



MONTSERRAT

## CHAPTER 17.07

# PUBLIC FINANCE (MANAGEMENT AND ACCOUNTABILITY) ACT and Subsidiary Legislation

**Revised Edition**

showing the law as at 1 January 2013

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.

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MONTserrat

## CHAPTER 17.07

# **PUBLIC FINANCE (MANAGEMENT AND ACCOUNTABILITY) ACT 2008** and Subsidiary Legislation

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## CHAPTER 17.07

### PUBLIC FINANCE (MANAGEMENT AND (ACCOUNTABILITY) ACT

*(Acts 7 of 2008 and 9 of 2011)*

AN ACT TO PROVIDE FOR THE DEVELOPMENT OF AN ECONOMIC AND FISCAL POLICY FRAMEWORK FOR MONTSEERRAT; THE FINANCIAL MANAGEMENT OF THE GOVERNMENT; THE RESPONSIBILITIES OF PERSONS ENTRUSTED WITH FINANCIAL MANAGEMENT IN THE GOVERNMENT; THE TRANSPARENT AND EFFICIENT MANAGEMENT OF THE FINANCES OF MONTSEERRAT; THE CONTROL OF FINANCES OF STATUTORY BODIES AND OTHER AUTHORITIES AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

#### Commencement

*[1 April 2009]*

#### PART 1

#### PRELIMINARY

#### Short title

1. This Act may be cited as the Public Finance (Management and Accountability) Act.

#### Interpretation

2. (1) In this Act, unless the context otherwise requires—
- “**Accountant General**” means the person designated under section 8;
- “**accounting officer**” means a person designated under section 9 as accounting officer;
- “**Appropriation Act**” means any Act applying a sum of money out of the Consolidated Fund and Development Fund for the service and development programme for a financial year;
- “**Auditor General**” means the person appointed or deemed to have been appointed Auditor General under section 101 of the Constitution;  
*(Amended by Act 9 of 2011)*
- “**bill**” means a Treasury bill issued under Treasury Bills Act;
- “**bond**” means a bond issued under the Development Bonds Act;
- “**chief executive**” means the person who has responsibility for managing the affairs of a public organisation;

“**commitment**” means a contract or other legal commitment that results in expenditure;

“**Consolidated Fund**” means the Consolidated Fund of Montserrat;

“**Development Fund**” means the Development Fund established under section 13;

“**expenditure vote**” means a group of estimates for which an appropriation is made by an Appropriation Act or Supplementary Appropriation Act;

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

“**generally accepted accounting practice**” means accounting practices and procedures recognised by the accounting profession in Montserrat and approved by the Accountant General as appropriate for reporting financial information relating to Government, a Ministry or department, a fund, an agency or other reporting unit, and which are consistent with this Act and any relevant Appropriation Act;

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

“**indicators**” means measures such as numerical ceilings and proportions to gross domestic product for the purpose of evaluation of the state of the economy of Montserrat or the fiscal position of government;

“**information**” includes accounts;

“**internal audit**” means a process to measure, evaluate and report to the management of an entity on the efficacy of the system of internal control used to ensure the validity of financial and other information;

“**internal control**” means a set of systems to ensure that financial and other records are reliable and complete and which ensure adherence to the entity’s management policies, the orderly and efficient conduct of the entity, and the proper recording and safeguarding of assets and resources;

“**loan**” means any loan raised by the Government;

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

“**outputs**” means goods produced or services provided;

“**programme**” means a collection of activities funded by an appropriation with the aim of creating the impact or impacts set forth in the programmes stated in the economic and fiscal management plan;

“**propriety**” means the requirement that expenditure and receipts must be dealt with in accordance with the intentions of the Legislative Assembly and, in particular, those expressed through an appropriate Public Accounts Committee of the Legislative Assembly; (*Amended by Act 9 of 2011*)

“**Public Accounts Committee**” means a Standing Committee appointed by the Speaker pursuant to the provisions of the Legislative Assembly Standing Orders; (*Amended by Act 9 of 2011*)

**“public moneys”** and **“public funds”** means money that is—

- (a) received or receivable by an agency;
- (b) raised by an instrument that is issued from an agency from which it can be reasonably inferred that the Government accepts liability in the case of default;
- (c) spent by an agency;
- (d) distributed by an agency to a person for a public purpose.

In this definition **“agency”** includes ministries, departments, statutory bodies, public organisation and government companies.

**“public officer”** means a person holding or acting in an office in the public service;

**“public organisation”** means an enterprise, authority, body or entity to which section 45(7) applies;

**“public property”** means resources owned by the Government or in the custody or care of the Government;

**“regularity”** means the requirement for all items of expenditure and receipts to be dealt with in accordance with the legislation authorising them, including this Act and any applicable delegated authority, regulations, directives and instructions issued under this Act;

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

**“Statutory body”** means any corporation, company, board, commission, fund or other entity which is established by an Act of the Legislature, fully or substantially funded by public funds and accountable to the Legislative Assembly; (*Amended by Act 9 of 2011*)

**“statutory expenditure”** means expenditure charged on the Consolidated Fund by the Constitution or an Act of the Legislative Assembly, including this Act, but does not include the expenditure of moneys appropriated or granted by an Appropriation Act or Supplementary Appropriation Act; and (*Amended by Act 9 of 2011*)

**“Supplementary Appropriation Act”** means any Act, the purpose of which is to supplement the appropriation already granted by an Appropriation Act.

(2) In this Act a reference to any provision of the Constitution of Montserrat includes a reference to a re-enactment of that provision.

## PART 2

## POLICY DEVELOPMENT

**Development of economic policy and advice by the Minister**

**3. (1)** The Minister shall develop and implement a national macro-economic and fiscal policy framework for Montserrat for a period of not less than three years and for this purpose shall—

- (a) advise Government on the total of resources to be allocated to the public sector and the appropriate level of resources to be allocated to individual programmes within that sector;
- (b) advise on the state of the economy for current and projected period;
- (c) supervise and monitor the public finances of Montserrat; and
- (d) co-ordinate the international and inter-governmental economic and fiscal relations of Montserrat.

**(2)** In pursuing his policy objectives the Minister shall adhere to the principles of prudent fiscal management and seek to manage financial risks accordingly having regard to economic circumstances including the maintaining of public debt at prudent levels.

**(3)** As soon as possible after the commencement of this Act, the Minister shall lay before the Legislative Assembly a statement setting out the key principles of prudent financial management he will adhere to and shall keep the Legislative Assembly fully informed of any significant changes thereto through the submission of further statements. *(Amended by Act 9 of 2011)*

**Reporting of economic and fiscal information, performance and projections to the Legislative Assembly**

**4. (1)** The Minister shall on or before 31 January prepare and lay before the Legislative Assembly an economic and fiscal management plan. *(Amended by Act 9 of 2011)*

**(2)** An economic and fiscal management plan prepared under subsection (1) must identify—

- (a) the period considered by the Minister to be appropriate for both the short term and the long term planning;
- (b) the macro-economic, fiscal policies and broad programmes to be pursued under section 3(1) for the periods identified in paragraph (a);
- (c) indicators which the Minister considers will enable an accurate overall assessment to be made of the state of the economy of Montserrat;

- (d) indicators which the Minister considers will enable an accurate overall assessment to be made of the state of the finances of government including indicators in respect of—
- (i) revenues;
  - (ii) current and capital expenditures;
  - (iii) borrowing and debt servicing;
  - (iv) contingent liabilities; and
  - (v) such other assets and liabilities that may be considered appropriate by the Minister;
- (e) any significant policy changes made since the previous economic and fiscal management plan.
- (3)** The Minister in the economic and fiscal management plan prepared under subsection (1), shall—
- (a) assess the current and projected finances of the Government;
  - (b) assess the current and projected state of the economy of Montserrat;
  - (c) identify the total of resources to be allocated to the public sector and the appropriate level of resources to be allocated to individual programmes within that sector for the periods identified in subsection (2)(a);
  - (d) set targets for the indicators in subsection (2)(c) and subsection (2)(d)(i) to (v) for the current year and the periods determined by the Minister under subsection (2)(a);
  - (e) compare the projected outcome of the indicators for the current year with the targets set in previous years and indicate the reasons for any significant differences.
- (4)** The Auditor General shall, in respect of the plan of macro-economic and fiscal policies and programmes prepared under subsection (1), examine and report to the Legislative Assembly whether in his opinion—
- (a) the conventions and assumptions underlying its preparation comply with the principles of prudent financial management established by the Minister under section 3(3);
  - (b) the information supplied in subsection (3)(e) is sufficiently accurate and that any reasons given are fair and reasonable having regard to the circumstances;
  - (c) the objects and activities are consistent with the approved overall macro-economic and fiscal policy.
- (Amended by Act 9 of 2011)*
- (5)** A report by the Auditor General under subsection (4) must be made at the same time as, or as soon as reasonably practicable after, the laying

before the Legislative Assembly of the economic and fiscal management plan.  
(Amended by Act 9 of 2011)

