believe that any person has in his custody or under his control or on his premises anything which there is reasonable cause to believe is intended for use without lawful excuse—

- (a) to destroy or damage property belonging to another; or
- (b) to destroy or damage any property in a way likely to endanger the life of another,

the Magistrate or the justice of the peace, as the case may be, may grant a warrant authorizing any police officer to search for and seize that thing.

(2) A police officer who is authorized to search any premises under a warrant issued under this section may enter, if necessary by force, and search the premises accordingly and may seize anything which he believes to be intended to be used as aforesaid.

Casting away of ships, etc

272.(1) Any person who—

- (a) wilfully and unlawfully casts away or destroys any aircraft, vehicle or vessel, whether or not the same is in a complete state; or

- (b) wilfully and unlawfully does any act which tends to the immediate loss or destruction of any aircraft vehicle or vessel, whether or not the same is in a complete state,

shall be guilty of an offence and liable to imprisonment for life.

(2) Any person who is convicted of an attempt to commit an offence under subsection (1) shall be liable to imprisonment for fourteen years.

PART XIX

CRIMINAL LIBEL

Libel

273. Subject to the other provisions of this Part, any person who, by printing, writing, painting, effigy or by any other means in a permanent form and otherwise than solely by gestures, spoken words or sounds, unlawfully publishes any defamatory matter concerning another person with intent to defame that other person, shall be guilty of the offence of libel and liable to imprisonment for one year.

(2) Notwithstanding the provisions of subsection (1), for the purposes of this Part, the broadcasting of words by means of wireless telegraphy shall be treated as publication in a permanent form.

(3) A prosecution for an offence under this section shall not be instituted except by or with the consent of the Attorney General.

Definition of defamatory matter

274.(1) Defamatory matter is matter likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or likely to damage any person in his profession or trade by an injury to his reputation or to disturb the peace of the community.

(2) It is not necessary for libel that a defamatory meaning should be directly or completely expressed; and it suffices if such meaning and its application to the person alleged to be defamed can be collected either from the alleged libel itself or from any extrinsic circumstances, or partly from the one and partly from the other means.

Definition of publication

275. A person publishes a libel if he causes the medium by which the defamatory matter is conveyed to be so dealt with or used that the defamatory meaning thereof becomes known or is likely to become known either to the person defamed or to any other person.

Definition of unlawful publication

276. Any publication of defamatory matter concerning a person is unlawful within the meaning of this Part, unless—

- (a) the matter is true and it was for the public benefit that it should be published; or
- (b) it is privileged on one of the grounds hereafter in this Part mentioned.

Absolute privilege

277.(1) The publication of defamatory matter is absolutely privileged, and no person shall under any circumstances be liable to punishment under this Code in respect thereof, in any of the following cases—

- (a) if the matter is published by the Governor or by the Legislative Council in any official document or proceeding; or
- (b) if the matter is published in the Legislative Council by the Governor or by any member of the Legislative Council; or
- (c) if the matter is published by order of the Governor; or
- (d) if the matter is published concerning a person subject for the time being to naval, military, air force or police discipline, and relates to his conduct as a person subject to such discipline and is published by some person having authority over him, in respect of such conduct, and to some person also having authority over him in respect of such conduct; or
- (e) if the matter is published in the course of any judicial proceeding by a person taking part therein as a Judge, Magistrate, justice of the peace, Commissioner, legal practitioner, juror, assessor, arbitrator, referee, witness or party thereto; or
- (f) if the matter published is in fact a fair report of anything said, done or published in the Legislative Council; or
- (g) if the person publishing the matter does so in pursuance of a duty imposed by law.

(2) For the purposes of this section, references to the Legislative Council shall be deemed to include any committee of the Legislative Council.

(3) Where a publication is absolutely privileged, it is immaterial for the purposes of this Part whether the matter be true or false, and whether it be or be not known or believed to be false, and whether it be or be not published in good faith.

Conditional privilege

278. A publication of defamatory matter is privileged, if it was published in good faith, if the relation between the parties by and to whom the publication is made is such that the person publishing the matter is under some legal, moral or social duty to publish it to the person to whom the publication is made or has a legitimate personal interest in so publishing it, and provided that the publication does not exceed either in extent or matter what is reasonably sufficient for the occasion, in any of the following cases—

- (a) if the matter published is in fact a fair report of anything said, done or shown in a civil or criminal inquiry or proceeding before any court:

Provided that if the court prohibits the publication of anything said or shown before it, on the grounds that it is seditious, immoral or blasphemous, the publication thereof shall not be privileged; or

- (b) if the matter published is a copy or reproduction, or in fact a fair abstract or summary, of any matter which has been previously published, and the previous publication of which was or would have been privileged under section 277; or
- (c) if the matter is an expression of opinion in good faith as to the conduct of a person in a judicial, official or other public capacity, or as to his personal character so far as it appears in such conduct; or
- (d) if the matter is an expression of opinion in good faith as to the conduct of a person in relation to any public question or matter, or as to his personal character so far as it appears in such conduct; or
- (e) if the matter is an expression of opinion in good faith as to the conduct of any person as disclosed by evidence given in a legal proceeding held in public, whether civil or criminal, or as to the conduct of any person as a party, witness or otherwise in any such proceeding, or as to the character of any person so far as it appears in any such conduct; or
- (f) if the matter is an expression of opinion in good faith as to the merits of any book, writing, painting, speech or other work, performance or act published or publicly done or made or submitted by a person to the judgment of the public; or as to the character of the person so far as it appears therein; or
- (g) if the matter is a censure passed by a person in good faith on the conduct of another person in any matter in respect of which he has authority, by contract or otherwise, over the other person, or on the character of the other person so far as it appears in such conduct; or

- (h) if the matter is a complaint or accusation made by a person in good faith against another person in respect of his conduct in any matter, or in respect of his character so far as it appears in such conduct, to any person having authority, by contract or otherwise, over that other person in respect of such conduct or matter or having authority by law to inquire into or receive complaints respecting such conduct or matter; or
- (i) if the matter is published in good faith for the protection of the rights or interests of the person who publishes it, or of the person to whom it is published or of some person in whom the person to whom it is published is interested.

Explanation as to good faith

279. A publication by any person of defamatory matter shall not be deemed to have been made in good faith, within the meaning of section 278, if it is made to appear—

- (a) that the matter was untrue and that he did not believe it to be true; or
- (b) that the matter was untrue and that he published it without taking reasonable care to ascertain whether it was true or false; or
- (c) that in publishing the matter, he acted with intent to injure the person defamed in a substantially greater degree or substantially otherwise than was reasonably necessary for the interest of the public or the protection of the private right or interest in respect of which he claims to be privileged.

Presumption as to good faith

280. It is proved, on behalf of an accused person, that any defamatory matter was published under such circumstances that the publication would have been justified if made in good faith, the publication shall be presumed to have been made in good faith until the contrary is made to appear, either from the libel itself or from the evidence given on behalf of the accused person or from evidence on behalf of the prosecution.

PART XX

CRUELTY TO ANIMALS

Interpretation of this Part

281. For the purposes of this Part “**animal**” shall be deemed to include birds and all other vertebrate creatures.

Cruelty to animals

282.(1) Any person who—

- (a) cruelly beats, kicks, ill-treats, over-rides, overloads, tortures, starves, infuriates or terrifies any animal or permits any animal to be so used, or by any wanton or unreasonable act causes or permits unnecessary suffering to any animal; or
- (b) causes or assists at the fighting or baiting of any animal, or keeps or manages any premises used for the purpose of such fighting or baiting, or permits any premises to be so used; or
- (c) wilfully and without reasonable cause or excuse administers or causes or permits any poisonous or injurious substance to be administered to or taken by any animal; or
- (d) conveys, or causes or permits to be conveyed, any animal in such a manner or position as to cause that animal unnecessary suffering; or
- (e) causes or permits any animal to be subjected to any operation which is performed without due care and humanity and the avoidance of unnecessary pain; or
- (f) employs or permits the employment of any animal in any work or labour which, in consequence of age or any disease, infirmity, wound or sore or otherwise, such animal is unfit to perform,

shall be guilty of the offence of cruelty to an animal and shall be liable on summary conviction to a fine of \$1,000 or to imprisonment for six months, or to both such fine and imprisonment.

(2) For the purposes of subsection (1) an owner shall be deemed to have permitted cruelty if he has failed to exercise reasonable care and supervision for the protection of the animal therefrom, but the owner, who is convicted of an offence by reason only that he has failed to exercise such care and supervision, shall not be liable to imprisonment without the option of a fine in the case of a first conviction for an offence under this section.

