

M O N T S E R R A T

PENAL CODE (AMENDMENT) ACT 2014

No. 9 of 2014

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I ASSENT

(Sgd.) Adrian Davis
Governor

DATE: 7.7.14

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AN ACT TO AMEND THE PENAL CODE BY MAKING PROVISION FOR OFFENCES RELATED TO BRIBERY; BY REVISING THE LAW RELATED TO SEXUAL OFFENCES AND FOR CONNECTED PURPOSES.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Montserrat, and by the Authority of the same as follows—

1. Short title and commencement

- (1) This Act may be cited as the Penal Code (Amendment) Act, 2014.
- (2) This Act comes into force on a date appointed by the Governor acting on the advice of Cabinet by Order published in the *Gazette*.
- (3) The Governor acting on the advice of Cabinet may appoint different dates for different sections of this Act.

2. Interpretation

In this Act, “**principal Code**” means the Penal Code (Cap. 4.02).

3. Sections 78, 79 and 80 deleted

The principal Code is amended by deleting sections 78, 79 and 80.

4. Part VA inserted

The principal Code is amended by inserting after Part V the following as Part VA:

“PART VA

BRIBERY

88A Interpretation

In this Part—

“**bribery**” means an offence under section 88F, 88G or 88H;

“**Commissioner**” means the Financial Services Commissioner appointed under the Financial Services Commission Act (No. 3 of 2008);

“**foreign public official**” means an individual who—

(a) holds a legislative, administrative or judicial position, whether appointed or elected, of a country or territory or a subdivision of a country or territory outside of Montserrat;

(b) exercises a public function for or on behalf of a—

(i) country or territory outside Montserrat or a subdivision of the country or territory; or

(ii) public agency or public enterprise of the country or territory or subdivision of the country or territory; or

(c) is an official or agent of a public international organisation; and

“public international organisation” means an organisation whose members are any of the following—

- (a) countries or territories;
- (b) governments of countries or territories;
- (c) other public international organisations; or
- (d) a mixture of any of the above.

88B Application

This Part applies to public officers as it applies to other individuals.

88C Function or activity to which bribe relates

- (1) For the purposes of this Part, a function or activity is a relevant function or activity if it—
- (a) falls within subsection (2); and
 - (b) meets one or more of conditions set out in subsection (3).
- (2) The following functions and activities fall within this subsection—
- (a) a function of a public nature;
 - (b) an activity connected with a business;
 - (c) an activity performed in the course of a person's employment; or

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- (d)* an activity performed by or on behalf of a body of persons, whether corporate or unincorporated.
- (3)** The conditions referred to in subsection (1) are that a person performing the function or activity is—
 - (a)* expected to perform it in good faith;
 - (b)* expected to perform it impartially; or
 - (c)* in a position of trust by virtue of performing it.
- (4)** A function or activity is a relevant function or activity even if it—
 - (a)* has no connection with Montserrat; and
 - (b)* is performed in a country or territory outside of Montserrat.
- (5)** In this section “**business**” includes trade or profession.

88D Improper performance to which bribe relates

- (1)** For the purposes of this Part a relevant function or activity is—
 - (a)* performed improperly if it is performed in breach of a relevant expectation; and
 - (b)* to be treated as being performed improperly if there is a failure to perform the function or activity and that failure is itself a breach of a relevant expectation.
- (2)** In subsection (1), “**relevant expectation**” in relation to a function or activity which meets the conditions under—
 - (a)* section 88C(3)(a) or (b), means the expectation mentioned in the condition concerned; and
 - (b)* section 88C(3)(c), means an expectation as to the manner in which, or the reasons for which, the function or activity will be performed that arises

from the position of trust mentioned in that condition.

- (3) Anything that a person does arising from or in connection with that person's past performance of a relevant function or activity is to be treated for the purposes of this Part as being done by that person in the performance of that function or activity.

88E Expectation test

- (1) For the purposes of sections 88C and 88D, the test of what is expected is a test of what a reasonable person in Montserrat would expect in relation to the performance of the type of function or activity concerned.
- (2) In deciding what a reasonable person would expect in relation to the performance of a function or activity where the performance is not subject to the law of Montserrat, a local custom or practice is to be disregarded unless it is permitted or required by the written law applicable to the country or territory concerned.
- (3) In subsection (2), “**written law**” means law contained in a—
 - (a) written constitution, or provision made by or under legislation, applicable to the country or territory concerned; or
 - (b) judicial decision which is so applicable and is evidenced in published written sources.

88F Offences of bribing another person

- (1) A person commits an offence if—
 - (a) he offers, promises or gives a financial or other advantage to another person and he intends the advantage to—

- (i) induce a third person to perform improperly a relevant function or activity;
 - (ii) encourage a third person to abstain from performing a relevant function; or
 - (iii) reward a third person for the improper performance of a function or activity; or
- (b) he offers, promises or gives a financial or other advantage to another person and he knows or believes that the acceptance of the advantage by that person would itself constitute the improper performance of a relevant function or activity.
- (2) For the purposes of subsection (1)(a) and (b), it does not matter whether the advantage is offered, promised or given by the person directly or through a third party.