(6) The Minister shall provide the Legislative Assembly with such additional reports and information as may be reasonable during the financial year that ensure the Legislative Assembly is kept fully informed of the state of the economy of Montserrat and the finances of the government. (Amended by Act 9 of 2011)

### PART 3

#### CONTROL AND MANAGEMENT OF PUBLIC FINANCE

#### Supervision, control and management of public finances

5. (1) The Minister shall—

- (a) ensure that systems are established throughout Government for planning, allocating, and budgeting for the use of resources in order to improve the economy, efficiency and effectiveness of Government;
- (b) consider all requests for the issue of moneys from the Consolidated Fund and, where the Minister considers it appropriate, approve their inclusion in estimates of expenditure for submission to the Legislative Assembly in accordance with section 19; and (Amended by Act 9 of 2011)
- (c) enhance the control of the Legislative Assembly over public resources and public moneys by maintaining transparent systems which—
  - (i) provide a full account to the Legislative Assembly of the use of resources and public moneys;
  - (ii) ensure the exercise of regularity and propriety in the handling and expenditure of resources and public money and, in particular, that goods or services are procured in a transparent, fair, equitable, competitive and cost-effective manner; and
  - (iii) ensure the efficient and cost-effective cash management of the Consolidated Fund, any other fund established under this Act and other public moneys;
- (d) be responsible for any statutory body for which he is responsible by virtue of being a Minister of Finance responsible for that statutory body.

(Amended by Act 9 of 2011)

(2) For the purpose of subsection (1), the Minister shall, subject to this Act, be responsible for the management of the Consolidated Fund and Development Fund and the supervision and control of all matters relating to the financial affairs of the Government.

### **Instructions and directives**

6. (1) The Minister may give instructions or directives that may appear to the Minister necessary and expedient for the proper carrying out of the intent and purposes of the Legislative Assembly, and for the safety, economy and advantage of the public revenue and public property. (*Amended by Act 9 of 2011*)

(2) The Minister shall take all proper steps to ensure that any directives or instructions given under this section are brought to the notice of persons directly affected by them, but it shall not be necessary to publish the directives and instructions in the *Gazette*.

(3) An accounting officer and a public officer to whom this section applies shall comply with any regulations issued under this Act, any directives or instructions given under them and all instructions that may from time to time be given by the Financial Secretary under section 7(5) or by the Accountant General under section 8(2).

(4) Nothing in this Act or any regulations issued under it or any instruction or directive issued by the Minister, the Financial Secretary or Accountant General shall be construed as requiring any person to do anything in respect of any moneys held on trust, which contravenes or is inconsistent with the terms of that trust.

### **Powers of the Financial Secretary**

7. (1) The Financial Secretary may, from time to time, require an accounting officer, or the chief executive of any public organisation or any entity that manages an asset or liability of the Government, to supply any information that the Financial Secretary considers necessary for the purpose of section 3.

(2) Any requirement under subsection (1)—

(a) shall be in writing; and

(b) may specify the date by which and the manner in which the information required is to be provided, but where a date is specified, that date shall be reasonable, having regard to the information required.

(3) The Financial Secretary is responsible to the Minister for the effective application of this Act and any regulations, directives or instructions issued under this Act.

(4) The Financial Secretary shall bring to the immediate attention of the Minister any defect in the application of this Act and any regulations, directives or instructions issued under this Act that may result in a diminution of control over the resources and finances of the Government.

(5) Subject to this Act and any regulations, directives or instructions issued by the Minister under section 6, the Financial Secretary may give directives and instructions he considers necessary for the effective and efficient discharge of the intents and purposes of this Act.

(6) The Financial Secretary and any public officer authorised by him, may inspect all offices affected by this Act, and shall be—

- (a) given access at all times to those offices; and
- (b) given all available information he may require with regard to the moneys and records regulated by this Act for the purpose of compliance with section 4 and subsection (3).

(7) (a) The Financial Secretary may by notice in writing direct any bank or financial institution to furnish any information that he may require for the purposes of this Act or any regulations made thereunder and the Manager of such bank or financial institution shall comply with such direction.

(b) A disclosure to which paragraph (a) applies does not constitute a breach of any duty of confidentiality owed by the person making the disclosure to any other person;

(c) No civil claim or action of any kind shall lie, in respect of a disclosure to which paragraph (a) applies against the—

- (i) person making that disclosure; or
- (ii) persons' principal or employer,

by reason only of that disclosure.

### **Designation, powers and duties of the Accountant General**

8. (1) There shall be an Accountant General who shall be subject to the terms and conditions governing the Public Service.

(2) Subject to this Act, the Accountant General shall be responsible for the—

- (a) compilation and management of the accounts of Government;
- (b) custody and safety of public money; and
- (c) resources of the Government, and

for that purpose, the Accountant General may give general instructions to accounting officers which are consistent with this Act, or any regulations, directives or instructions issued under it.

(3) Without prejudice to the generality of subsection (2), the Accountant General shall—

- (a) specify for every Government Ministry, department, fund, agency or other reporting unit required to produce accounts under section 41—
  - (i) the basis of the accounting to be adopted; and



- (ii) the classification system to be used;
  - (b) ensure that an appropriate system of accounting is established in each Government Ministry, department, fund, agency, or reporting unit which is compatible with the requirements of section 41 and which ensures that all money received and paid by the Government is brought promptly and properly to account;
  - (c) ensure that the system of internal control in every Government Ministry, department, fund, agency, or other reporting unit required to produce accounts under section 41 is appropriate to the needs of the organisations concerned and conforms to internationally recognised standards;
  - (d) ensure that the internal audit function in each Government Ministry, department, fund, agency, or other reporting unit required to produce accounts under section 41 is appropriate to the needs of the organisation concerned and conforms to internationally recognised standards in respect of its status and procedures;
  - (e) refuse payment on any voucher which is wrong or deficient in content, or that contravenes the provisions of the Constitution or this Act or any regulations, directives or instructions properly made or given under this or any other law for the management of public money, or that is in any way unacceptable in support of a charge on public funds;
  - (f) report to the Financial Secretary in writing any apparent defect in departmental control of revenue, expenditure, cash, stores and other property of the Government and any breach or non-observance of any regulations, directives or instructions which may come or be brought to his notice;
  - (g) ensure, as far as practicable, that adequate provisions exist for the safe custody of public money, property, securities and accountable documents; and
  - (h) take precautions, by the maintenance of efficient checks, including surprise inspections, against the occurrence of fraud, embezzlement or mismanagement.
- (4) Notwithstanding any authorisation by the Financial Secretary under section 7(6), the Accountant General may inspect all offices of Government and shall be given—
- (a) access at all times to those offices; and
  - (b) given all available information he may require or consider necessary for the purpose of enforcing compliance with subsections (3)(a), (b), (c), (d), (g) and (h).

(5) The Accountant General shall report annually to the Financial Secretary on the discharge of his duties under this Act, and in the reports required under section 41 shall identify—

- (a) the basis of the standards required by subsection (3)(b) and (c); and
- (b) any defect, shortcoming or other factor which in his opinion has affected materially the Minister's responsibility under section 5(1)(c).

(6) A copy of any report issued under subsection (5) shall be sent to the Auditor General.

### **Designation and duties of accounting officers**

9. (1) The Financial Secretary shall, with the prior approval of the Minister, designate an accounting officer by name and in writing.

(2) An accounting officer shall control and be personally accountable to the Legislative Assembly through the Public Accounts Committee or such other Committee as may be established by the Legislative Assembly for the regularity and propriety of the expenditure of money applied by an expenditure vote or any other provision to any Ministry, department, fund, agency or other entity funded wholly through the Consolidated Fund or Development Fund, and for all resources received, held or disposed of, by or on account of that Ministry, department, fund, agency or other entity. (*Amended by Act 9 of 2011*)

(3) An accounting officer shall—

- (a) whenever the necessity arises, consult the Financial Secretary on the applicability of this Act, any regulations, directives or instructions issued under this Act; and
- (b) bring to the immediate attention of the Financial Secretary any defect in the application of this Act and any regulations, directives or instructions made under this Act that may result in a diminution of control over the resources and finances of Government.

(4) In the exercise of his duties under subsection (2), an accounting officer shall ensure in particular—

- (a) that adequate control is exercised over the incurring of commitments;
- (b) that effective systems of internal control and internal audit are in place in respect of all transactions and resources under his control; and
- (c) in respect of paragraphs (a) and (b), that he complies with any instructions issued under this Act.