(3) Where any person is convicted of an offence under this section, the court, if satisfied that it would be cruel to keep the animal alive, may direct that it be destroyed without unnecessary suffering, by and in the presence of a suitable person appointed for the purpose by the court. Any reasonable expenses incurred in destroying the animal shall be ordered by the court to be paid by the owner of the animal and may be recovered by the court in the same manner as a fine, and shall be paid by the court to the person ordered to destroy the animal.

(4) Where the owner of an animal is convicted of an offence under this section, the court recording the conviction, in addition to any punishment imposed, may, if it thinks fit, deprive such person of the ownership of the animal, and may make such order as to the disposal of the

animal as appears suitable in the circumstances of the case. In deciding whether or not an order should be made under this subsection the court shall take into account evidence of any previous conviction of the owner for an offence under this section and also the likelihood or otherwise of the animal being exposed to further cruelty if such order is not made.

Order for treatment of animal after conviction of offender

283.(1) Where any person has been convicted of an offence under section 282, the court recording the conviction may order that any animal in respect of which the offence was committed—

- (a) shall not be used for any particular purpose or work, as may be specified in the order; or
- (b) shall be removed to and detained for treatment in some place and for such time as shall be specified in the order.

(2) Where an order is made for the detention of an animal for treatment, any person convicted of the offence in respect of that animal shall be liable to pay the fees approved by the court for the maintenance and treatment of the animal while so detained and such fees shall be recoverable in the same manner as a fine.

Diseased or injured animals

284.(1) Any magistrate, government veterinary officer or qualified veterinary practitioner, medical officer or police officer who has satisfied himself by personal inspection—

- (a) that an animal is diseased or injured and that such disease or injury is incurable or that it is cruel to keep the animal alive; or
- (b) that an animal is so diseased or injured, or in such physical condition, that in his opinion, having regard to the circumstances and the location of the animal, it cannot be treated or removed for treatment without cruelty and that it is cruel to keep it alive,

may by order in writing direct that such animal be destroyed in the most humane manner possible.

(2) The expenses in connection with the destruction, removal and burial of an animal so destroyed shall be paid by the owner or person in charge thereof and shall be recoverable summarily from the owner or person in charge as a civil debt.

Power of arrest

285.(1) Any police officer may arrest without warrant any person whom he has reason to believe is guilty of an offence under section 282, whether upon his view thereof or upon the complaint or information of any other person, who shall declare his name and address to the officer at the time.

(2) Where a person is in charge of an animal or vehicle at the time of his arrest under this section any police officer may take such animal or vehicle and deposit the same in some suitable place for safe custody until the termination of the proceedings in the case or until the court shall otherwise direct; and the reasonable costs of such detention, including maintenance and veterinary treatment (where necessary) for the animal, shall be recoverable summarily from the owner as a civil debt, or, where the owner is himself convicted of the offence, shall be recoverable in the same manner as a fine.

Cruelty in slaughtering animals

286. Any person who tortures or causes unnecessary suffering to any animal which is required to be killed for food or any other necessary purpose, or in consequence of injury or disease, shall be guilty of an offence and liable on summary conviction to a fine of \$1,000 or to imprisonment for six months or to both such fine and imprisonment.

Communicating disease to animals

287. Any person who wilfully and unlawfully causes or is concerned in the causing, or attempts to cause, any infections or contagious disease to be communicated to any animal shall be guilty of an offence and liable to imprisonment for seven years.

PART XXI

NUISANCES AND OTHER OFFENCES AGAINST THE PUBLIC IN GENERAL

Common nuisance

288. Any person who does an act not authorized by law or who omits to discharge a legal duty and thereby causes a common injury or danger or annoyance, or who obstructs or causes inconvenience to the public in the exercise of common rights, commits the offence of being a common nuisance and shall be liable on summary conviction to imprisonment for six months or to a fine of \$500, or to both such imprisonment and fine.

Watching and besetting

289. (1) Any person who watches and besets—

- (a) any premises or the approaches to any premises with a view to preventing any person from doing any act which such person has a legal right to do thereat; or
- (b) the house or other place where any person resides, works or carries on business, or happens to be, or the approaches to

any such house or place, with a view to preventing such person from doing or compelling him to do any act which such person has a legal right to do or abstain from doing,

shall be guilty of an offence and liable on summary conviction to imprisonment for six months.

(2) No proceedings shall be brought in respect of an offence under this section without the written consent of the Attorney General.

Chain letters

290.(1) Any person who sends or causes to be sent any chain letter, or who sends or receives any money or money's worth in connection with any chain letter shall be guilty of an offence and liable on summary conviction to imprisonment for six months or to a fine of \$500, or to both such imprisonment and fine.

(2) For the purposes of this section "**chain letter**" means a document addressed by one person to another suggesting to the person to whom it is addressed or requiring—

- (a) that he should send a document having the same purport to one or more other persons; and
- (b) that he should remit to a person or to an address specified in the first mentioned document money or money's worth.

Obscene publications

291.(1) Any person who—

- (a) for the purposes of or by way of trade, or for the purpose of distribution or public exhibition, makes, produces or has in his possession any obscene writing, drawing, print, painting, printed matter, pictures, posters, emblems, photographs, films, discs or any other obscene objects tending to corrupt morals; or
- (b) for any of the purposes above mentioned imports, conveys or exports, or causes to be imported, conveyed or exported, any such matter or thing, or in any manner whatsoever puts any of the same into circulation; or
- (c) carries on or takes part in any business, whether public or private, concerned with any such matters or things, or deals in the same in any manner whatsoever, or distributes them publicly or makes a business of lending them; or
- (d) advertises or makes known by any means whatsoever with a view to assisting the circulation of or traffic in, any such matter or thing, that a person is engaged in any of the acts referred to in this section, or advertises or makes known

how, or from whom, any such matter or thing can be procured either directly or indirectly; or

- (e) publicly exhibits any indecent show or performance, or any show or performance tending to corrupt morals,

shall be guilty of an offence and liable on summary conviction to imprisonment for six months or to a fine of \$500, or to both such imprisonment and fine.

(2) On the application of the Commissioner of Police, the Magistrate's Court may order the destruction of any obscene matter or thing to which this section relates and which has been seized by or otherwise come into the possession of the police whether or not any person has been convicted under the provisions of this section in respect of such obscene matter or thing.

Idle and disorderly persons

292.(1) Any person who—

- (a) wanders abroad or, not being a blind or disabled person, places himself in any public place for the purpose of begging, or who causes any child so to do;
- (b) being a common prostitute behaves in a disorderly or indecent manner in a public place;
- (c) pretends to deal in obeah (as defined in section 297), myalism, duppy catching or witchcraft, or tells fortunes by palmistry or like superstitious means intending to deceive or impose on people;
- (d) publicly does an indecent act;
- (e) in any public place conducts himself in a manner likely to cause a breach of the peace;
- (f) solicits for immoral purposes in any public place;
- (g) in any public place plays any game or pretended game of chance for money or money's worth;
- (h) endeavours to obtain, or actually obtains, contributions for a charitable purpose unless authorized in writing so to do by the Commissioner of Police, or any police officer acting on his behalf, in pursuance of any instructions in that behalf given by the Governor in Council;
- (i) being able, wholly or in part, to maintain himself, refuses or neglects so to do or who has no fixed abode and sleeps by night in open or public places,

shall be deemed an idle and disorderly person and shall be liable on summary conviction to imprisonment for three months or to a fine of \$250, or to both such imprisonment and fine.

(2) The provisions of paragraph (h) of subsection (1) shall not apply to charitable appeals or collections made in any established place of religious worship or on behalf of a religious organization recognized by the Governor in Council for the purpose of this section.

Rogues and vagabonds

293.(1) Any person who—

- (a) has in his custody or possession, without lawful excuse (the proof of which excuse shall be on such person) any pick-lock, key, jemmy or crow-jack, bit or other implement of housebreaking, with intent to break into any house or other building; or
- (b) is armed with any firearm, cutlass, bludgeon or other offensive weapon or instrument, with intent to commit any criminal act; or
- (c) is found by night, without lawful excuse (the proof of which excuse shall be on such person) in or upon any dwelling house, warehouse, garage, stable or other building, or in any enclosed garden, yard or area, or on board any vessel or aircraft; or
- (d) having previously been convicted of an offence under Part XV (or of any similar offence involving dishonesty or larceny under any law in force before the date of commencement of this Code) frequents any wharf, warehouse or place adjoining thereto, or any public place leading or adjacent thereto, with intent to commit an offence; or
- (e) upon being apprehended as an idle and disorderly person, violently resists any police officer arresting him,

shall be deemed to be a rogue and a vagabond and shall be guilty of an offence and liable on summary conviction—

- (i) for a first offence under this section to imprisonment for one year;
- (ii) for every subsequent offence under this section, or for an offence under this section after having been previously convicted as a rogue and vagabond under any law in force immediately before the date of commencement of this Code, to imprisonment for two years,

and every weapon or instrument of house breaking in the possession of the offender at the time of the offence shall, upon his conviction, be forfeited to the Crown.