88G Offences relating to being bribed

- (1) A person commits an offence if—
- (a) he requests, agrees to receive or accepts a financial or other advantage intending that, in consequence, a relevant function or activity should be performed improperly, whether by himself or another person;
 - (b) he requests, agrees to receive or accepts a financial or other advantage as a reward for the improper performance, whether by himself or another person, of a relevant function or activity; or
 - (c) in anticipation of or in consequence of his requesting, agreeing to receive or accepting a financial or other advantage, a relevant function or activity is performed improperly—
 - (i) by him; or
 - (ii) by another person at his request or with his assent or acquiescence.

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- (2) For the purposes of subsection (1), it does not matter whether the—
 - (a) person requests, agrees to receive or accepts, or is to request, agree to receive or accept, the advantage directly or through a third party; or
 - (b) advantage is for the benefit of the person or another person.
- (3) For the purposes of subsection (1)(b) and (c), it does not matter whether the person knows or believes that the performance of the function or activity is rendered improper by the request, agreement or acceptance of the financial or other advantage.
- (4) For the purposes of subsection (1)(c), where another person is performing the function or activity, it also does not matter whether that person knows or believes that the performance of the function or activity is rendered improper by the request, agreement or acceptance of the financial or other advantage.

88H Bribery of foreign public officials

- (1) A person who bribes a foreign public official with intent to influence the foreign public official in his capacity as a foreign public official commits an offence if the person's intention is to obtain or retain—
 - (a) business; or
 - (b) an advantage in the conduct of business.
- (2) A person bribes a foreign public official if directly or through a third party, the person offers, promises or gives a financial or other advantage to—
 - (i) the foreign public official; or
 - (ii) another person at the foreign public official's request or with the foreign public official's assent or acquiescence.

- (3) For the purposes of this section, a trade or profession is a business.

88I Failure of commercial organisations to prevent bribery

- (1) A relevant commercial organisation commits an offence under this section if a person associated with the relevant commercial organisation bribes another person intending to obtain or retain—
- (a) business for the relevant commercial organisation; or
 - (b) an advantage in the conduct of business for the relevant commercial organisation.
- (2) It is a defence for the relevant commercial organisation to prove that it had in place adequate procedures designed to prevent persons associated with it from undertaking the conduct under subsection (1).
- (3) For the purposes of this section, the person under subsection (1) bribes another person if, the person under subsection (1) commits an offence under section 88F or 88H.
- (4) In this section—
- “**partnership**” means a—
- (a) partnership within the Partnership Act (Cap. 11.09); or
 - (b) limited partnership registered under the Limited Partnerships Act (Cap. 11.10); or
 - (c) firm or entity of a similar character to that in paragraph (a) or (b) formed under the law of a country or territory outside Montserrat.

“**relevant commercial organisation**” means—

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- (a) a body which is incorporated under the laws of Montserrat and which carries on a business whether in Montserrat or elsewhere;
- (b) any other body corporate; which carries on a business, or part of a business, in Montserrat;
- (c) a partnership which is formed under the laws of Montserrat and which carries on a business whether in Montserrat or elsewhere; or
- (d) any other partnership, wherever formed, which carries on a business, or part of a business, in Montserrat,

and for the purposes of this section, a trade or profession is a business.

88J Meaning of associated person

- (1) For the purposes of section 88I, a person is associated with a relevant commercial organisation if the person is a person who performs services for or on behalf of the relevant commercial organisation.
- (2) The capacity in which the person performs services for or on behalf of the relevant commercial organisation does not matter.
- (3) The person under subsection (1) may include an employee, agent or subsidiary of the relevant commercial organisation.
- (4) Whether or not the person under subsection (1) is a person who performs services for or on behalf of the relevant commercial organisation is to be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship

between the person and the relevant commercial organisation.

- (5) If the person under subsection (1) is an employee of the relevant commercial organisation, it is to be presumed, unless the contrary is shown, that the person is a person who performs services for or on behalf of the relevant commercial organisation.

88K Guidance about commercial organisations preventing bribery

- (1) The Financial Services Commissioner shall publish guidance on the procedures that relevant commercial organisations are required to put in place to prevent persons associated with them from bribing as mentioned in section 88I(1).
- (2) The Financial Services Commissioner may publish revisions to guidance under subsection (1).
- (3) Publication under this section shall be in a manner as the Financial Services Commissioner considers appropriate.
- (4) Expressions used in this section have the same meaning as in section 88I.

88L Consent to prosecution

No proceedings for an offence under this Act may be instituted in Montserrat except by or with the consent of the Director of Public Prosecutions.