- (5) An accounting officer shall submit to the Minister—
- (a) report on programmes for which he is responsible as an accounting officer and that would be identified in the economic and fiscal management plan to be laid before the Legislative Assembly; (*Amended by Act 9 of 2011*)
  - (b) within six months of the end of the financial year, an annual performance report on the programmes under each head or part of a head of expenditure charged on the Consolidated Fund or Development Fund by law and identified in the main or Supplementary Appropriation that will be laid before the Legislative Assembly by the Minister,

in such form as the Minister may direct.

(*Amended by Act 9 of 2011*)

(6) An accounting officer shall, if so required by any regulations, directives or instructions issued under this Act, state in writing the extent to which the powers conferred and duties imposed on him, may be exercised or performed on his behalf by any public officer under his control, and shall give such directives as may be necessary to ensure the proper exercise or performance of those powers and duties.

(7) Any delegation of the powers and duties of the accounting officer under subsection (6) shall not affect the personal accountability of the accounting officer.

(8) An accounting officer shall, if so required by the Minister, establish and maintain an audit committee which shall have such constitution, powers and duties as may be determined by the Minister.

### **Internal Audit**

**10. (1)** The Financial Secretary shall establish an internal audit to review the financial management systems operated by Ministries, Departments, statutory bodies and public organisations.

- (2) The internal audit unit shall have the right—
- (a) of access to all information held by any Ministry, Department, statutory body or public organisation;
  - (b) to take copies of any information referred to in paragraph (a);
  - (c) to require explanations from officers and employees of entities subject to review; and
  - (d) of access to all premises occupied by any Ministry, Department, statutory body or public organisation.

## PART 4

## PUBLIC FUNDS

**Consolidated Fund**

11. There shall be a Consolidated Fund in and for Montserrat.

**Payments made in or out of Consolidated Fund**

12. (1) Subject to the Constitution, and except as otherwise provided in this Act or any other enactment, public funds other than moneys that are payable by or under any law into some other fund established for a specific purpose, shall be paid into and form part of the Consolidated Fund.

(2) No moneys shall be paid out of the Consolidated Fund except in the manner prescribed by this Act.

**Development Fund**

13. (1) There shall be a Development Fund into which shall be paid—

- (a) money appropriated for the purpose of the Development Fund by the Legislature;
- (b) the proceeds of a loan raised for the purpose of the Development Fund by the Government;
- (c) any grant made for a development purpose by a government or an agency of a government or by a regional or international organisation.

(2) For the avoidance of doubt, any reference to moneys raised or received by the Government, does not include moneys received on deposit or moneys held on trust by or under the control of any court, officer of a court, the Public Trustee, the Attorney General or any sums of money held on trust by any other officer for purposes other than the purposes of the Government.

**Special Fund and Trust Fund**

14. (1) The Governor acting on the advice of Cabinet may, by regulations, establish special funds or trust funds which shall not form part of the Consolidated Fund, and the receipts, earnings and accruals of those funds at the end of the financial year, shall not be repaid to the Consolidated Fund but, shall be retained by the funds for the purposes for which they were established. *(Amended by Act 9 of 2011)*

(2) The Governor acting on the advice of Cabinet may make regulations and issue directives for the management and control of any fund established under subsection (1). *(Amended by Act 9 of 2011)*

(3) Any regulation made under subsection (1) shall—

- (a) state the purposes for which the special funds and trust funds is being established; and

(b) identify the accounting officer responsible for its operations.

(4) No expenditure shall be incurred by a special fund or trust fund except under the authority of a warrant signed by the Minister and addressed to the responsible accounting officer.

(5) A warrant mentioned in subsection (4) shall not be issued in respect of any financial year unless estimates of the income and expenditure of the special fund or trust fund for that financial year, prepared in accordance with instructions issued by the Financial Secretary and approved by the Minister, have been laid before the Legislative Assembly. *(Amended by Act 9 of 2011)*

(6) Where the Legislative Assembly is dissolved under the provisions of section 67 of the Constitution less than three months before the commencement of any financial year, the estimates for that year may be laid before the Legislative Assembly as soon as practicable after the commencement of that year and section 22 shall apply, with the necessary modifications, to the authorisation of withdrawals from the fund. *(Amended by Act 9 of 2011)*

(7) Where the Minister is satisfied that either—

- (a) the moneys forming part of any special fund or trust fund are exhausted and no legal provision exists for any further moneys to be paid into the fund; or
- (b) that it is in the public interest to wind up a special fund or trust fund,

the Governor acting on the advice of Cabinet on the recommendation of the Minister may, by regulation, dissolve the fund and any moneys or other resources standing to the credit of the fund at the time of winding up, shall be paid into the Consolidated Fund. *(Amended by Act 9 of 2011)*

(8) Where the accounting officer for the fund being wound up under subsection (7) is not the Financial Secretary, the Minister shall not wind up the fund unless the Minister responsible for the operations of the special fund or trust fund has been consulted.

### Contingencies

**15. (1)** The Minister, if he is satisfied that due to exceptional circumstances which could not have been foreseen an urgent need for expenditure has arisen—

- (a) for which no moneys have been appropriated or for which the sum appropriated is insufficient; and
- (b) which cannot be deferred without detriment to the public interest,

may by warrant under his hand, addressed to the Accountant General, authorise advances not exceeding two million dollars from the Consolidated Fund to meet that need in anticipation of the grant of an Appropriation by the Legislative Assembly. *(Amended by Act 9 of 2011)*

(2) Where an advance is made from the Consolidated Fund under subsection (1), a Supplementary Appropriation including the amount advanced shall be submitted to the Legislative Assembly for approval at its next sitting. *(Amended by Act 9 of 2011)*

(3) Upon the grant of an appropriation to meet the expenditure in respect of which an advance was made under the provisions of this section, the Contingency Warrant authorising such advance shall lapse and shall cease to have effect and the advance shall be deemed to have been made for the purpose of the grant and shall be accounted for accordingly.

(4) Notwithstanding the provision of this section the Government of Montserrat can make other arrangements for meeting emergency such as a fund and a reserve.

### **Investment of and advances from the Consolidated Fund**

**16. (1)** Any sums standing to the credit of the Consolidated Fund may be invested—

- (a) with a bank at call; or
- (b) subject to notice not exceeding twelve months; or
- (c) in an investment authorised by law for the investment of trust funds and approved by the Minister.

(2) The Minister may, by warrant signed by him and addressed to the Accountant General, authorise temporary advances from the Consolidated Fund—

- (a) to special fund or trust fund; and
- (b) to public officers, for the purpose of funding expenditure approved under an Appropriation Act or a Supplementary Appropriation Act;
- (c) on behalf of and recoverable from other Governments and administrations,

and those advances issued under paragraphs (a) and (b) shall be repaid before the end of the financial year.

(3) For the avoidance of doubt, any investment or advance made under this section, shall not constitute a withdrawal of funds from the Consolidated Fund.

### **Withdrawal from the Consolidated Fund and Development Fund**

**17. (1)** No money shall be withdrawn from the Consolidated Fund or Development Fund except upon the authority of a warrant signed by the Minister and addressed to the Accountant General.

(2) A warrant shall not be issued by the Minister for the purpose of meeting any expenditure unless the Accountant General certifies that there is sufficient sum available and the expenditure—

- (a) has been authorised for the financial year during which the withdrawal is to take place by—
  - (i) an Appropriation Act; or
  - (ii) a Supplementary Appropriation Act; or
  - (iii) a warrant issued under sections 15, 16 and 22;
- (b) is a statutory expenditure;
- (c) is for the purpose of repaying any moneys that are received in error by the Consolidated Fund or Development Fund; or
- (d) is for the purpose of paying sums required for any advance, refund, rebate or drawback where the payment of the advance, refund, rebate or drawback is provided for in this or any other Act.

(3) The Minister may suspend, withdraw, limit or place conditions on any warrant or other authority issued by him if the Minister is satisfied that such action is required by reason of a financial exigency or is in the public interest.

### **Virement**

**18. (1)** The Financial Secretary shall by virement signed by him, authorise an accounting officer to incur expenditure up to the limits specified in the virement and for the purpose and subject to the conditions contained in the virement.

(2) A virement shall not be issued by the Financial Secretary unless the sum and purpose for which it is issued have been included in a warrant issued by the Minister under section 17(1).

(3) A virement issued by the Financial Secretary shall be subject to the limits and conditions determined by the Minister under the powers conferred on the Minister by section 17(3).