(2) In proceedings under this section, it shall not be necessary in proving the intent to commit an offence to show that the person accused

was guilty of any act or acts tending to show his purpose or intent, and he may be convicted if from the circumstances of the case and his known character as proved to the court, it appears to the court that his intent was as alleged, and his known character, as proved, shall be relevant evidence in that behalf.

Disorderly conduct

294.(1) Any person who, in any public place conducts himself in a disorderly manner, or conducts himself in such a noisy manner as to disturb the neighbourhood, shall be guilty of an offence and liable on summary conviction to a fine of \$250 or to imprisonment for three months, or to both such fine and imprisonment.

(2) If any person, on any private premises, conducts himself, or allows any other person so to conduct himself thereon, as to repeatedly annoy or disturb the neighbourhood, any person annoyed or disturbed thereby may complain to the Magistrate who, if satisfied by evidence on oath that there are good grounds for such complaint, may cause the person so offending to be warned, and if, after such warning, such person, within three months, so conducts himself, or allows any other person so to conduct himself, on the same premises as to annoy or disturb the neighbourhood, he shall be guilty of an offence and liable on summary conviction to a fine of \$250 or to imprisonment for three months, or to both such fine and imprisonment.

(3) Any person who behaves profanely, indecently or in a disorderly manner during the performance of any religious worship or ceremony, or who smokes in any building appropriated for religious worship while any service or ceremony is taking place therein, shall be guilty of an offence and liable on summary conviction to a fine of \$500 or to imprisonment for six months, or to both such fine and imprisonment.

(4) Any person who wilfully disturbs, interrupts or disquiets any body of persons, assembled for any lawful purpose, by profane discourse, rude or indecent behaviour or by making a noise, either within the place of such assembly or so near thereto as to disturb the same, shall be guilty of an offence and liable on summary conviction to a fine of \$250 or to imprisonment for three months, or to both such fine and imprisonment.

(5) Any person who at a lawful public meeting acts in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called, or who incites any other person so to act, shall be guilty of an offence and liable on summary conviction to a fine of \$250 or to imprisonment for three months or to both such fine and imprisonment.

Drunkenness

295.(1) Any person found drunk in any public place or upon any premises licensed for the sale of alcohol shall be guilty of an offence and liable on summary conviction—

- (a) upon a first conviction for such an offence to a fine of \$50;
 - (b) upon a second or subsequent conviction for such an offence, to a fine of \$100;
 - (c) upon any subsequent conviction within a period of twelve months from the date of a second or subsequent conviction for such an offence, to a fine of \$250 or to imprisonment for three months, or to both such fine and imprisonment.
- (2) Any person found drunk in any public place when—
- (a) in charge of any vehicle or animal; or
 - (b) in possession of any firearm,

shall be guilty of an offence and liable on summary conviction to a fine of \$500 or to imprisonment for six months, or to both such fine and imprisonment.

Abuse and false statements

296.(1) Any person who uses any abusive, blasphemous, indecent, insulting, profane or threatening language—

- (a) in any public place; or
- (b) in any place to the annoyance of the public; or
- (c) in any circumstances likely to cause a breach of the peace,

shall be guilty of an offence and liable on summary conviction to a fine of \$250 or to imprisonment for three months, or to both such fine and imprisonment.

(2) Any person who in any public place or at any meeting open to members of the public, whether on payment or otherwise, makes any statement about any person which he knows to be false or makes any such statement, recklessly without regard to its truth or otherwise, which statement is calculated or likely to bring such person into ridicule, odium or contempt or to undermine confidence in such person or in the conduct of public affairs by any person in an official position, shall be guilty of an offence and liable on summary conviction to a fine of \$1,000 or to imprisonment for twelve months, or to both such fine and imprisonment.

(3) For the purposes of subsection (2), “**person in an official position**” includes the Governor, any member of the Executive or Legislative Council, and any Judge, Magistrate, justice of the peace or member of any Commission of Inquiry appointed under any law.

- (4) Any person who—
- (a) in any public place or at any meeting open to members of the public, whether on payment or otherwise makes any statement which he knows to be false, or makes such

statement recklessly without regard to its truth or otherwise;
or

- (b) prints or distributes such a statement, which is of such a nature as to be likely to cause fear or alarm or to disturb the public peace or undermine public confidence in the conduct of public affairs,

shall be guilty of an offence and liable on summary conviction to a fine of \$500 or to imprisonment for six months, or to both such fine and imprisonment.

(5) A prosecution for an offence under subsections (2), (3) and (4) shall not be brought except by, or with the consent of, the Attorney General. (*Amended by Act 3 of 1992*)

Obeah

297.(1) For the purposes of this section and of paragraph (c) of subsection (1) of section 292, a person practising or dealing in obeah or myalism means a person who, to effect any fraudulent or unlawful purpose or for gain, or for the purpose of frightening any person, uses or pretends to use any occult means, or pretends to possess any supernatural power or knowledge and “**instrument of obeah or myalism**” means anything commonly used in or associated with the practice of obeah or myalism.

(2) Any person who—

- (a) practises or deals in obeah or myalism; or
- (b) for any fraudulent or unlawful purpose consults any person practising or reputed to be practising, or who has been convicted of any offence under any law relating to, obeah or myalism; or
- (c) for the purpose of effecting any purpose or bringing about any event by the use of occult means or any supernatural power or knowledge, consults any person practising or reputed to be practising obeah or myalism, or any person who has been convicted of any offence under any law relating to obeah or myalism and agrees to reward the person so consulted,

shall be guilty of an offence and liable on summary conviction to a fine of \$1,000 or to imprisonment for one year, or to both such fine and imprisonment.

(3) Any person who has in his possession any instrument of obeah or myalism or who has under his control any premises upon which any such instrument is found, unless or until the contrary is proved, shall be deemed to be practising obeah or myalism at the date when such instrument is found.

(4) Any person who composes, prints, sells or distributes any pamphlet or other printed or written matter calculated to promote the superstition of obeah or myalism shall be guilty of an offence and liable to the same punishment as a person convicted of practising obeah or myalism.

(5) Any court before which a person is convicted of an offence under this section may, in addition to any fine or sentence of imprisonment imposed, order that the person so convicted shall be subject to police supervision for a period not exceeding two years from the date of imposition of such fine or the expiration of any term of imprisonment, whichever is the later date, and thereupon such person shall be subject to the provisions of the Prevention of Crimes Act.

Negligent act likely to spread disease

298. Any person who unlawfully or negligently does any act which he knows or has reason to believe to be likely to cause the spread of any infectious or contagious disease shall be guilty of an offence and liable on summary conviction to a fine of \$500 or to imprisonment for six months, or to both such fine and imprisonment.

Pollution, etc

299. Any person who—

- (a) intentionally or negligently corrupts or fouls the water of any spring, stream, well or reservoir so as to render it less fit for the use of mankind or any livestock; or
- (b) intentionally or negligently vitiates the atmosphere in any place so as to render it noxious to the health or comfort of persons in the neighbourhood; or
- (c) for any purpose makes loud noises or offensive smells in such place and circumstances as to interfere with the comfort of persons in the exercise of their common rights; or
- (d) deposits offal or refuse in the sea within 500 yards of the shore,

shall be guilty of an offence and liable on summary conviction to a fine of \$500 or to imprisonment for six months, or to both such fine and imprisonment.

Adulteration of food, etc

300. Any person who—

- (a) adulterates any article of food or drink, so as to make such article noxious as food or drink intending to sell or offer for sale the same as food or drink, or knowing that it is likely that it will be offered for sale as such; or

- (b) sells or offers for sale as food or drink any article which has been rendered or has become noxious or in a state unfit for use as food or drink, knowing or having reason to believe that the same is unfit for such use; or
- (c) adulterates any drug or medicinal preparation in such manner as to lessen the efficacy or to change the operation of such drug or preparation, or to make it noxious, intending that it shall be or is likely to be sold or offered for sale for any medicinal purpose as if it had not been so adulterated or rendered noxious; or
- (d) knowing that any drug or medicinal preparation has been adulterated or rendered noxious, as mentioned in paragraph (c), sells the same or offers it for sale or issues it from any dispensary for medicinal purposes as if it had not been so adulterated or rendered noxious, or causes it to be so issued by any person,

shall be guilty of an offence and liable on summary conviction to a fine of \$500 or to imprisonment for six months, or to both such fine and imprisonment.