88M Penalties

- (1) An individual who commits an offence under section 88F, 88G or 88H is liable—
- (a) on summary conviction, to two years' imprisonment or to a fine of \$7,000 or to both; or

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- (b)* on conviction on indictment, to ten years' imprisonment, or to a fine of \$30,000, or to both.
- (2) Any other person who commits an offence under section 88F, 88G or 88H is liable—
 - (a)* on summary conviction, to a fine of \$15,000; or
 - (b)* on conviction on indictment, to a fine of \$100,000.
- (3) A person who commits an indictable offence under section 88I is liable to a fine of \$40,000.

88N Territorial application of this Part

An offence is committed under section 88F, 88G, 88H or 88I in Montserrat if an act or omission which forms part of the offence takes place in Montserrat.

88O Defence for certain bribery offences etc.

- (1) It is a defence for a person charged with a relevant bribery offence to prove that the person's conduct was necessary for the proper exercise of a function of—
 - (a)* an intelligence service designated by the Governor; or
 - (b)* the defence force when engaged on active service.
- (2) The Governor shall ensure that the intelligence service has in place arrangements that are satisfactory to the Financial Services Commissioner and are designed to ensure that the conduct of a member of the service which would otherwise be a relevant bribery offence is necessary for a purpose falling within subsection (1)(a).
- (3) The Governor shall ensure that the defence force has in place arrangements that are satisfactory to the Financial Services Commissioner and are designed to ensure that the conduct of a—

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- (a) member of the defence force who is engaged on active service; or
 - (b) person subject to the disciplinary standards of the defence force when supporting a member of the defence force who is engaged on active service,
which would otherwise be a relevant bribery offence is necessary for a purpose falling within subsection (1)(b).
- (4) The arrangements under subsection (2) or (3) are subject to the approval of Cabinet.
- (5) For the purposes of this section, the circumstances in which a person's conduct is necessary for a purpose falling within subsection (1)(a) or (b) are to be treated as including circumstances in which the person's conduct—
 - (a) would otherwise be an offence under section 88G; and
 - (b) involves conduct by another person which, but for subsection (1)(a) or (b), would be an offence under section 88F.
- (6) In this section—
 - “**active service**” means service in—
 - (a) an action or operation against an enemy;
 - (b) an operation outside Montserrat for the protection of life or property; or
 - (c) the military occupation of a foreign country or territory;
 - “**defence force**” means the defence force maintained under the Defence Force Act (Cap. 10.07); and
 - “**relevant bribery offence**” means an offence—
 - (a) under section 88F which would not also be an offence under section 88H;
 - (b) under section 88G;

- (c) committed by aiding, abetting, counselling or procuring the commission of an offence falling within paragraph (a) or (b); or
- (d) of attempting or conspiring to commit, or of inciting the commission of, an offence falling within paragraph (a) or (b).

88P Offences under sections 88F, 88G and 88H by bodies corporate etc.

- (1) This section applies if an offence under section 88F, 88G or 88H is committed by a body corporate.
- (2) If the offence is proved to have been committed with the consent or connivance of a—
 - (a) senior officer of the body corporate; or
 - (b) person purporting to act as a senior officer of the body corporate,the senior officer or person and the body corporate commits the offence and is liable to be proceeded against and punished accordingly.
- (3) In this section—
 - “**director**”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate; and
 - “**senior officer**” means in relation to a body corporate, a director, manager, secretary or other similar officer of the body corporate.

88Q Offences under section 88I by partnerships

- (1) Proceedings for an offence under section 88I alleged to have been committed by a partnership shall be brought in the name of the partnership.
- (2) For the purposes of proceedings under subsection (1)—

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- (a) rules of court relating to the service of documents have effect as if the partnership were a body corporate; and
- (b) section 129 of the Criminal Procedure Code (No. 9 of 2010) applies in relation to a body corporate.
- (3) A fine imposed on a partnership on its conviction for an offence under section 88I is to be paid out of the partnership assets.
- (4) In this section “**partnership**” has the same meaning as in section 88I.

88R Consequential amendments

- (1) The consequential amendments to an enactment are set out in Schedule III.
- (2) Despite subsection (1), the Governor acting on the advice of Cabinet may, by Order published in the *Gazette*, amend any law if it considers the amendment necessary on account of anything contained in this Part.
- (3) An Order made under subsection (2) is subject to affirmative resolution.

88S Transitional provisions

- (1) This Part does not affect any liability, investigation, legal proceeding or penalty for or in respect of an offence which is committed wholly or partly before the coming into force of this Part in relation to the offence.
- (2) For the purposes of subsection (1), an offence is partly committed before a particular time if an act or omission which forms part of the offence takes place before that time.
- (3) Subsections (1) and (2) are without prejudice to section 71 of the Interpretation Act (No. 12 of 2011).

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88T Conflict between this Part and other law

Save for Part VI of the Integrity in Public Office Act 2010 (No. 2 of 2010), and sections 62, 66 and 68 of the Elections Act (Cap. 1.04), to the extent that there may be conflict or inconsistency between this Part and another enactment relative to the offence of bribery, this Part shall prevail.