(4) The Accountant General shall not make any payment or accept any charge in his accounts, nor shall accounting officers make any payment unless authorised by virement to do so.

## PART 5

## AUTHORISATION OF EXPENDITURE

**Estimates of revenue and expenditure**

**19. (1)** The Minister shall cause to be prepared and laid before the Legislative Assembly as soon as is practicable, and in any case not later than the commencement of each financial year—

- (a) estimates of the revenues and financing requirements of the Government for that year and the allocation of these between the Consolidated Fund and Development Fund;
- (b) estimates of the expenditure of the Government to be met through the Consolidated Fund or Development Fund for that year allocated between those expenditure votes or projects the Minister may consider appropriate and shall include for each expenditure vote or projects—
  - (i) a statement of the purposes for which the vote or project is to be used and which shall be consistent with the policy objective outlined in the macro-economic and fiscal management plan;
  - (ii) the identity of the accounting officer appointed under section 9 responsible for the vote or project; and
  - (iii) in respect of each vote a statement of the classes of outputs expected to be provided from that vote during the year and the performance criteria to be met in providing those outputs; and
- (c) an estimate of the amount required for guarantees to be issued for the following financial year under section 35.

**(2)** Where the Legislative Assembly is dissolved under the provisions of section 67 of the Constitution less than three months before the commencement of any financial year, the estimates for that year may be laid before the Legislative Assembly as soon as practicable after the commencement of that year.

**(3)** The Minister shall at the time of submission of the estimates under subsection (1) submit for the approval of the Legislative Assembly such resolutions as are required by sections 30(3), 35(2) and 54(1) and (2) in respect of the financial year to which estimates relate.

**(4)** The Minister shall at the time of submission of the estimates under subsection (1) submit for the approval of the Legislative Assembly a budget statement which—

- (a) sets out the main policies and programmes of government for the ensuing financial year in respect of taxation, other revenues, expenditure, borrowings and such other activities which have potential budgetary implications; and



- (b) identifies any changes to the indicators submitted under section 4(2)(c) and (d) and gives reasons therefor.
- (5) The Minister shall prepare estimates of expenditure for three financial years and the Minister shall lay such estimates before the Legislative Assembly.
- (6) The expenditure votes and the amount to be issued as advances contained in the estimates, other than statutory expenditure, shall be included in an Appropriation Bill which shall be introduced into the Legislative Assembly to provide for the issue from the Consolidated Fund and Development Fund the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified in the Bill.

*(Amended by Act 9 of 2011)*

### Supplementary estimates

20. (1) Where in respect of any financial year, it is found that the amount appropriated by an Appropriation Act is insufficient, or that a need has arisen for expenditure for a purpose for which no amount has been appropriated by that Act, a supplementary estimate, showing the amount required shall be laid before the Legislative Assembly, and the expenditure votes shall be included in a Supplementary Appropriation Bill to be introduced in the Legislative Assembly to provide for their appropriation. *(Amended by Act 9 of 2011)*

(2) A supplementary estimate prepared under subsection (1) shall indicate any effect on the financing requirements of Government submitted under section 19(1)(a) and any expected changes to the statement provided under section 19(1)(b)(iii).

### Excess expenditure

21. (1) Where at the close of accounts for any financial year, it is found that moneys have been expended—

- (a) on any expenditure vote in excess including outstanding commitments of the amount appropriated for it by an Appropriation Act;
- (b) for a purpose for which no moneys have been voted and appropriated; or
- (c) in excess of the sum assigned to an estimate forming part of an expenditure vote in the estimates of expenditure approved by the Legislative Assembly for the financial year, and to which no further sum has been applied under this Act or any regulations issued under it; *(Amended by Act 9 of 2011)*
- (d) in excess of the sum appropriated for the issue of advances under section 16(2)(a) and (c).

the amount of the excess expended, or not appropriated, as the case may be, shall be included in a statement of expenditure in excess which shall be laid

before the Legislative Assembly and referred to the Public Accounts Committee of the Legislative Assembly. *(Amended by Act 9 of 2011)*

(2) The Public Accounts Committee shall report to the Legislative Assembly on a statement of expenditure in excess referred to it under subsection (1) within three months after it is referred to it. *(Amended by Act 9 of 2011)*

(3) Where on receiving any report of the Public Accounts Committee issued under subsection (1), the Legislative Assembly, by means of a motion, allows the excess or the amount expended but not appropriated, to stand charged to public funds, the sum required to meet that excess or that amount as shall be allowed shall be included in a Supplementary Appropriation Bill for appropriation. *(Amended by Act 9 of 2011)*

(4) Any excess or any amount expended but not appropriated and which is not allowed in terms of subsection (2), shall be treated as a loss of public moneys and dealt with in accordance with section 49(2). *(Amended by Act 9 of 2011)*

### **Provision if Appropriation Act not in force**

22. (1) Where the Minister is satisfied that the Appropriation Act in respect of any financial year, will not or has not come into operation by the beginning of any financial year, the Minister may, by Provisional General Warrant under his hand, addressed to the Accountant General, authorise the issue of moneys from the Consolidated Fund or Development Fund Account for purposes of meeting expenditure necessary to carry on the services of the Government until the expiration of four months from the beginning of that financial year, or from the coming into operation of the Appropriation Act, whichever is the earlier.

(2) A sum authorised under subsection (1) shall not exceed one third of the amount in respect of that service approved in the appropriation and supplementary appropriation Acts passed by the Legislative Assembly in the previous financial year. *(Amended by Act 9 of 2011)*

### **Duration of appropriations and warrants**

23. Every appropriation by the Legislative Assembly of public moneys for the service of a financial year, and every warrant or other authority issued under this Act in respect of a financial year, shall lapse and cease to have any effect at the close of that year and the unexpended balance of any moneys withdrawn from the Consolidated Fund shall be repaid to the Consolidated Fund. *(Amended by Act 9 of 2011)*

## PART 6

## PAYMENTS

**Authority for payment**

**24.** Subject to the provisions of section 17, any payment made from the Consolidated Fund shall be authorised by warrant under the hand of the Minister.

**General Warrant**

**25. (1)** Subject to section 17 and on the coming into operation of an Appropriation Act and any Supplementary Appropriation Act, the Minister shall authorise the Accountant General by General Warrant under his hand to pay out of the Consolidated Fund such sums as may be required to pay for the services approved by the Legislative Assembly. (*Amended by Act 9 of 2011*)

**(2)** Notwithstanding the issue of a General Warrant it shall be within the discretion of the Minister to limit or suspend at any time any expenditure excluding statutory expenditure, with or without cancellation of the General Warrant if, in his opinion, financial exigencies of the public interest so require.

**Advance Warrant**

**26. (1)** Subject to the provision of this section, the Minister may, by Advance Warrant under his hand, authorise the Accountant General to make disbursements of moneys forming part of the Consolidated Fund or of other public moneys for the purposes of making advances—

- (a) on behalf of, and recoverable from, other Governments and administrations;
- (b) to, or on account of, the Development Fund or any Special Fund where such advances are recoverable before the close of the financial year in which such advances are made;
- (c) to meet expenditure authorised by a Loan Act in anticipation of the receipt of any installment of the loan authorised by such Act;
- (d) to public or police officers for any purposes and on terms as may be prescribed from time to time.

**(2)** The total of the sums issued and disbursed for the purpose of making advances under subsection (1)(c) and (d) shall not exceed in the aggregate at any time, after deducting repayments, an amount of \$5,000,000 of the recurrent revenue for the previous financial year.

**Imprest Warrants**

**27. (1)** The Minister may, by Imprest Warrant under his hand, authorise the Accountant General to issue imprest from the Consolidated Fund to officers for any purpose for which moneys have been appropriated.

(2) Any officer to whom an imprest has been issued pursuant to subsection (1) shall retire that imprest before the end of the financial year in which the imprest was issued or, if some earlier date is specified in the Imprest Warrant, on or before that earlier date.

(3) Notwithstanding subsection (2) where any officer fails to retire an imprest in accordance with the provisions of that subsection, the Accountant General shall forthwith recover the amount of the imprest by deduction from the salary or other emoluments of that officer in any manner as the Financial Secretary directs.

(4) Notwithstanding the provisions of section 2 and any other Act, a Minister of the Government shall, for the purpose of this section, be deemed to be a public officer.

### Departmental Warrant

28. An accounting officer may, by Departmental Warrant under his hand, authorise any officer named in that warrant to incur expenditure against any vote under his control.

### Warrant to lapse

29. A warrant issued under this Part shall lapse and cease to have effect on the date specified in the warrant or at the end of the financial year in which it is issued, whichever is earlier.