Unauthorized wearing of uniform

301. Any person who without lawful excuse or authority wears any uniform of the armed or police forces of any Commonwealth country, or any clothing having the appearance or intended to have the appearance of such uniform, shall be guilty of an offence and liable on summary conviction to a fine of \$500 or to imprisonment for six months, or to both such fine and imprisonment:

Provided that it shall not be an offence under this section for a person taking part in a *bona fide* theatrical or similar entertainment to wear a costume resembling a military uniform, when required for the purpose of representing a particular character, but in such case the badges shall not be identical with those of any of such armed or police force.

Carrying offensive weapons, etc, in public place

302.(1) Any person who, in any public place, carries or has in his possession any firearm, bludgeon, cutlass or other offensive weapon whatsoever, or any explosive or explosive device and who is unable to afford a lawful excuse, to the satisfaction of the court, for so carrying or having the same in his possession, shall be guilty of an offence and liable on summary conviction to a fine of \$1,000 or to imprisonment for one year or to both such fine and imprisonment.

(2) Any court before whom a person is convicted of an offence under subsection (1) may order that any article in respect of which the offence was committed shall be forfeited.

(3) For the purposes of this section “**firearm**” includes any imitation firearm, as defined in paragraph (a) of subsection (1) of section 213.

(4) Nothing in this section shall be deemed to prevent any police officer or member of the Defence Force from wearing or carrying any firearm, sword, staff or other weapon issued for the purpose of his duty.

Negligence with fire

303.(1) Any person who in any place negligently or recklessly carries or uses any fire shall be liable on summary conviction to a fine of \$250 or to imprisonment for three months, or to both such fine and imprisonment.

(2) Any person who by the careless or improper use of fire within any town or village endangers any lives or property therein shall be liable on summary conviction to a fine of \$1,000 or to imprisonment for one year, or to both such fine and imprisonment.

Throwing missile in public place

304.(1) Any person who in the vicinity of or in any public place unlawfully throws or discharges any missile or dangerous object, to the damage or danger of any property or person shall be liable on summary conviction to a fine of \$1,000 or to imprisonment for one year, or to both such fine and imprisonment.

(2) For the purposes of subsection (1) it is immaterial whether or not any person was actually injured or any property damaged if in the circumstances of the case a reasonable man would have anticipated that such injury or damage might have occurred.

Nuisance by noise

305. Any person who—

- (a) in or near any public place; or
- (b) in connection with any shop, business premises or other place used for any commercial purpose; or
- (c) in any other premises situated in or near any town or village, by operating or permitting the operation of any amplifier, musical instrument, radio or electrical or mechanical device for producing, reproducing or amplifying sound, causes or permits to be made any noise which is so loud, continuous or repetitive as to cause a nuisance to persons in any public place or to the occupants of any premises in the neighbourhood,

shall be guilty of an offence and liable on summary conviction to a fine of \$500.

Defacing buildings, etc

306. Any person who, without the consent of the owner or occupier—

- (a) posts any advertisement, bill, placard or other paper against or upon; or
- (b) writes upon, soils, marks or defaces,

any building, wall, fence, lamp post or other similar object, shall be guilty of an offence and liable on summary conviction to a fine of \$250 or to imprisonment for three months, or to both such fine and imprisonment.

Removing boats, etc

307.(1) Any person who takes or attempts to take any vessel from or out of any mooring, wharf, boat-house, berth, beach, landing-stage or other place for the purpose of using the same without the consent of the owner or other person having charge thereof, and without any reasonable claim of right or title thereto, shall be guilty of an offence and liable on summary conviction to a fine of one \$1,000 or to imprisonment for one year, or to both such fine and imprisonment.

(2) A conviction of any person for an offence under this section shall not affect the civil right of action of any person aggrieved by the act which constituted the offence.

Animals in public place

308. Any person in charge of any animals (other than cats or dogs) in any public place who wilfully remains at such a distance from them as not to have proper control over them shall be guilty of an offence and liable on summary conviction to a fine of \$250.

Fireworks and firearms in public place

309.(1) Subject to subsection (2), any person who, in any public place or within one hundred yards thereof, discharges any firearm or lets off any firework shall be guilty of an offence and liable on summary conviction to a fine of \$250 or to imprisonment for three months, or to both such fine and imprisonment.

(2) A person shall not commit an offence under subsection (1) by reason only that he fires a starting pistol or similar weapon in the ordinary course of the conduct of a sporting or athletic event or that he lets off a firework in the ordinary course of some festival or celebration at which the use of fireworks has been approved in writing by the Commissioner of Police or a police officer acting on his behalf.

Gambling

310.(1) Any person who knowingly permits or is concerned in the use of any building or place for the purpose of gambling, betting or the holding of a lottery or sweepstake shall be guilty of an offence and liable on summary conviction to a fine of \$1,000 or to imprisonment for one year, or to both such fine and imprisonment.

(2) The Magistrate or a justice of the peace, on being satisfied by evidence on oath that there is good reason to believe that any house or place is kept or used for a purpose contrary to the provisions of subsection (1), may by warrant authorize any police officer, with such assistance and by such force as may be necessary, by day or night to enter such house or place and to search the same and any persons found therein, and to seize all instruments and appliances of gambling, betting, or required for the holding of a lottery or sweepstake, and all money, securities for money and other articles reasonably supposed to have been used or intended to be used for any such purpose; and also to detain any persons there found until the completion of the search of such house or place; and if any such instruments and appliances are found in such house or place every person found therein at the time may be detained in custody until he can be brought before the Magistrate's Court, or is granted bail by the police officer in charge of such search, for his appearance before the Magistrate's Court:

Provided that if, owing to the lateness of the hour, or other sufficient cause, a search warrant cannot be obtained with sufficient speed, a police officer in uniform, not below the rank of sergeant, may exercise the powers referred to in this subsection without a search warrant.

(3) If any instruments or appliances for gambling, betting or the holding of a lottery or sweepstake are found in any house or place or on any person searched in pursuance of the powers conferred by this section, the fact of such finding shall be deemed to be evidence, until the contrary is made to appear, that such house or place was being used for gambling, betting or the holding of a lottery or sweepstake and that the persons found therein or escaping therefrom were gambling, betting or taking part in a lottery or sweepstake therein, although no such activity was actually seen by any police officer or other person assisting him at the time of entering or searching such house or place; and any person found in such house or place at the time shall, unless he satisfies the court to the contrary, be deemed to have been taking part in gambling or betting, or in a lottery or sweepstake and shall be liable on summary conviction to a fine of \$500 or to imprisonment for six months, or to both such fine and imprisonment.

(4) Any person playing or betting in any public place at or with any table or instrument of gambling at any game, or pretended game of chance shall be guilty of an offence and liable on summary conviction to a fine of \$250 or to imprisonment for three months, or to both such fine and imprisonment.

In this subsection "**approved**" means approved by the Governor in Council for the purposes of this section.

Neglect to maintain family

311.(1) Any person who, being wholly or in part able to maintain his or her children whether legitimate or illegitimate, and if a male, his wife, by work or other lawful means, refuses or neglects to do so, shall be guilty of an offence and liable on summary conviction to imprisonment for three months.

(2) Proceedings in respect of an offence under subsection (1) shall be without prejudice to any other legal remedy available to any person to enforce the payment of maintenance for, or to recover the cost of any necessities supplied to the wife (if any) and family of the offender.

Unlawful depasturing of animals

312. Any person who unlawfully and maliciously depastures any animal on any land, public place or thoroughfare shall be guilty of an offence and liable on summary conviction to a fine of \$250 or to imprisonment for three months.

Obstructing police officer

313. Any person who wilfully obstructs any police officer in the execution of his duties shall be guilty of an offence and liable on summary conviction to a fine of \$500 or to imprisonment for six months, or to both such fine and imprisonment.

Refusing to assist police officer, etc

314.(1) Any person who, in any public place, when lawfully called upon by a police officer to assist such officer in apprehending or securing any person whom such officer is endeavouring to apprehend or secure, without reasonable excuse refuses so to do shall be guilty of an offence and liable on summary conviction to a fine of \$250 or to imprisonment for three months or to both such fine and imprisonment.