5. Schedule III inserted

The principal Code is amended by inserting the following as Schedule III:

“SCHEDULE III
(Section 88R)

CONSEQUENTIAL AMENDMENTS	
Short Title and Chapter	Extent of Amendment
Co-operative Societies Act (No. 4 of 2011)	Section 225 is repealed.
Company Management Act (Cap. 11.26)	Section 25(2)(b) is repealed.
Customs (Control and Management) Act (Cap. 17.04)	Section 105 is repealed.
Police Act (Cap. 10.01)	Section 32(b) is repealed.
Police Regulations (Cap. 10.01)	Regulation 6(g)(i), (iii), (iv) and (v) is repealed.
Public Service Act (Cap, 1.06)	Section 10 is repealed.”.

6. Section 116 amended

The principal Code is amended by deleting section 116 and substituting the following—

“Construction of certain provisions of this Part

116. (1) In this Part—

“genitals”, includes—

- (a) the pubic mound, labia, clitoris, opening of the urethra, opening of the vagina or hymen of a female; and
- (b) the penis or scrotum of a male;

“medically recognized treatment” means any medical care or procedure provided by registered medical practitioner, his assistant, a registered nurse or an enrolled nursing assistant to diagnose or treat a medical condition, illness or injury; and

“sexual intercourse” means—

- (a) penetration, however slight, of the vagina or anus of a person, with a part of a person's body or with an object;
- (b) female to female and male to male genital contact; or
- (c) any contact between the mouth of one person and the genitals or anus of another person.

(2) Under this Part, if penetration is by the penis, it is not necessary to prove the emission of seminal fluid to prove penetration.

(3) Despite subsection (1), penetration for medically recognized treatment does not amount to sexual intercourse.

(4) The use of the word “**man**” in this Part without the addition or alternative of the word “**boy**” or vice versa, shall not prevent a section from applying to a person to whom it would have applied if one or both words had been used.

(5) The use of the word “**woman**” in this Part without the addition or alternative of the word “**girl**” or vice versa, shall not prevent a section from applying to a person to whom it would have applied if one or both words had been used.”.

7. Section 117 amended

The principal Code is amended by deleting section 117 and substituting the following—

“Rape

117. (1) A man who rapes a woman commits an offence and is liable to life imprisonment.

(2) A man commits rape if—

(a) the man penetrates with his penis the vagina of a woman, who at the time of the vaginal penetration did not consent to it; and

(b) at that time the man knows that the woman does not consent to the vaginal penetration or the man is reckless as to whether the woman consents to it.

(3) For the purposes of subsection (1), a woman is deemed not to have consented to

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vaginal penetration if the woman's acquiescence is obtained by—

- (a) threat of force;
- (b) use of force;
- (c) means of a threat;
- (d) intimidation of any kind;
- (e) fear of bodily harm;
- (f) means of false representations as to the nature of the act; or
- (g) impersonating the woman's husband.

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

- (a) grievous sexual assault under section 117A;
- (b) sexual intercourse with a girl under thirteen years of age under section 120;
- (c) sexual intercourse with a girl under sixteen years of age under section 121;
- (d) indecent assault under section 122;
- (e) procurement by threats under section 126;
- (f) procurement by false pretences under section 127;
- (g) administering drugs to obtain or facilitate intercourse under section 128; or
- (h) common assault under section 184.

(5) A man who attempts to rape a woman commits an offence and is liable to seven years imprisonment.

(6) In this section—

- (a) “**man**” means a person who is born with male genitals; and
- (b) “**woman**” means a person who is born with female genitals.”.

8. Section 117A inserted

The principal Code is amended by inserting the following as section 117A—

“Grievous sexual assault

117A. (1) A person who commits grievous sexual assault against another person commits an offence and is liable to life imprisonment.

(2) A person (“**the accused**”) commits grievous sexual assault against another person (“**the complainant**”) if—

- (a) the accused does any of the following acts—
 - (i) penetrates the vagina or anus of the complainant with a body part other than his penis;
 - (ii) penetrates the vagina or anus of the complainant with an object manipulated by him or her, except if penetration is accomplished for medically recognized treatment;
 - (iii) places his or her genitals on or into the mouth of the complainant; or
 - (iv) places his or her mouth or part of his or her mouth on or in the genitals of the

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complainant; and

(b) at that time the accused knows that the complainant does not consent to the act or the accused is reckless as to whether the complainant consents to the act.

(3) For the purposes of subsection (1), a person is deemed not to have consented to the act if the person's acquiescence is obtained by—

(a) threat of force;

(b) use of force;

(c) means of a threat;

(d) intimidation of any kind;

(e) fear of bodily harm;

(f) means of false representations as to the nature of the act; or

(g) impersonating the complainant's spouse.