## PART 7

### LOANS, GUARANTEES AND GRANTS

#### Authority to raise loans

30. (1) Subject to the provisions of the Constitution, the authority to raise money by loan, to issue guarantees and to accept grants for and on behalf of the Government shall vest solely in the Minister and no other person, or public organisation shall, without the prior approval of the Minister, raise any loan or issue any guarantee, or take any other action which may in any way either directly or indirectly result in a liability being incurred by the Government.

(2) Loans may be raised upon such terms and conditions as to interest, repayment or otherwise as may be negotiated by the Minister but, only for the purpose of—

- (a) financing budget deficits;
- (b) refinancing maturing debts;
- (c) obtaining foreign currency;
- (d) furthering a prudent economic and fiscal management programme;
- (e) on-lending to an approved institution; or

(f) otherwise defraying expenditure which may lawfully be defrayed.

(3) The net amount that the Minister may borrow under this section in any financial year shall not exceed the amount, if any, approved by the Legislative Assembly by resolution for that financial year. (*Amended by Act 9 of 2011*)

### **Moneys borrowed to be paid into the Consolidated Fund or Development Fund**

31. (1) All moneys raised under section 30 shall be paid into the Consolidated Fund and shall form part of it and be available in the manner in which that fund is available.

(2) Where a loan has been raised for the purposes of the Development Fund or for a purpose for which a special fund has been established under section 14(3), the Minister may, by order signed by him, direct that the whole or a part of the amount of the loan shall be paid into and form part of the Development Fund or special fund.

### **Raising of loans**

32. (1) Subject to section 30 loans may be raised by—

- (a) the issue by the Minister, of Government bills, bonds or stock; or
- (b) any other method the Minister may deem expedient, including a fluctuating overdraft.

(2) A loan raised under subsection (1)(a), shall be subject to the conditions contained in the Treasury Bills Act and Development Bonds Act.

(3) The terms and conditions of any loan raised under this section shall be laid before the Legislative Assembly and the loan shall not come into operation unless the terms and conditions of the loan have been approved by the Legislative Assembly by resolution. (*Amended by Act 9 of 2011*)

### **Repayment, conversion and consolidation of loans**

33. The Minister may, on terms and conditions the Minister may determine and, where necessary, with the approval of the lender—

- (a) repay any loan prior to the redemption date of that loan;
- (b) convert the loan into any other loan; or
- (c) consolidate two or more loans into an existing or new loan:

Provided such terms and conditions have been approved by the Legislative Assembly by resolution.

(*Amended by Act 9 of 2011*)

### Expenses of loans

**34.** All expenses incurred or incidental to the raising of loans raised under section 30 or 32 must be charged to and accounted through the Consolidated Fund.

### Authority to guarantee loans

**35. (1)** Where the Minister is satisfied that it is in the public interest, he may, with the approval of the Legislative Assembly, and on behalf of the Government, guarantee the repayment of the principal money and the payment of the interest and other charges on any loan raised either within or outside Montserrat in the manner and on conditions he may think fit by—

- (a) a statutory body; or
- (b) any other authority or body to which section 45(7)(b) or (c) applies.

**(2)** The net amount that the Minister may guarantee under this section in any financial year shall not exceed the amount, if any, approved by the Legislative Assembly by resolution for that financial year.

**(3)** The Minister must at least annually report the circumstances relating to any payments under a guarantee issued under subsection (1) to the Speaker for tabling in the Legislative Assembly.

*(Amended by Act 9 of 2011)*

### Beneficiary to reimburse all costs

**36. (1)** Where a guarantee is given under section 35, the statutory body, or other authority or body, for whose benefit that guarantee is given, shall reimburse the Government in the manner the Minister may direct—

- (a) all sums of moneys which the Government has paid to fulfil the guarantee; and
- (b) all the expenses which the Government incurs in relation to the guarantee and, in addition, shall pay the Government the interest or service charge in relation to that sum or money paid by the Government or expense incurred by the Government, as the Minister may direct.

**(2)** All moneys received under subsection (1) shall be paid into the Consolidated Fund.

### Receipt of grants

**37. (1)** Grants made to the Government by a foreign government or any other person shall be received by the Minister on behalf of the Government.

(2) Section 31 shall apply to any sum of money received by the Government by way of a grant.

### **Amounts due on loans or guarantees to be charged on Consolidated Fund**

**38.** Any sum of money due from the Government—

- (a) in respect of any loan either by way of repayment or payment of interest; or
- (b) by way of interest on or otherwise in respect of any bond or stock issued under section 32; or
- (c) in respect of any guarantee given under section 35;
- (d) in respect of any expenditure incurred under section 34,

shall be charged on and paid out of the Consolidated Fund without further appropriation.

### **Minister to specify particulars in annual estimates**

**39.** The Minister shall, in the annual estimates of public revenue and expenditure submitted to the Legislative Assembly, specify the amount required to meet the cost of servicing all loans raised under this Act whether by repayment of capital or payment of interest or other charges incurred on the loan for the financial year to which these estimates relate, and the amount expected to be raised from loans and grants during that year. (*Amended by Act 9 of 2011*)

### **Delegation by the Minister**

**40.** The Minister may, by order signed by him, delegate to a public officer—

- (a) his functions under this Act relating to the negotiation of a loan, guarantee or grant; and
- (b) the authority to execute on behalf of the Government any agreement or other instrument relating to a loan or guarantee raised or given under this Act.

## **PART 8**

### **PREPARATION OF ACCOUNTS AND REPORTS**

#### **Annual accounts**

**41. (1)** After the end of each financial year—

- (a) the Accountant General shall prepare and submit to the Auditor General and the Minister the accounts set out in paragraph 1 of the Schedule to this Act, within a period of 4 months, or any

longer period the Legislative Assembly may, by resolution appoint; and (*Amended by Act 9 of 2011*)

- (b) each accounting officer shall within three months prepare and submit to the Minister and the Auditor General, with a copy to the Accountant General, in respect of the financial year and in respect of the votes, revenues, resources and moneys for which the accounting officer is responsible, the accounts and information set out in paragraph 2 of the Schedule to this Act.

(2) The Governor acting on the advice of Cabinet may, by regulation, and for the purpose of section 5(1)(c), amend paragraph 2 of the Schedule to this Act. (*Amended by Act 9 of 2011*)

(3) Any accounting officer administering a special fund, and any accounting officer or other public officer administering any agency, trust or other fund or account not provided for in this section, shall prepare, sign and submit to the Accountant General, with a copy to the Auditor General, an account of the agency, trust, fund, or account in the form the Accountant General may from time to time direct.

(4) All accounts submitted under this section shall—

- (a) where directed by the Accountant General, be prepared in accordance with the generally accepted accounting practice and in all cases in accordance with any instructions issued by the Accountant General;
- (b) identify any significant departures from the generally accepted accounting practice as recognised by the accounting profession in Montserrat and approved by the Accountant General for use in Government and shall state the reasons for those departures; and
- (c) state the basis of accounting used in their preparation, identify any significant departures from it and the reasons for the departure.

### **Annual and other reports**

**42. (1)** On receiving the accounts prescribed by section 41, the Auditor General shall cause them to be examined and audited and shall, within six months, or such longer period as the Legislative Assembly may by resolution appoint, after the end of the financial year to which the accounts relate, certify, in respect of each account, the result of the examination and audit.

(2) The Auditor General shall within the period mentioned in subsection (1), prepare a report upon the examination and audit of all the accounts received in subsection (1) and submit the report to the Legislative Assembly.

(3) The Auditor General may, at any time, if it appears to him desirable, submit to the Speaker of the Legislative Assembly and to the Minister a special report on any matter incidental to his powers and duties.



(4) The Legislative Assembly or the Minister may at any time request the Auditor General to make a special report on any matter.

*(Amended by Act 9 of 2011)*

## PART 9

### CONTROL OF THE FINANCES OF STATUTORY BODIES

#### Interpretation

**43.** In this Part, “**appropriate Minister**”, in relation to a statutory body, means the Minister under whose portfolio the statutory body falls.

#### Estimates of expenditures by statutory bodies

**44. (1)** A statutory body shall, as prescribed by regulation, submit to the appropriate Minister for his approval—

(a) the estimates of its recurrent and capital expenditure and its estimates of revenue and other financing required for that year; and

(b) a corporate plan covering the affairs of such body for that year, in such form as the Minister may direct.

(2) The appropriate Minister shall, before the commencement of the financial year of the statutory body, submit to the Minister of Finance for his approval the estimates of recurrent and capital expenditure and its estimates of revenue and other financing required by the statutory body and corporate plan covering the affair of such body for that year.

(3) The statutory body shall, whenever the appropriate Minister or the Minister of Finance directs, furnish any further information in relation to its estimates of recurrent and capital expenditure and its estimates of revenue and other financing required or the corporate plan.