(2) Any person who, when lawfully required so to do by a Magistrate, justice of the peace or police officer, refuses to give his name and address or gives a false name and address shall be guilty of an offence and liable on summary conviction to a fine of \$250 or to imprisonment for three months, or to both such fine and imprisonment.

Using explosive to kill fish

315. Any person who uses any explosive to catch or destroy fish, in any part of Montserrat, including the territorial waters thereof, shall be liable on summary conviction to a fine of \$250 or to imprisonment for three months, or to both such fine and imprisonment.

Using animal without consent of owner

316.(1) Any person who takes or drives or attempts to take or drive any animals from or out of any enclosure, stable, pasture or other place for the purpose of using the same without the consent of the owner or other person entrusted with the charge thereof, and without having any probable claim or title thereto, shall be guilty of an offence and liable on summary conviction to a fine of \$250.

(2) Proceedings in respect of an offence under subsection (1) shall be without prejudice to any other legal remedy available to the party aggrieved for the recovery of any such animals and for damages in respect of the taking or using thereof by the offender or for any injury caused to the animal.

Indecency, etc in public place

317.(1) Any person who behaves in an indecent manner in a public place shall be guilty of an offence and liable on summary conviction to a fine of \$250 or to imprisonment for three months, or to both such fine and imprisonment.

(2) Any person who writes or draws any indecent word, figure or representation in any public place shall be guilty of an offence and liable on summary conviction to a fine of \$250.

(3) Any person who wilfully—

(a) exposes in any public place or in any premises visible or accessible to the public from any public place any obscene print, picture, photograph or indecent exhibition; or

(b) exposes his person in any public place or in view thereof,

shall be guilty of an offence and liable on summary conviction to a fine of \$500 or to imprisonment for six months, or to both such fine and imprisonment.

Jurisdiction in respect of offence under this Part

318. Notwithstanding the provisions of section 62 of the Criminal Procedure Code, but subject to the provisions of section 75 of that Code, any offence mentioned in this Part may be tried summarily:

Provided that where the facts alleged to constitute an offence charged under this Part appear to the Magistrate also to constitute another offence, not triable summarily, under some other Part or under some other law, the Magistrate, in his discretion, may stay the proceedings brought in respect of such offence under this Part and hold a preliminary inquiry with a view to committing the accused person for trial before the High Court for that other offence; and if the person so committed for trial is convicted before the High Court of that other offence no further proceedings shall be taken on the same facts for an offence under this Part.

PART XXII

SUPPLEMENTARY

Arrest without warrant

319.(1) The powers of summary arrest conferred by the following subsections shall apply to offences for which the sentence is fixed by law or for which a person (not previously convicted) may under or by virtue of any enactment be sentenced to imprisonment for a term of five years or longer, and to attempts to commit any such offence; and in this Code and in any other law “**arrestable offence**” means any such offence or attempt.

(2) Any person may arrest without a warrant anyone who is, or whom he, with reasonable cause suspects to be, in the act of committing an arrestable offence.

(3) Where an arrestable offence has been committed, any person may arrest without warrant anyone who is, or whom he, with reasonable cause suspects to be, guilty of the offence.

(4) Where a police officer, with reasonable cause, suspects that an arrestable offence has been committed, he may arrest without warrant anyone whom he, with reasonable cause, suspects to be guilty of that offence.

(5) A police officer may arrest without warrant any person who is, or whom he, with reasonable cause, suspects to be, about to commit an arrestable offence.

(6) For the purpose of arresting a person under any power conferred by this section, a police officer may enter, if need be by force, and search any place where that person is or where the police officer, with reasonable cause, suspects him to be.

(7) This section shall not affect the operation of any enactment restricting the institution of proceedings for an offence, nor prejudice any power of arrest conferred by law apart from this section.

Further provisions concerning arrestable offences

320.(1) For the avoidance of doubt, where an offence is triable either summarily or on indictment and is punishable by imprisonment for five years, or longer if tried on indictment, it shall be deemed to be an arrestable offence notwithstanding that it would be punishable by a lesser term if tried summarily.

(2) Arrestable offences under this Code are shown as such in the fourth column of the Table of Offences and Penalties in Schedule I.

Penalties for assisting offenders

321.(1) Where a person has committed an arrestable offence, any other person who, knowing or believing him to be guilty of that offence or of

some other arrestable offence does without lawful authority or reasonable excuse an act to impede his apprehension or prosecution shall be guilty of an offence.

(2) If on the trial of an indictment for an arrestable offence the jury is satisfied that the offence charged (or some other offence of which the accused might on that charge be found guilty) was committed, but find the accused not guilty of it, they may find him guilty of any offence under subsection (1) of which they are satisfied that he is guilty in relation to the offence charged (or that other offence).

(3) A person committing an offence under subsection (1) with intent to impede another person's apprehension or prosecution shall on conviction on indictment be liable to imprisonment according to the gravity of the other person's offence, as follows—

- (a) if that offence is one for which the sentence is fixed by law, he shall be liable to imprisonment for not more than ten years;
- (b) if it is one for which a person (not previously convicted) may be sentenced to imprisonment for fourteen years, he shall be liable to imprisonment for not more than seven years;
- (c) if it is not included above but is one for which a person (not previously convicted) may be sentenced to imprisonment for ten years, he shall be liable to imprisonment for not more than five years;
- (d) in any other case, he shall be liable to imprisonment for not more than three years.

(4) No proceedings shall be instituted for an offence under this section except by or with the consent of the Attorney General.

Penalties for concealing offences

322.(1) Where a person has committed an arrestable offence, any other person who, knowing or believing that the offence or some other arrestable offence has been committed, and that he has information which might be of material assistance in securing the prosecution or conviction of an offender for it, accepts or agrees to accept for not disclosing that information any consideration other than the making good of loss or injury caused by the offence, or the making of reasonable compensation for that loss or injury, shall be guilty of an offence and liable on conviction to imprisonment for two years.

(2) No proceedings shall be instituted for an offence under this section except by or with the consent of the Attorney General.

Penalties for giving false information

323. Any person who causes any wasteful employment of the police by knowingly making to any person a false report tending to show that an offence has been committed, or to give rise to apprehension for the safety of any persons or property, or tending to show that he has information material to any police inquiry, shall be guilty of an offence and liable on

summary conviction to a fine of \$500 or to imprisonment for six months, or to both such fine and imprisonment.

Provisions relating to cases in which the assent of the Attorney General is required

324. Where in this Code or any other law it is provided that no prosecution shall be commenced except by or with the consent of the Attorney General, such provision shall not be deemed to prevent the arrest, or the issue of a warrant for the arrest, of a person for such an offence, or the remand in custody or on bail of a person charged with such an offence pending the decision of the Attorney General in the matter.

Offences and penalties, etc

325. The Table of Offences and Penalties contained in Schedule I sets out for convenience of reference the offences and penalties therefor contained in this Code but shall not be construed to add to or derogate from the provisions in this Code in relation to each such offence.

Alternative convictions

326. Without prejudice to the provisions of section 56 of the Criminal Procedure Code or to any other provisions of this Code, where a person is charged with an offence mentioned in the first column of the Table set out in Schedule II, if the court finds that he is not guilty of the offence charged but that, on the evidence before the court, he is guilty of another offence under a section of this Code referred to in the third column of the said Table, he may be convicted of that other offence although he was not charged with it.

Attempts to commit offences

327. Where a person is convicted of an attempt to commit an offence, if no specific penalty is provided for the punishment of an attempt to commit that offence, either in this Code or in any other law, the sentence which may be imposed shall not exceed that provided for punishment of the offence attempted; and the common law power to impose punishment in such a case is abolished.

Restriction on proceedings for offences under common law

328. (1) Where any act or omission constitutes an offence under this Code and also under common law, proceedings in respect of that offence shall be brought under the relevant provision of this Code and not under common law; and the common law offence in any such case shall be deemed to have been abolished.

(2) Where any act or omission constitutes an offence under this Code and also under some other enactment, proceedings in respect of that offence shall not be brought under that other enactment except by or with the consent of the Attorney General.

Abolition of distinctions between felony and misdemeanour

329.(1) All distinctions between felony and misdemeanour are hereby abolished.

(2) Subject to the provisions of this Code and of the Criminal Procedure Code, on all matters on which a distinction has previously been made between felony and misdemeanour the law and practice in relation thereto shall be the same as the law and practice applicable in relation to misdemeanours immediately before the date of commencement of this Code.