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

(a) sexual intercourse with a boy or girl under thirteen years of age under section 120;

(b) sexual intercourse with a boy or girl under sixteen years of age under section 121;

(c) indecent assault under section 122;

(d) procurement by threats under section 126;

(e) procurement by false pretences under section 127;

(f) administering drugs to obtain or facilitate intercourse under section 128;

(g) common assault under section 184.

(5) A person who attempts to commit grievous sexual assault commits an offence and is liable to seven years imprisonment.”.

9. Section 118 amended

The principal Code is amended by deleting section 118 and substituting the following—

“Incest

118. (1) A person who has sexual intercourse with another person whom he or she knows to be his or her parent, child, brother, sister, grandparent, grandchild, aunt, uncle, niece or nephew commits incest and is liable—

(a) if the incest is committed with a boy or girl under thirteen years of age, to fourteen years imprisonment; or

(b) in any other case, to seven years imprisonment.

(2) In subsection (1)—

(a) **“sister”** includes half-sister; and

(b) **“brother”** includes half-brother; and

any expression importing a relationship between two persons shall be taken to apply even if 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 sexual intercourse was had with the consent of the person concerned.

(4) A person who attempts to commit incest is liable to two years imprisonment.”.

10. Section 119 deleted

Section 119 of the principal Code is deleted.

11. Section 120 amended

The principal Code is amended by deleting section 120 and substituting the following—

“Sexual intercourse with a boy or girl under thirteen years of age

120. (1) A person who has sexual intercourse with a boy or girl under thirteen years of age commits an offence and is liable to fourteen years imprisonment.

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

(3) A person who attempts to commit an offence under this section is liable to five years imprisonment.”.

12. Section 121 amended

Section 121 of the principal Code is amended—

(a) by deleting the heading to the section and substituting the following—

“Sexual intercourse with a boy or girl under sixteen years of age”;

(b) by deleting subsection (1) and substituting the following—

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“(1) Subject to this section, a person who has sexual intercourse with a boy or girl who is—

(a) thirteen years of age or more and under sixteen years of age; and

(b) not the person’s husband or wife,

commits an offence and liable to ten years imprisonment.”;

(c) by deleting subsection (4) and substituting the following:

“(4) A person is not guilty of an offence under this section because the person has sexual intercourse with a boy or girl who is under sixteen years of age if—

(a) the person is under twenty four years of age and has not previously been convicted of a similar offence; and

(b) the person believes the boy or girl to be sixteen years of age or over and has reasonable cause for the belief.”; and

(d) by deleting subsection (5).

13. Section 122 amended

The principal Code is amended by deleting section 122 and substituting the following—

“Indecent assault

122. (1) A person who indecently assaults another person commits an offence and is liable, if the indecent assault is on—

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(a) a boy or girl under thirteen years of age, to ten years imprisonment;
and

(b) in any other case, to five years imprisonment.

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

(3) If a marriage is invalid under section 25(3) of the Marriage Act (Cap. 5.01), because the husband or wife is under sixteen years of age, the invalidity of the marriage does not make the husband or wife guilty of an offence under this section by reason of the husband or wife's incapacity to consent while under sixteen years of age, if a party to the marriage believes the other to be the party's husband or wife and has reasonable cause for the belief.

(4) A person who is a mental defective cannot in law give consent which would prevent an act being an assault for the purposes of this section.

(5) A person is only to be treated as guilty of an indecent assault under this section by reason of the incapacity to consent, if that person knew or had reason to know that the person against whom the indecent assault was committed was a person of unsound mind or mental defective receiving treatment.

(6) In this section—

“indecent assault” means an assault accompanied by words

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or circumstances indicating an indecent intention; and

“mental defective” means a person who—

(a) has been ordered to be detained under the provisions of the Mental Treatment Act (Cap. 14.03); or

(b) is shown by the evidence of two medical practitioners to be suffering from serious mental illness, psychopathic disorder or subnormality.”.

14. Section 123 amended

The principal Code is amended by deleting section 123 and substituting the following—

“Indecency with a child

123. A person who commits an act of gross indecency with or towards a child under thirteen years of age or who incites a child under thirteen years of age to commit an act of gross indecency with him or another person commits an offence and is liable to five years imprisonment.”.

15. Section 124 amended

The principal Code is amended by deleting section 124 and substituting the following—

“Permitting a boy or girl under thirteen years of age to use premises for sexual intercourse

124. (1) A person commits an offence if the person—

- (a) is the owner or occupier of premises; or
- (b) has or acts or assists in, the management or control of any premises; and
- (c) induces or knowingly allows a boy or girl under thirteen years of age to resort to or be on those premises for the purpose of having sexual intercourse with a person.

(2) A person who commits an offence under subsection (1) is liable to five years imprisonment.”.