(4) The estimates of recurrent and capital expenditure of the statutory body and its estimates of revenue and other financing required and the corporate plan as approved by the appropriate Minister may not be altered without the approval of the appropriate Minister.

(5) The appropriate Minister shall, without delay after approval by the Minister of Finance, lay the estimates and corporate plans as approved by the appropriate Minister before the Legislative Assembly, if the Legislative Assembly is sitting, and, if it is not sitting, then without delay at its next sitting. *(Amended by Act 9 of 2011)*

(6) The Minister may, where he has reason to believe that a statutory body has or may have failed to implement the corporate plan as submitted under subsection (1), authorise the Financial Secretary to carry out an investigation into, or inspection of, the records of that statutory body.

### Control of accounts of public organisations

**45. (1)** Notwithstanding anything to the contrary in any law in force, the accounts of any public organisation shall be audited by the Auditor General.

**(2)** In the exercise of his duties under this section, the Auditor General—

- (a)* shall have the same discretion and powers in relation to the moneys, stamps, securities, stores and other property of a public organisation, as are conferred upon the Auditor General by the Audit Act, as if the moneys, stamps, securities, stores or other property of the public organisation were public moneys and government property respectively, and, the officials of the public organisation were public officers in the employment of Government; and
- (b)* may authorise any person eligible to be appointed as an auditor of a company, or any public officer to inspect, examine or audit on behalf of the Auditor General the books and accounts of anybody which the Auditor General may be required to audit by this section and that person or officer shall conduct the audit and report on it to the Auditor General in a form to be determined by the Auditor General.

**(3)** The Auditor General shall prepare a report on the audit of the accounts referred to in this section and shall send them to the Minister and to the public organisation concerned.

**(4)** The public organisation shall within twenty one days—

- (a)* submit to the Minister its observations on the report submitted in subsection (3); and
- (b)* send a certified copy of such observations to the Auditor General.

**(5)** The Minister shall, within two calendar months after receiving the report prepared by the Auditor General under subsection (2), cause the report, and any observations made on it by a public organisation under subsection (2), and any observations by the Minister, to be laid before the Legislative Assembly. *(Amended by Act 9 of 2011)*

**(6)** The Auditor General shall raise a charge on any public organisation audited or reported on under this section, for the costs of conducting the audits and preparing the reports and such charges shall be paid by the respective public organisation on demand into the Consolidated Fund.

**(7)** This section applies to—

- (a)* any statutory bodies;
- (b)* any authority established by an Act which is in receipt of a contribution from, or the operations of which may, under the

Act establishing it or any Act relating to it, impose or create a liability upon the public funds of Montserrat;

- (c) any public body which has in any of its financial year received more than half its income from public funds; or
- (d) any entity, which is audited by the Auditor General under any Act.

## PART 10

### SURCHARGE

#### Power to surcharge

**46. (1)** If, at any time, the Financial Secretary brings to the attention of the Minister moneys or public stores have been lost or damaged, and if, within a period specified by the Minister an explanation satisfactory to him is not furnished by the responsible officer with regard to such loss or damage, the Minister in consultation with the Financial Secretary shall surcharge against that officer the amount which appears to him to be the loss suffered by the Government, or the value of the property lost or damaged as the case may be, or a lesser amount as the Minister may determine.

**(2)** Any officer who contravenes any provision of this Act or of any Regulations made hereunder shall be liable to a surcharge in such sum as may be determined by the Minister in consultation with the Financial Secretary after due inquiry.

**(3)** The amount of the surcharge made under subsection (2) shall not exceed 1/10 of the annual salary of the officer concerned.

#### Circumstances of action

**47.** The circumstances which may give rise to action under section 46 include—

- (a) failure to collect any moneys owing to Government for the collection of which a person is or was at the time responsible;
- (b) payment of public moneys in excess of amounts authorised under the Financial Regulations;
- (c) making, allowing or directing any payment of public moneys without proper authority, or proper evidence that the amount was due;
- (d) payment of public moneys without obtaining proper evidence of the identity of the payee;
- (e) responsibility for any deficiency in, loss or destruction of or damage to any public moneys, stamps, securities, stores or other public property;

- (f) failure to render accurate accounts by a person whose duties require him to render such accounts;
- (g) signing an incorrect or false certificate on a voucher;
- (h) mixing public moneys with other moneys; or
- (i) failure to observe Financial Regulations or Procurement and Stores Regulations or other directions or instructions given under proper authority.

### Notification of surcharge

48. The Financial Secretary shall notify in writing the decision of the Minister to surcharge—

- (a) the person surcharged;
- (b) the accounting officer of the department concerned;
- (c) the Accountant General; and
- (d) the Auditor General.

### Appeal against surcharge

49. (1) Any person who is aggrieved by any surcharge made against him under the provisions of section 46 may appeal to the responsible authority under the public service law, within one month from the date on which he is notified of the surcharge.

(2) The responsible authority under the public service law, after making or causing to be made such investigation as it deems to be necessary, may confirm the surcharge or direct that the person surcharged be released wholly or in part from the surcharge as may appear to be just and reasonable.

*(Amended by Act 9 of 2011)*

### Withdrawal of surcharge

50. The Minister may at any time withdraw any surcharge in respect of which a satisfactory explanation is received or if it otherwise appears to him that no surcharge should have been made and in that event the Financial Secretary shall notify all the persons notified under section 48 of the decision of the Minister to withdraw the surcharge.

### Recovery of surcharge

51. (1) The Accountant General, on being notified of a surcharge made under section 46, shall cause the amount of the surcharge to be recovered from the person surcharged in such a manner as the Financial Secretary directs.

(2) No recoveries shall be made under subsection (1) until after the expiration of the period allowed under section 49 for the lodging of any appeal, and where the person surcharged appeals under the provisions of that

section, no recoveries shall be made until and unless the surcharge has been confirmed or otherwise determined.

(3) The amount of the surcharge made under the provisions of this Part shall be recovered as the Financial Secretary may direct and may be deducted from any salary, pension or other emoluments of the person surcharged:

Provided that—

- (a) no monthly installment payable in respect of a surcharge shall exceed  $\frac{1}{4}$  of the gross monthly salary or pension of the person surcharged; and
- (b) where the person surcharged is due to be paid any moneys by the Government other than by way of salary or pension or other emolument, the Financial Secretary may require the amount of any surcharge imposed on that person to be deducted from such moneys in whole or in part as he considers just and reasonable.

(4) Nothing in this section shall prejudice the right of Government to sue for and recover the amount of any surcharge as a civil debt due to the Government.

### Penalties and surcharge

**52. (1)** Where a public officer without reasonable excuse, fails to provide by the due date any information that the Financial Secretary may reasonably require under section 7(1), such failure may be reported by the Financial Secretary to the responsible authority under the public service law for appropriate action. (*Amended by Act 9 of 2011*)

(2) Where—

- (a) a loss of or deficiency in public money or other money occurs that has been advanced to or was under the control of a public officer, or
- (b) a loss or deficiency of or damage to public property or other property occurs while the property was in the care of a public officer, and the Minister is satisfied after due enquiry, that the negligence or misconduct of the public officer caused or contributed to the loss or deficiency—
  - (i) the amount of the loss or deficiency;
  - (ii) the value of the property lost or destroyed; or
  - (iii) the cost of replacing or repairing the damage to that property,

as the case may be, shall be a debt due to the Government, and may be recovered from the public officer either administratively or through a court of competent jurisdiction.

(3) Where the negligence or misconduct of a public officer is not the sole cause of any loss, deficiency or destruction resulting in an action under

subsection (1), the amount recoverable from the public officer may be restricted to only the cost of replacing or repairing the loss, deficiency, damage or destruction that the Minister in consultation with the Financial Secretary considers, after due enquiry, to be just and equitable, having regard to the contribution made by the public officer to that loss, deficiency, damage or destruction.

(4) In this section a reference to a public officer includes a person who has been a public officer.

## PART 11

### MISCELLANEOUS

#### **Bank accounts**

**53.** A public or official account shall not be opened in any bank without the prior authority of the Accountant General in writing; and the continued operation of that account shall be subject to the terms and conditions the Accountant General may, from time to time, determine.

#### **Abandonment of claims etc. and write off of public money and stores**

**54. (1)** The Minister may, if so authorised by a resolution of the Legislative Assembly, and to the extent specified in the resolution, abandon and remit any claims by or on behalf of the Government, or any service to government and write off losses of or deficiencies in public moneys or public resources. *(Amended by Act 9 of 2011)*

(2) A resolution referred to in subsection (1) may specify the maximum amount authorised for each write off or abandonment and the total sum authorised to be written-off or abandoned in a financial year.