Abolition of certain common law offences

330.(1) The following offences under common law are hereby abolished—

- (a)* any distinct offence, under the common law, of maintenance (including champerty and embracery);
- (b)* challenging to fight;
- (c)* eavesdropping;
- (d)* being a common barrator, a common scold or a common night walker.

(2) For the avoidance of doubt it is hereby declared that to the extent (if any) that the following Acts of the Parliament of England apply in Montserrat, namely—

- (a)* The Champerty Act (28 Edw. I c.11);
- (b)* The Maintenance and Embracery Act 1540 (32 Hen. VIII c. 9),

the said Acts are hereby repealed in relation to Montserrat.

SCHEDULE I

(Sections 320 and 325)

TABLE OF OFFENCES AND PENALTIES

In this Table—

“A” means offender may be arrested by police officer without warrant;

“S” means triable summarily, subject to the provisions of sections 75, 90 and Part VI of the Criminal Procedure Code.

Nothing in the description of an offence in the second column of this Table shall be construed as adding to or derogating from the provisions contained in the relevant section of the Code.

<i>Penal Code section</i>	<i>Nature of offence</i>	<i>Maximum punishment</i>	<i>Whether arrestable without warrant</i>	<i>Whether triable summarily</i>
36	Treason	Life	A	
37	Concealment of treason	Life	A	
38	Treason Felony	Life	A	
41	Incitement to mutiny	Life	A	
42	Aiding, etc acts of mutiny—			
	(a) on summary conviction	1 year		S
	(b) on indictment	5 years		
43	Inducing police officer, etc to desert	6 months		S
44	Piracy <i>jure gentium</i>	Life	A	
45	Piracy in other cases	As English law	A	
48 (1)	Importation, etc of prohibited publications	3 years and/ or \$2000		
(2)	Possession of prohibited publications	2 years and/ or \$500		
49 (1)	Failure to surrender prohibited publication received innocently	2 years and/ or \$2000		
52 (1)	Seditious offences	3 years and/ or \$3000	A	
(2)	Possession of seditious publication	2 years and/ or \$2000		
55	Unlawful oath to commit capital offence	Life	A	

<i>Penal Code section</i>	<i>Nature of offence</i>	<i>Maximum punishment</i>	<i>Whether arrestable without warrant</i>	<i>Whether triable summarily</i>
56	Other unlawful oaths to commit offences	10 years	A	
57 (1)	Unlawful drilling	7 years	A	
(2)	Participating in unlawful drilling	2 years		
58 (1)	Publishing false news likely to cause alarm, etc	1 year and/ or \$1000		
59	Defamation of foreign personages, etc	2 years		
60	Foreign enlistment	2 years		
61	Unlawful assembly	1 year		S
62	Riot	2 years		
64	Rioting after proclamation	10 years	A	
65 (1)	Forcibly preventing proclamation	10 years	A	
(2)	Rioting after prevention of proclamation	5 years	A	
66	Rioters damaging property	14 years	A	
67	Rioters obstructing, etc aircraft or ships	2 years		
69	Importation, etc of prohibited weapons	5 years and/ or \$5000	A	
70	Carrying offensive weapon	2 years and/ or \$2000		S
73	Forcible detainer	2 years		
74	Challenging to fight	2 years and/ or \$2000		S
75	Affray	1 year and/ or \$1000		S
76 (1)	Threatening violence	1 year		S
(2)	Threatening violence at night	2 years		S
77	Assembling for purpose of smuggling	2 years and/ or \$2000		
78	Official corruption	3 years		
79	Extortion by public officer	3 years		
80	Public officer receiving property to show favour	6 months		S
81	Public officer exercising powers in respect of matter in which he has private interest	1 year		
82	False claims by officials	2 years		

<i>Penal Code section</i>	<i>Nature of offence</i>	<i>Maximum punishment</i>	<i>Whether arrestable without warrant</i>	<i>Whether triable summarily</i>
83 (1)	Abuse of powers of public officer	2 years		
(2)	Abuse of powers of public officer for private gain	3 years		
84	False certificates by public officer	2 years		
85	Unauthorized administration of oaths	1 year		S
86	False assumption of authority	2 years		
87	Personation of public officer	3 years		
88	Threats to public officer	2 years		
89	Deceiving witness	2 years		
90	Destroying evidence	2 years		
91	False swearing	2 years		
92	Conspiracy to defeat course of justice	5 years	A	
93 (1)	Offences relating to judicial proceedings	2 years		
(2)	Summary punishment for offence committed in view of court	1 month and/or \$200		
94	Perjury	7 years	A	
95	Subornation of perjury	7 years	A	
96	Fabrication of evidence	7 years	A	
97	Contradictory statements by witness	6 months		
100	Compounding offences	2 years		
101	Compounding penal actions	2 years		
102	Offering reward for return of stolen property	1 year and/or \$1000		S
103	Rescue from lawful custody—			
	(a) where prisoner under sentence of life imprisonment	Life	A	
	(b) in case of other prisoner	7 years	A	
	(c) in case of other rescue	2 years		
104	Escape from lawful custody	2 years		
105	Permitting prisoner to escape	2 years		
106	Aiding prisoner to escape	7 years	A	
107	Removing property lawfully seized	3 years		
108	Obstructing court officers	2 years		
109	Frauds and breach of trust by public officer	3 years		

<i>Penal Code section</i>	<i>Nature of offence</i>	<i>Maximum punishment</i>	<i>Whether arrestable without warrant</i>	<i>Whether triable summarily</i>
110	Giving false information to public officer	3 years and/ or \$3000		
111	Insulting religion	2 years		
112	Disturbing religious assembly	1 year		
113	Writing, etc, with intent to wound religious feeling	1 year		
114	Hindering burial, etc	2 years		
115	Trespassing on burial place with intent to wound feelings or insult etc	2 years		
117 (1)	Rape	Life	A	
(5)	Attempted rape	7 years	A	
118 (1)	Incest by man—			
	(a) with female under 13 years	14 years	A	
	(b) in other case	5 years	A	
(3)	Attempt to commit incest	2 years		
119	Incest by woman	5 years	A	
120 (1)	Sexual intercourse with girl under 13 years	14 years	A	
(3)	Attempt to commit offence under (1)	2 years		
121	Unlawful sexual intercourse with girl under 16 years	2 years		
122	Indecent assault on woman—			
	(a) under 13 years	5 years	A	
	(b) in other case	2 years		
123	Indecency with child—			
	(a) on summary conviction	6 months and/or \$500		S
	(b) on conviction on indictment	2 years		
124	Permitting use of premises for sexual intercourse by girl under 13 years	Life	A	
125	Causing prostitution, etc of girl under 16 years	2 years		
126	Procuring woman by threats	2 years		
127	Procuring woman by false pretences	2 years		
128	Administering drug to facilitate intercourse	2 years		

<i>Penal Code section</i>	<i>Nature of offence</i>	<i>Maximum punishment</i>	<i>Whether arrestable without warrant</i>	<i>Whether triable summarily</i>
129	Causing prostitution of woman	2 years		
130	Detention of woman in brothel	2 years		
131	Man living on earnings of prostitution—		A	
	(a) on summary conviction	6 months and/or \$500		S
	(b) on conviction on indictment	5 years		
132	Woman exercising control over prostitute—		A	
	(a) on summary conviction	6 months and/or \$500		S
	(b) on conviction on indictment	5 years		
133	Living on earnings of male prostitution—		A	
	(a) on summary conviction	6 months		S
	(b) on conviction on indictment	5 years		
134	Intercourse with defective	2 years		
135	Keeping a brothel	6 months and/or \$500		S
136	Letting premises for use as brothel—			
	(a) on first conviction for this offence	6 months and/or \$500		S
	(b) on second or subsequent conviction for this offence	1 year and/or \$2000		S
137 (1)	Buggery	10 years	A	
(2)	Attempt to commit buggery	5 years	A	
138	Indecent assault on a man	2 years		
139 (1)	Use of poison, etc to cause miscarriage	Life	A	
(4)	Supplying or procuring means to cause miscarriage	5 years	A	
140	Killing unborn child	Life	A	
141	Bigamy	7 years	A	
142	Fraudulent pretence of marriage	7 years	A	
143	Fraudulent taking part in marriage ceremony	5 years	A	
144	Falsely pretending to be marriage officer	5 years	A	
145	Personation in marriage ceremony	7 years	A	