16. Section 125 amended

The principal Code is amended by deleting section 125 and substituting the following—

“Causing or encouraging prostitution etc. of a boy or girl under sixteen years of age

125. (1) A person commits an offence if the person causes or encourages—

- (a) the prostitution of;

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(b) the commission of sexual intercourse with; or

(c) an indecent assault on

a boy or girl under sixteen years of age for whom the person is responsible.

(2) If a boy or girl has—

(a) become a prostitute;

(b) had sexual intercourse; or

(c) been indecently assaulted,

a person is deemed for the purposes of this section to have caused or encouraged it if the person knowingly allows the boy or girl to consort with, to enter or continue in the employment of a prostitute or person of known immoral character.

(3) Subject to subsection (4), a person who is to be treated for the purposes of this section as responsible for a boy or girl is—

(a) a person who is the boy or girl's parent or legal guardian; and

(b) a person—

(i) who has actual custody or control of the boy or girl;

(ii) to whose charge the boy or girl has been committed by the boy or girl's parent or legal guardian or by a person having the custody of the boy or girl; or

(c) any other person who has the custody, charge or care of the boy or girl.

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(4) For the purposes of this section—

(a) **“parent”** in relation to a boy or girl—

- (i) means, in the case of a boy or girl who has been adopted under the Adoption of Children Act (Cap. 5.04), the boy or girl’s adoptive parents;
- (ii) means, in the case of a boy or girl who has not been adopted, the boy or girl’s mother or father and includes a person who has been adjudged to be the boy or girl’s putative father;
- (iii) does not include a person deprived of the custody of the boy or girl by order of any court of competent jurisdiction; and

(b) **“legal guardian”** means in relation to a boy or girl—

- (i) a person who is appointed by law, deed or will or by order of a court of competent jurisdiction as the boy or girl’s guardian; or
- (ii) a person to whom the care and control of the boy or girl has been entrusted by the parent of

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the boy or girl, whether in writing or otherwise.

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

(6) A person who causes or encourages an action under this subsection commits an offence and is liable to fifteen years imprisonment.”.

17. Section 126 amended

The principal Code is amended by deleting section 126 and substituting the following—

“Procurement by threats

126. (1) A person who, by threats or intimidation procures or attempts to procure another person to have sexual intercourse with a person either in Montserrat or elsewhere commits an offence and is liable to fifteen years imprisonment.

(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.”.

18. Section 127 amended

The principal Code is amended by deleting section 127 and substituting the following—

“Procurement by false pretences

127. (1) A person who, by false pretences or false representation procures or attempts to procure another person to have unlawful sexual intercourse with a person either in Montserrat or elsewhere commits an offence and is liable to fifteen years imprisonment.

(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.”

19. Section 128 amended

The principal Code is amended by deleting section 128 and substituting the following—

“Administering drugs to facilitate sexual intercourse

128. (1) A person who—

- (a) applies to;
- (b) administers to; or
- (c) causes to be taken by

another person a drug, matter or thing with intent to stupefy or overpower that person so as to enable any person to have unlawful sexual intercourse with that person commits an offence and is liable to fifteen years imprisonment.

(2) A person shall not be convicted of an offence under this section on the evidence of one

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witness only, unless that witness is corroborated in some material particular by evidence implicating the accused.”.

20. Section 129 amended

The principal Code is amended by deleting section 129 and substituting the following—

“Causing prostitution of a person

129. (1) A person who procures or attempts to procure another person in Montserrat to—

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

commits an offence and is liable to ten years imprisonment.

(2) A person shall only be convicted of an offence under this section on the evidence of one witness only, if the witness is corroborated in some material particular by evidence implicating the accused.”.

21. Section 130 amended

The principal Code is amended by deleting section 130 and substituting the following—

“Detention of a person in brothel, etc.

130. (1) A person who detains another person against the other person’s will—

- (a) on any premises with the intention that the person detained shall have unlawful sexual intercourse with a person; or
- (b) in a brothel,

commits an offence and is liable to ten years imprisonment.

(2) For the purposes of this section, where a man or woman is on premises for the purpose of having unlawful sexual intercourse or is in a brothel, a person is deemed to detain the man or woman there if, with the intention of compelling or inducing the man or woman to remain there, the person—

- (a) withholds from the man or woman clothes or any other property—
 - (i) belonging to;
 - (ii) issue to; or
 - (iii) registered in the name of,

the man or woman; or

- (b) threatens the man or woman with legal proceedings if the man or woman takes away clothing that the

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person has provided to the man or woman.

(3) A person who is detained under subsection (1) is not liable to civil or criminal proceedings for taking away or being found in possession of clothing necessary to enable the person to—

(a) leave premises on which the person was for the purposes of having unlawful sexual intercourse; or

(b) leave a brothel.”.

22. Section 131 amended

The principal Code is amended by deleting section 131 and substituting the following—

“Living on earnings of prostitution

131. (1) A person who knowingly lives wholly or partly on the earnings of prostitution commits an offence and is liable to a fine of \$10,000 or five years imprisonment or to both.