(3) The Minister may, in writing and signed by the Minister, delegate to any officer any powers which the Minister is authorised to exercise by a resolution of the Legislative Assembly under this section. *(Amended by Act 9 of 2011)*

#### **Gift of stores and other property**

**55. (1)** The Financial Secretary may authorise the gift of any stores not required by Government purposes to institutions or organisations in Montserrat established solely or principally for educational, scientific, cultural or charitable purposes.

(2) Where the value of such gift exceeds \$5,000 the prior approval of the Minister shall be obtained.

### **Annulment by the Legislative Assembly of regulations**

**56.** A regulation made under this Act shall—

- (a) be laid before the Legislative Assembly as soon as possible after its publication in the *Gazette*;
- (b) be subject to annulment by the Legislative Assembly by resolution after twenty one days after its being laid before the Legislative Assembly; and
- (c) cease to have effect after it is annulled by the Legislative Assembly but without prejudice to the making of a further instrument or to its previous operation.

*(Amended by Act 9 of 2011)*

### **Amendment of Schedule**

**57.** The Governor acting on the advice of Cabinet may by regulations amend the Schedule to this Act. *(Amended by Act 9 of 2011)*

### **Regulations**

**58.** The Governor acting on the advice of Cabinet may make regulations for the better carrying out of this Act and, without limitation, may make regulations—

- (a) prescribing anything that by this Act may be prescribed by regulation;
- (b) exempting a statutory body from the definition of statutory body for the purpose of this Act or any provision of this Act;
- (c) respecting the collection, receipt, custody, banking, expenditure, due accounting for, care and management of, and forms of records relating to public money;
- (d) respecting the custody, handling and proper accounting for stamps, investments or securities, whether the property of the Government or on deposit with, or entrusted to, the Government or to any public officer in his official capacity, or any other person;
- (e) respecting the use of technology as it applies to the preparation and management of the financial and accounting system of Montserrat including—
  - (i) electronic authorisation;
  - (ii) electronic certification;
  - (iii) digital signature; and
  - (iv) techniques relating to the security, integrity and access to financial information;

- (f) respecting the procurement of goods and services including the designation of persons with authority to award contracts, or the establishment of a board charged with the award of contracts, or classes of contracts, or charged with advising on the award of contracts and the definition of the powers of such a board, or both the designation of persons and the establishment of a Tenders Board;
- (g) defining “government property” and “stores”;
- (h) respecting government property including such matters as the responsibility for making and maintaining up-to-date inventories, the form of and the information to be kept in such inventories and writing off government property and declaring government property surplus and disposing of it;
- (i) respecting stores including their classification and operation, the writing off of stores and declaring stores surplus and disposing of them;
- (j) prescribing fees for dishonoured cheques.  
*(Amended by Act 9 of 2011)*

### Repeals and savings

**59. (1)** The Finance (Administration) Act (Cap. 17.07) is repealed.

**(2)** Any regulations made under any Act repealed by subsection (1) and are in force at the commencement of this Act, shall continue in force as if made under this Act, and until otherwise repealed.

### Transitional provisions

**60. (1)** Any loan raised by the Government under any Act and in respect of which any liability is subsisting immediately before the commencement, shall be deemed to be a loan raised under this Act notwithstanding that the amount of the loan or any obligation undertaken by the Government in respect of the loan exceeds any limitation imposed by this Act or any Act repealed by this Act.

**(2)** All bills, bonds and other securities issued under any Act and subsisting immediately before the commencement, shall continue in effect and be binding in the same manner and to the same extent as if they were issued under this Act.

**(3)** Notwithstanding section 2—

- (a) the first financial year commencing on 1 April shall be the financial year commencing from 1 April 2010;
- (b) the financial year immediately prior to that defined in paragraph (a) shall be a period of fifteen months ending on 31 March 2010.



## Precedence of this Act

61. This Act shall take precedence over all other existing Acts related to public finance and any Act in contradiction with this Act is modified to conform with the provisions of this Act.

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## SCHEDULE

(Section 41)

### PROVISIONS FOR SUBMISSION OF ACCOUNTS

#### Accounts to be submitted by the Accountant General

1. The following accounts shall be submitted to the Auditor General and the Minister by the Accountant General—

- (a) a balance sheet showing the consolidated assets and liabilities of all public funds and other entities wholly funded through the Consolidated Fund;
- (b) a consolidated statement of the cash flow for all public funds and other entities wholly funded through the Consolidated Fund showing the revenues, expenditures and financing for the year;
- (c) a balance sheet showing the assets and liabilities of the Consolidated Fund;
- (d) a balance sheet showing the assets and liabilities of the Development Fund;
- (e) a statement of the cash flow for the Consolidated Fund showing the revenues, expenditures and financing of the fund for the year;
- (f) a statement of cash flow for the Development Fund showing the revenues, expenditures and financing of the fund for the year;
- (g) a summary statement of revenue and expenditure, being a summary of all the statements signed by accounting officers under paragraphs 2(a) and (c) of this Schedule;
- (h) a statement of the amounts outstanding at the end of the year in respect of the Public Debt;
- (i) a statement of the amounts guaranteed by the Government at the end of the financial year in respect of bank overdrafts, loans, public loan issues and other contingent liabilities;
- (j) a summary statement of revenue and expenditure of the Consolidated Fund and Development Fund, being a summary of all the statements signed by accounting officers under paragraphs 2(a) and (c) of this Schedule;
- (k) a statement of the amount outstanding at the end of the year in respect of loans issued by the Government;

- (l) a statement of investments held by the Government at the end of the year showing the original cost and current value;
- (m) a statement of the net worth of all statutory bodies as at the end of the financial year;
- (n) a statement of losses of public moneys and stores written-off and claims abandoned during the financial year and the authority for such write off or abandonment;
- (o) a statement of losses of public moneys and stores reported during the year whether written-off or not;
- (p) a summary statement of arrears of revenue for each revenue head, being a summary of the statements of arrears of revenue signed by accounting officers under paragraph 2(d) of this Schedule;
- (q) a summary statement of commitments outstanding for the supply of goods and services for each vote at the end of the financial year being a summary of the amount included for such commitments in the statement signed by accounting officers under paragraph 2(b) of this Schedule;
- (r) a summary statement of stores and other assets for each vote, being a summary of the statement of assets signed by accounting officers under paragraph 2(e) of this Schedule; and
- (s) any other statement and in the form the Legislative Assembly may from time to time require. (*Amended by Act 9 of 2011*)

### Accounts to be submitted by accounting officers

2. The following accounts shall be submitted to the Accountant General by accounting officers—

- (a) an appropriation account signed by the accounting officer showing the services for which the moneys expended were voted, the sums actually expended on each service, and the state of each vote compared with the amount appropriated for that vote by the Legislative Assembly; (*Amended by Act 9 of 2011*)
- (b) a statement signed by the accounting officer and in the form the Accountant General may direct containing the amount of commitments outstanding for the supply, goods and services at the end of the financial year and any other information the Minister may require;
- (c) a statement of revenues received signed by the accounting officer and in the form the Accountant General may direct showing the amount contained in the estimates of revenue for each source of revenue, the amount actually collected and containing an explanation for any variation between the revenues actually collected and the amount estimated;

- (d) a statement of arrears of revenue signed by the accounting officer showing the amount outstanding at the end of the financial year for each source of revenue and containing information in the form the Accountant General may direct; a nil return should be submitted if appropriate;
  - (e) a statement of assets signed by the accounting officer containing details and values of all unallocated stores under his control at the end of the financial year, together with the details and values of any other classes of assets under the control of the accounting officer as the Accountant General may from time to time determine;
  - (f) a statement of performance providing each class of outputs provided during the year signed by the accounting officer that—
    - (i) compares that performance with the forecast of the performance contained in the estimates laid before the Legislative Assembly under section 19(1)(b)(iii); and (*Amended by Act 9 of 2011*)
    - (ii) gives particulars of the extent to which the performance criteria specified in that estimate in relation to the provision of those outputs was satisfied;
  - (g) a list of all outstanding commitments or bills remaining unpaid at the end of a financial year; and
  - (h) any other statements and in the form the Accountant General may from time to time require.
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**PROCUREMENT AND STORES REGULATIONS**

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**PROCUREMENT AND STORES REGULATIONS – SECTION 58**

*(S.R.O.s 15/2002 and 11/2012)*

**Commencement**

*[25 January 2002]*

PART 1

PRELIMINARY

**Short title**

1. These Regulations may be cited as the Procurement and Stores Regulations.

**Interpretation**

2. In these Regulations—

“**Act**” means the Public Finance (Management and Accountability) Act;

“**Allocated Stores**” means stores the cost of which is chargeable directly to an appropriate sub-head of expenditure;

“**Expendable Stores**” means stores of a consumable nature which may be issued in bulk without subsequent records of detailed issues;

“**Stores**” means stores including stores of plant, equipment, machinery, tools and vehicles being the property or in the possession or under the control of the Government;

“**Un-allocated Stores**” means stores the cost of which is chargeable to a general sub-head of expenditure and which cannot be charged directly to an appropriate sub-head of expenditure until they are issued for the specific work or service concerned;

“**Un-expendable Stores**” means stores which are closing not of a consumable nature and which have a life assigned to them and which will remain on ledger charge whether in use or in store until they are written-off or disposed of.