<i>Penal Code section</i>	<i>Nature of offence</i>	<i>Maximum punishment</i>	<i>Whether arrestable without warrant</i>	<i>Whether triable summarily</i>
147	Genocide—			
	(a) if killing involved	Life	A	
	(b) in other case	14 years	A	
151	Murder	Life	A	
153	Attempted murder	Life	A	
154	Manslaughter	Life	A	
155	Infanticide	Life	A	
156	Threats to murder	10 years	A	
157	Conspiracy to murder	10 years	A	
158	Abetment of suicide	14 years	A	
159	Suicide pacts	As for man-slaughter	A	
163	Inflicting grievous bodily harm	Life	A	
164	Inflicting bodily harm, with or without weapon	5 years	A	
165	Attempting to choke, etc to commit offence	Life	A	
166	Using anaesthetic, etc to commit offence	Life	A	
167	Administering poison so as to endanger life or inflict grievous bodily harm	10 years	A	
168	Administering poison with intent to injure, etc	5 years	A	
169	Impeding escape from shipwreck	Life	A	
170	Causing bodily harm by corrosive substance or explosive	Life	A	
171	Using explosive or corrosive substance with intent to do grievous harm	Life	A	
172	Placing explosive near building, etc with intent to cause bodily harm	Life	A	
173	Causing explosion likely to endanger life or property	14 years	A	
174	Setting traps, etc with intent to inflict grievous bodily harm	5 years	A	
175	Concealing birth of child	2 years	A	
176	Unlawful use of firearms	5 years	A	

<i>Penal Code section</i>	<i>Nature of offence</i>	<i>Maximum punishment</i>	<i>Whether arrestable without warrant</i>	<i>Whether triable summarily</i>
177	Wounding	5 years	A	
179	Reckless and negligent acts	2 years		
180	Other negligent acts causing harm	6 months		S
181	Dealing with poisonous substance in negligent manner	6 months		S
182 (1)	Acts tending to the destruction of aircraft and ships	Life	A	
(2)	Acts tending to the destruction of aircraft and ships	7 years	A	
183	Conveying person for hire in unsafe conveyance	1 year		S
184	Common assault	1 year		S
185	Assault causing actual bodily harm	5 years	A	
186	Assault on person protecting wreck	7 years	A	
187	Assaults specially punishable	2 years		
188	Assault on female or child	6 months and/or \$500		S
189	Assault on police officers, etc—			
	(a) on summary conviction for first offence	6 months and/or \$1000		S
	(b) on conviction on indictment	2 years and/or \$2000		
190	Neglecting servant or apprentice	5 years	A	
191	Failure to supply necessaries	5 years	A	
192	Abandoning or exposing child under two years	7 years	A	
193	Cruelty to children—			
	(a) on summary conviction	6 months and/or \$500		S
	(b) on conviction on indictment	5 years and/or \$5000		
	(c) if person convicted had interest in money payable on death of child	7 years and/or \$7000		
194	Other negligent acts or commissions causing harm	1 year and/or \$1000		
196	Kidnapping	10 years	A	

<i>Penal Code section</i>	<i>Nature of offence</i>	<i>Maximum punishment</i>	<i>Whether arrestable without warrant</i>	<i>Whether triable summarily</i>
197	Abduction with intent to remove from or to confine in Montserrat	14 years	A	
198	Abduction or kidnapping female with intent to marry, etc	14 years	A	
199	Unlawfully taking girl under 16 years away from parent	2 years		
200	Child stealing	7 years	A	
201	Wrongful confinement	5 years	A	
202	Unlawful compulsory labour	5 years	A	
210	Theft—		A	
	(a) on summary conviction	2 years		S
	(b) on conviction on indictment	10 years		
211	Robbery	Life	A	
212	Burglary	14 years		
213	Aggravated burglary	Life	A	
214	Removing articles from place open to the public	5 years	A	
215	Abstraction of electricity	2 years		S
216	Fraudulent use of telephone or telex system—			
	(a) on summary conviction	3 months and/or \$250		S
	(b) on conviction on indictment	2 years and/or \$2000		
217	Taking conveyance without authority	2 years and/or \$2000		S
218	Obtaining property by deception	10 years	A	
219	Evasion of liability by deception—		A	
	(a) on summary conviction	1 year		S
	(b) on conviction on indictment	5 years		
220	Obtaining pecuniary advantage or services by deception—		A	
	(a) on summary conviction	1 year		S
	(b) on conviction on indictment	5 years		
221	Making off without payment	6 months and/or \$2000		S

<i>Penal Code section</i>	<i>Nature of offence</i>	<i>Maximum punishment</i>	<i>Whether arrestable without warrant</i>	<i>Whether triable summarily</i>
222	False accounting	7 years	A	
224	False statements by company directors, etc	7 years	A	
225	Destruction, etc of valuable security or procuring execution of same by deception	7 years	A	
226	Blackmail	14 years	A	
227	Handling stolen goods	10 years	A	
231	Going equipped to steal, etc	3 years	A	
236	Forgery of certain documents with intent to defraud—			
	(a) under subsection (1)	Life	A	
	(b) under subsection (2)	14 years	A	
237	Forgery of certain documents with intent to defraud or deceive—			
	(a) under subsection (1)	Life	A	
	(b) under subsection (2)	14 years	A	
	(c) under subsection (3)	7 years	A	
238	Forging or uttering forged court documents	7 years	A	
239	Forging or uttering forged documents relating to registration of births, marriages and deaths	Life	A	
240	Forgery of passport	2 years and/or \$2000		
241	Forgery of other documents with intent to defraud or deceive	2 years and/or \$2000		
242	Forgery of seals and dies—			
	(a) under subsection (1)	Life	A	
	(b) under subsection (2)	14 years	A	
243	Uttering forged document, etc with intent to deceive or defraud	the same penalty as if he had himself forged the document, etc		

<i>Penal Code section</i>	<i>Nature of offence</i>	<i>Maximum punishment</i>	<i>Whether arrestable without warrant</i>	<i>Whether triable summarily</i>
244	Uttering cancelled or spent document	the same penalty as if he had forged the document		
260	Sale of counterfeit currency	6 months and/or \$1000		
262	Personation of person named in certificate, etc	the same penalty as for forgery of the certificate, etc		
263	Personation of person named in testimonial	1 year		
264	Falsely acknowledging recognizances, etc	7 years	A	
265	Destroying or damaging property— (a) in the case of arson or under (2) (b) in any other case	Life 10 years	A A	
266	Threats to destroy or damage property	10 years	A	
267	Possessing anything with intent to destroy or damage property	10 years	A	
272	(a) Casting away ships, etc (b) Attempt to commit offence under this section	Life 14 years	A A	
273	Criminal libel	1 year		
282	Cruelty to animals	6 months and/or \$1000		S
286	Cruelty in slaughtering animals	6 months and/or \$1000		S
287	Communicating disease to animals	7 years	A	
288	Common nuisance	6 months and/or \$500		S
289	Watching and besetting	6 months		S
290	Sending chain letters	6 months and/or \$500		S
291	Importing, distributing, etc obscene publications	6 months and/or \$500		S

<i>Penal Code section</i>	<i>Nature of offence</i>	<i>Maximum punishment</i>	<i>Whether arrestable without warrant</i>	<i>Whether triable summarily</i>
292	Idle and disorderly person	3 months and/or \$250		S
293	Rogue and vagabond—			
	(a) for first offence	1 year		S
	(b) for second or subsequent offence	2 years		S
294	Disorderly conduct—			
	(a) under subsection (1)	3 months and/or \$250		S
	(b) under subsection (2)	3 months and/or \$250		S
	(c) under subsection (3)	6 months and/or \$500		S
	(d) under subsection (4)	3 months and/or \$250		S
	(e) under subsection (5)	3 months and/or \$250		S
295	Drunkenness in public place—			
	(a) on first conviction	\$50		S
	(b) on second or subsequent conviction	\$100		S
	(c) on subsequent conviction within twelve months of second or subsequent conviction	3 months and/or \$250		S
	(d) when in charge of vehicle or firearm	6 months and/or \$500		S
296	Abuse and false statements—			
	(a) under subsection (1)	3 months and/or \$250		S
	(b) under subsection (2)	1 year and/or \$1000		S
	(c) under subsection (4)	6 months and/or \$500		S
297	Practising or dealing in obeah, etc	1 year and/or \$1000		S
298	Negligent act likely to spread disease	6 months and/or \$500		S