(2) For the purposes of this section, a person who—

(a) lives with or is habitually in the company of a prostitute; or

(b) exercises control over a prostitute’s movements in a way which shows that the person is aiding, abetting or compelling her prostitution with others,

is presumed to be knowingly living on the earnings of prostitution, unless the person proves the contrary.”.

23. Section 132 amended

The principal Code is amended by deleting section 132 and substituting the following—

“Exercising control over a prostitute

132. A person who, for the purpose of gain, exercises control, direction or influence over a prostitute’s movements in a way which shows that the person is aiding, abetting or compelling the prostitution commits an offence and is liable to a fine of \$10,000 or five years imprisonment or to both.”.

24. Section 133 deleted

The principal Code is amended by deleting section 133.

25. Section 134 amended

The principal Code is amended by deleting section 134 and substituting the following—

“Sexual intercourse with a mental defective

134. (1) Subject to this section, a person who has unlawful sexual intercourse with another person who is a mental defective commits an offence and liable to five years imprisonment.

(2) No consent or alleged consent of a mental defective is a defence to a charge for an offence under subsection (1).

(3) It is a defence for a person to prove, on the balance of probabilities, that he did not know

and had no reason to suspect that the other person was a mental defective.

(4) In this section “**mental defective**” means a person who—

(a) has been ordered to be detained under the provisions of the Mental Treatment Act (Cap. 14.03); or

(b) is shown by the evidence of two medical practitioners to be suffering from serious mental illness, psychopathic disorder or subnormality.”.

26. Section 135 amended

The principal Code is amended by deleting section 135 and substituting the following—

“Brothels

135. (1) A person commits a summary offence if the person—

(a) keeps a brothel; or

(b) manages or assists in managing a brothel.

(2) A person who commits an offence under subsection (1) is liable to a fine of \$10,000 or five years imprisonment or to both.

(3) For the purposes of this Part, 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 prostitutes is the owner or tenant and the occupier of the premises is immaterial.

27. Section 136 amended

The principal Code is amended by deleting section 136 and substituting the following—

“Letting premises for use as a brothel

136. A person who is the owner or lessor, occupier or in control of any premises, or his agent, who—

- (a) lets or arranges for the letting of the premises with the knowledge that they are to be used as a brothel; or
- (b) is a party to the use of the premises as a brothel,

commits a summary offence and is liable to a fine of \$5,000 or one year imprisonment or to both for a first offence and to a fine of \$10,000 or five years imprisonment or to both for a subsequent offence.

28. Section 137 amended

The principal Code is amended by deleting section 137 and substituting the following—

“Buggery

137. (1) Subject to subsections (6), (7), (8) and (9), a man who commits buggery with another person commits an indictable offence and is liable to life imprisonment.

(2) A man commits buggery if he penetrates with his penis the anus of another person.

(3) A man who attempts to commit buggery or commits an assault with intent to commit buggery commits an indictable offence and is liable to seven years imprisonment.

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(4) No proceedings shall be instituted in respect of an offence under this section except by or with the consent of the Director of Public Prosecutions.

(5) On the trial of an offence under this section, the court may convict the accused of an offence under section 122.

(6) A man who engages in buggery in private does not commit an offence if the other party—

- (a) has attained the age of eighteen years; and
- (b) consents to the act.

(7) An act of buggery under subsection (6) shall not be treated as being in private if done—

- (a) when more than two persons take part or are present; or
- (b) in a place to which the public has or is permitted to have access, whether on payment or otherwise.

(8) A person who is suffering from a severe mental handicap cannot in law give consent which would prevent an act under subsection (1) or (3) from being an offence.

(9) A man who is a member of a hospital staff or has responsibility for mental patients commits an offence under subsection (1) if he penetrates with his penis the anus of—

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- (a) a patient who is receiving treatment for mental disorder in that hospital; or
- (b) any other mental patient for whom he has responsibility.

(10) It is a defence for a man to prove that he did not know and had no reason to suspect that—

- (a) a person under subsection (8) was suffering from a severe mental handicap; or
- (b) a patient under subsection (9) was suffering from a mental disorder.

(11) If a man is charged with buggery under this section, the prosecutor has the burden of proving that—

- (a) the act was not done in private;
- (b) the act was done without the consent of at least one of the two parties; or
- (c) at least one of the two parties had not attained the age of eighteen years.

(12) In this section, “**severe mental handicap**” means a state of arrested or incomplete development of the mind and includes severe impairment of intelligence and social functioning.

29. Section 138 amended

Section 138 of the principal Code is deleted and the following is substituted—

“Bestiality

138. (1) A person who commits bestiality commits an offence and is liable to five years imprisonment.

(2) A person commits bestiality if—

- (a)* he, with his penis, penetrates the vagina, anus or any external reproductive organ of a living animal;
- (b)* she causes or permits her vagina to be penetrated by the penis or any external reproductive organ of a living animal; or
- (c)* he or she cause his or her anus to be penetrated by the penis of a living animal.