<i>Penal Code section</i>	<i>Nature of offence</i>	<i>Maximum punishment</i>	<i>Whether arrestable without warrant</i>	<i>Whether triable summarily</i>
299	Pollution, noises and smells, etc	6 months and/or \$500		S
300	Adulteration of food, etc	6 months and/or \$500		S
301	Unauthorized wearing of uniform	6 months and/or \$500		S
302	Carrying offensive weapon in public place	1 year and/or \$1000		S
303	Negligence with fire—			
	(a) under subsection (1)	3 months and/or \$250		S
	(b) under subsection (2)	1 year and/or \$1000		S
304	Throwing missile in public place	1 year and/or \$1000		S
305	Nuisance by noise	\$500		S
306	Defacing buildings, etc	3 months and/or \$250		S
307	Removing boats, etc	1 year and/or \$1000		S
308	Failing to control animals in public place	\$250		S
309	Letting off fireworks and firearms in public place	3 months and/or \$250		S
310	Gambling—			
	(a) under subsection (1)	1 year and/or \$1000		S
	(b) under subsection (3)	6 months and/or \$500		S
	(c) under subsection (4)	3 months and/or \$250		S
311	Neglecting to maintain family	3 months		S
312	Unlawful depasturing of animals	3 months and/or \$250		S
313	Obstructing police officer	6 months and/or \$500		S

<i>Penal Code section</i>	<i>Nature of offence</i>	<i>Maximum punishment</i>	<i>Whether arrestable without warrant</i>	<i>Whether triable summarily</i>
314	Refusing to assist police officer	3 months and/or \$250		S
315	Using explosive to kill fish	3 months and/or \$250		S
316	Using animal without consent of owner	\$250		S
317	Indecency in public place—			
	(a) under subsection (1)	3 months and/or \$250		S
	(b) under subsection (2)	\$250		S
	(c) under subsection (3)	6 months and/or \$500		S
321	Assisting offender—			
	under subsection (3)(a)	10 years	A	
	under subsection (3)(b)	7 years	A	
	under subsection (3)(c)	5 years	A	
	under subsection (3)(d)	3 years		
322	Concealing offence	2 years		
323	Giving false information to police	6 months and/or \$500		S

SCHEDULE II

(Section 326)

TABLE OF ALTERNATIVE VERDICTS

When a person is charged with an offence mentioned in the first column of this Table and the Court is of the opinion that he is not guilty of that offence but that he is guilty of another offence mentioned in the second column of this Table, he may be convicted of the latter offence although he was not charged with it.

Nothing in the description of an offence in this Table shall be construed to add to or derogate from the provisions in this Code in relation to that offence.

<i>Offence charged</i>	<i>Section of Code</i>	<i>Alternative conviction of other offence</i>	<i>Section of Code or other law</i>
Burglary	s. 212	Theft	s. 210
		Destroying or damaging property	s. 265
Causing grievous bodily harm with intent so to do	s. 163	Inflicting grievous bodily harm	s. 164
Incest by man	s. 118	Sexual intercourse with girl under age of thirteen	s. 120
		Sexual intercourse with girl under age of sixteen	s. 125
		Intercourse with defective	s. 134
Indecent assault on woman	s. 122	Common assault	s. 184
Indecent assault on man	s. 138	Common assault	s. 184
Infanticide	s. 155	Killing unborn child	s. 140
		Concealing the birth of child	s. 175
Inflicting grievous bodily harm	s. 164	Assault causing actual bodily harm	s. 185
		Common assault	s. 184
Killing unborn child	s. 140	Use of poison, etc or instruments to cause miscarriage	s. 139
Manslaughter	s. 154	Killing unborn child	s. 140
		Abetment of suicide	s. 158
Killing where use of vehicle involved		Reckless or dangerous driving	ss 53 & 57 of Vehicles and Road Traffic Act

<i>Offence charged</i>	<i>Section of Code</i>	<i>Alternative conviction of other offence</i>	<i>Section of Code or other law</i>
Murder	s. 149	Manslaughter	s. 154
		Infanticide	s. 155
		Abetment of suicide	s. 158
		Killing of unborn child	s. 140
Murder		Wounding or causing grievous bodily harm, with intent so to do	s. 163
		Concealment of birth	s. 175
		Attempt to commit murder or another offence of which he might be found guilty on a charge of murder	s. 153
Poison, administering so as to endanger life, etc	s. 167	Administering poison with intent to injure	s. 168
Rape	s. 117	Sexual intercourse with girl under age of thirteen	s. 120
		Sexual intercourse with girl under age of sixteen	s. 121
		Indecent assault on woman	s. 122
		Procurement of woman by threats	s. 126
		Procurement of woman by false pretences	s. 127
		Administering drugs to obtain or facilitate intercourse	s. 128
		Common Assault	s. 184
Theft	s. 210	Taking conveyance without authority	s. 217
		Handling stolen goods	s. 227
		Using animal without consent of owner	s. 316
Unnatural offence	s. 137	Indecent assault on a man	s. 138

Note: See also s. 321(2) under which a person tried on indictment for any arrestable offence, if found not guilty of that offence, may be convicted of an offence, under subsection (1) of that section, for assisting an offender

**CARIBBEAN TERRITORIES (ABOLITION OF
DEATH PENALTY FOR MURDER) ORDER 1991**

(Statutory Instrument (U.K.) 1991 No. 988)

Commencement

[10 May 1991]

Her Majesty, by virtue and in exercise of the powers conferred on Her by sections 5 and 7 of the West Indies Act 1962 and section 1 of the Anguilla Act 1980 and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

Short title

1. (1) This Order may be cited as the Caribbean Territories (Abolition of Death Penalty for Murder) Order 1991.
- (2) This Order shall come into force on 10th May 1991.

Extent of Order

2. (1) This Order extends to the following territories—
 - Anguilla;
 - British Virgin Islands;
 - Cayman Islands;
 - Montserrat;
 - Turks and Caicos Islands.
- (2) In the application of this Order to any of the said territories the expression “**the Territory**” means that territory.

Abolition of the Death Penalty for Murder

3. Notwithstanding the provisions of any other law in force in the Territory, no person shall be sentenced to death by any court in the Territory for the crime of murder, and a person convicted of murder shall be sentenced to imprisonment for life.
-

CARIBBEAN TERRITORIES (CRIMINAL LAW) ORDER

At the Court at Buckingham Palace

THE 13TH DAY OF DECEMBER 2000

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL

Her Majesty, by virtue and in exercise of the powers in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order and it is hereby ordered, as follows:

Citation and commencement

1. (1) This Order may be cited as the Caribbean Territories (Criminal Law) Order 2000.

(2) This Order shall come into force on 1st January 2001.

Extent of Order

2. (1) This Order extends to the following territories—

Anguilla
Cayman Islands
Montserrat
Turks and Caicos Islands
Virgin Islands.

(2) In the application of this Order to any of the said territories the expression “**the territory**” means territory.

Amendment of law relating to homosexual acts in private

3. (1) Notwithstanding any statutory or common law provision in force in the Territory to the contrary, a homosexual act in private shall not be an offence provided that the parties consent thereto and have attained the age of eighteen years.

(2) An act which would otherwise be treated for the purposes of this Order as being done in private shall not be so treated if done—

- (a) when more than two persons take part or are present; or
- (b) in a lavatory to which the public have or are permitted to have access, whether on payment or otherwise.

(3) A man who is suffering from severe mental handicap cannot in law give any consent which, by virtue of paragraph (1) of this article, would prevent a homosexual act from being an offence, but a person shall not be convicted, on account of the incapacity of such a man to consent, of an offence consisting of such an act if he

proves that he did not know and had no reason to suspect that man to be suffering from severe mental handicap.

(4) In paragraph (3) of this article “**severe mental handicap**” means a state of arrested or incomplete development of mind which includes severe impairment of intelligence and social functioning.

(5) Paragraph (1) of this article shall not have effect in relation to the doing by a man on the staff of a hospital, or otherwise having responsibility for mental patients of a homosexual act with a male patient who is for the time being receiving treatment for mental disorder in that hospital; but a man shall not be convicted of an offence consisting of such an act with a male patient if he did not know and had no reason to suspect that male patient to be a mentally disordered patient.

(6) It is hereby declared that where in any proceedings it is charged that a homosexual act is an offence the prosecutor shall have the burden of proving that the act was done otherwise than in private or otherwise than with the consent of the parties or that any of the parties had not attained the age of eighteen years.

(7) For the purpose of this article a man shall be treated as doing a homosexual act if, and only if, he commits buggery with another man or commits an act of gross indecency with another man or is a party to the commission by a man of such an act.

Past offences

4. Article 3 of this Order shall have effect in relation to acts done before the commencement of this Order as it applies in relation to acts done after its commencement.

A.K. Galloway

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