30. Schedule I amended

Schedule I to the principal Code is amended by deleting—

- (a)* the entry in the table corresponding with sections 119 and 133; and
- (b)* the entries in the table corresponding with sections 118, 120(1), 120(3), 121, 122, 123 to 132 and 134 to 138 and substituting the following entries—

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“Penal Code Section	Nature of Offence	Maximum Punishment	Whether Arrestable without warrant	Whether triable summarily
117A(1)	Grievous sexual assault	Life	A	
117A(5)	Grievous sexual assault	7 years	A	
118(1)	Incest— (a) with a boy or girl under thirteen years of age	14 years	A	
	(b) in any other case	7 years		
118(4)	Attempt to commit incest	2 years		
120(1)	Sexual intercourse with a boy or girl under thirteen years of age	14 years		
120(3)	Attempt to commit an offence under subsection (1)	5 years		
121(1)	Sexual intercourse- (a) with a boy or girl thirteen years of age or more and under sixteen	10 years		

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“Penal Code Section	Nature of Offence	Maximum Punishment	Whether Arrestable without warrant	Whether triable summarily
	(b) with a boy or girl who is not the person’s husband or wife	10 years		
122	Indecent Assault- (a) on a boy or girl under thirteen years of age (b) in any other case	10 years 5 years		
123	Indecency with child	5 years		
124	Permitting a boy or girl under thirteen years of age to use premises for sexual intercourse	5 years		
125	Causing or encouraging prostitution, etc of a boy or girl under sixteen years of age	15 years		
126	Procurement by threats	15 years		
127(1)	Procurement by false pretences	15 years		
128	Administering drug to facilitate sexual	15 years		

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“Penal Code Section	Nature of Offence	Maximum Punishment	Whether Arrestable without warrant	Whether triable summarily
	intercourse			
129	Causing prostitution of a person	10 years		
130	Detention of a person in brothel etc.	10 years		
131(1)	Living on earnings of prostitution	\$10,000 or 5 years or to both		
132	Exercising control over a prostitute	\$10,000 or 5 years or to both		
134(1)	Sexual intercourse with a mental defective	5 years		
135(2)	Brothel	\$10,000 or 5 years or to both		
136(1)	Letting premises for use as a brothel— (a) on first conviction for the offence (b) on second or subsequent conviction for the offence	\$5,000 or 1 year or to both \$10,000 or 5 years or to both		

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“Penal Code Section	Nature of Offence	Maximum Punishment	Whether Arrestable without warrant	Whether triable summarily
137(1)	Buggery	Life		
137(3)	attempts to commit buggery imprisonment	7 years		
138(1)	Bestiality	5 years		

31. Schedule II amended

Schedule II to the principal Code is deleted and the following is substituted—

“SCHEDULE II

(Section 326)

TABLE OF ALTERNATIVE VERDICTS

If a person is charged with an offence in the First Column of this Table and the Court is of the opinion that the person is not guilty of that offence but that the person is guilty of another offence in the Second Column of the Table, the person may be convicted of the offence in the Second Column 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 of 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

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<i>Offence charged</i>	<i>Section of Code</i>	<i>Alternative conviction of other offence</i>	<i>Section of Code or other law</i>
		Destroying or damaging property	s. 265
Causing grievous bodily harm with intent so to do	s. 163	Inflicting grievous bodily harm	s. 164
Incest	s. 118	Sexual intercourse with a boy or girl under thirteen years of age	s. 120
		Sexual intercourse with a boy or girl under sixteen years of age	s. 121
		Sexual intercourse with a mental defective	s. 134
Indecent assault	s. 122	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 49 & 52 of Road Traffic Act

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<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	s. 149	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 a girl under thirteen years of age	s. 120
		Sexual intercourse with a girl under sixteen years of age	s. 121
		Indecent assault	s. 122

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<i>Offence charged</i>	<i>Section of Code</i>	<i>Alternative conviction of other offence</i>	<i>Section of Code or other law</i>
		Procurement by threats	s. 126
		Procurement by false pretences	s. 127
		Administering drugs to obtain or facilitate intercourse	s. 128
		Common Assault	s. 184
Grievous sexual assault	s. 117A	Sexual intercourse with a boy or girl under thirteen years of age	s. 120
		Sexual intercourse with a boy or girl under sixteen years of age	s. 121
		Indecent assault	s. 122
		Procurement by threats	s. 126
		Procurement 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

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<i>Offence charged</i>	<i>Section of Code</i>	<i>Alternative conviction of other offence</i>	<i>Section of Code or other law</i>
Buggery	s. 137	Indecent assault	s. 122

Note: See also section 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 section 321(1) for assisting an offender.”

(Sgd.) Teresina Bodkin

SPEAKER

Passed by the Legislative Assembly this 25th day of June, 2014.

(Sgd.) Judith Baker

CLERK OF THE LEGISLATIVE ASSEMBLY