PART 2

RESPONSIBILITY FOR THE CARE AND CUSTODY OF STORES

**Accounting Officer**

3. (1) Every accounting officer shall be responsible for—
  - (a) the care and custody of all stores received, held or disposed of by or on behalf of his department;
  - (b) the proper accounting for all receipts and issues of stores in his department.

(2) Every accounting officer shall ensure that regular checks are made for the verification of physical stocks and ledger balances of stores under his control.

(3) Every accounting officer shall ensure that stores under his control are inspected regularly and reports made to him with respect to the sufficiency and security of storage and the general condition of stores and storage facilities.

(4) At least once every year an accounting officer shall cause all weights, measures, and scales used in his department to be examined by an inspector of weights and measures.

### Storekeeper

4. (1) Every storekeeper shall in respect of stores under his control be responsible for—

- (a) the checking, handling and storage of stores received by him;
- (b) the checking, packing and dispatch of stores issued from stocks;
- (c) the correctness of stock balances;
- (d) the occurrence of losses, deterioration, wastage or irregular issues;
- (e) the safe custody and security of allocated or un-allocated stores.

(2) Every storekeeper shall carry out monthly checks of stores on hand against the stores ledger or bin cards and shall report to the accounting officer any surpluses, shortages, deterioration, wastage, damage, un-serviceability or obsolescence of stores under his control.

(3) Every storekeeper shall ensure that stocks are maintained to the required level and shall not permit any shortages or excesses to occur.

(4) Every storekeeper shall ensure that storerooms are kept clean, properly ventilated and secure from fire and unauthorised entry.

### Stores Accountant

5. (1) Every accounting officer shall designate a suitable officer to perform the duties of stores accountant.

(2) A stores accountant shall be responsible for—

- (a) maintaining proper records of receipts and issues of stores;
- (b) ensuring that procurement of goods is in accordance with these Regulations;
- (c) reconciling stocks on hand with financial records;
- (d) assist in the annual survey of stores and the verification of stock balances;
- (e) exercising general control over the rate of consumption of expendable stores;
- (f) preparing documents and performing accounting functions for the procurement of goods.

**Key holders**

6. (1) Accounting officers shall nominate in writing officers who will be responsible for holding keys to storage areas.

(2) Store keys, when not in use, shall be secured against unauthorised use by any other person.

(3) Duplicate keys to storerooms shall be secured by the responsible accounting officer.

(4) A key holder shall be responsible for any loss from a storage area due to the loss of a key or to any failure on his part to comply with these Regulations.

**Other officers**

7. Every officer is responsible for stores under his control or in his custody.

## PART 3

## PROCUREMENT OF STORES AND SERVICES

8. – 27. Deleted by S.R.O.11/2012

## PART 4

## ALLOCATED STORES

**Use of allocated stores**

28. (1) Except as otherwise provided, allocated stores shall be issued to and used on the service or project to which such stores have been charged.

(2) Allocated stores shall not be issued for use on any other service or project except on the authority of the accounting officer.

(3) Allocated stores issued for use on any other service or project shall be accounted for by journal entry transferring the charge to the service or project on which the stores are used.

**Allocated Stores Ledger**

29. An allocated stores ledger shall be maintained in such manner as may be approved by the Accountant General from time to time.

**Storage of allocated Stores**

30. Accounting officers shall ensure that allocated stores are securely stored and physically separate from un-allocated or any other stores.

## PART 5

## UN-ALLOCATED STORES

**Accounting for Stores**

**31. (1)** An accounting officer responsible for maintaining un-allocated stores shall ensure that accurate accounts are maintained for all receipts and issues of such stores.

**(2)** Un-allocated stores shall be accounted for by both quantities and values and the accounts shall indicate the unit cost of each item of stores.

**Stock limits**

**32.** Every accounting officer responsible for un-allocated stores shall ensure that the total value of stores on hand at any time does not exceed the authorised stock limit.

**Pricing of stores**

**33. (1)** The price of un-allocated stores for accounting purposes shall be determined on the basis of a unit of quantity and shall include the invoice price, freight, insurance, inspection fee, local transportation, handling and all other charges related to the purchase and storage of such stores.

**(2)** No other expense shall be charged against un-allocated stores which are not taken into account in the costing of the value of the stores.

**(3)** The issue price per unit shall be arrived at by dividing the total cost of an item of stores by the number of units of quantity and will be fixed at the nearest whole cent.

**(4)** The issue price per unit shall be revised whenever new purchases are made to replenish any particular item of stores.

**(5)** When on calculating an issue price per unit the total cost is not divisible by the number of units, the amount over or under the cost price shall be accounted for in a price adjustment account.

**Un-allocated Stores Ledger**

**34. (1)** Un-allocated stores ledgers shall be maintained in such manner as may be determined by the Accountant General from time to time.

**(2)** Where for any reason it becomes necessary to introduce new un-allocated stores ledgers with the opening balances based on the physical stocks on hand and not on the closing balances in the previous ledgers, the full circumstances necessitating the use of physical stock balances shall be reported to the Accountant General whose prior approval shall be obtained before the new ledgers are put into use.

**(3)** The balance and value of each item of stores shall be recorded whenever a receipt or issue is made.

**Stock valuation lists**

**35. (1)** As soon as possible after the end of each financial year, an accounting officer responsible for un-allocated stores shall cause to be prepared a stock valuation list showing the numerical and financial balances for each item of stores in the un-allocated stores ledger.

**(2)** Signed copies of the stock valuation list shall be submitted to the Financial Secretary and the Auditor General.

**(3)** If at any time the total value of stock exceeds the authorised limit, the accounting officer concerned shall report immediately to the Financial Secretary explaining the reasons for the excess.

**(4)** Stock held in excess of the authorised limit may be treated in the accounts in the same manner as unauthorised expenditure and the accounting officer concerned may be held responsible therefor.

**Tabular summary**

**36. (1)** As soon as possible after the close of each financial year every accounting officer responsible for un-allocated stores shall cause to be prepared a tabular summary in respect of each un-allocated store.

**(2)** Signed copies of the tabular summary shall be submitted to the Financial Secretary and the Auditor General.

**Bin cards**

**37. (1)** Bin cards shall be kept by each storekeeper for each item of un-allocated stores for the purpose of recording receipts, issues and balances on hand by quantities.

**(2)** The officer-in-charge of the un-allocated store shall, at least once every quarter check the balances on the bin cards against the balances shown in the un-allocated store ledger and shall investigate and report any discrepancies.

**(3)** A copy of any report prepared by the officer-in-charge shall be submitted to the accounting officer concerned.

## PART 6

## FURNITURE AND OFFICE EQUIPMENT

**Responsibility for furniture and equipment**

**38.** Responsibility for the accounting for and control of furniture and equipment rests with the following departments, which for the purpose of this Part shall be termed “the controlling department”.

Furniture and equipment for  
Government offices

The Ministry or Department in possession

Furniture, furnishings and

Establishment Department

equipment for Government Quarters

Furniture and Equipment for institutions and other establishments	The Ministry or Department responsible for the institution or Department
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### **Sale custody and care of furniture and equipment**

**39. (1)** The controlling department shall be responsible for furniture and equipment issued to it or to institutions and establishments under its control.

**(2)** The occupants of Government quarters or other residences assigned to them shall be personally responsible for any furniture, furnishings or equipment provided for their use.

### **Master Control Registers to be kept**

**40. (1)** The controlling department shall maintain a master control register in which shall be recorded all purchases and issues of furniture and equipment.

**(2)** The master control register shall include a record of the departments, institutions and establishments to which furniture and equipment have been issued.

### **Inventories to be maintained**

**41. (1)** Accounting officers shall ensure that inventories of furniture and equipment are maintained in all offices, institutions and establishments under their control.

**(2)** No item of furniture and equipment shall be removed from any inventory except on the written authority of the Financial Secretary.

### **Inventories to be checked**

**42.** Accounting officers shall ensure that all inventories are checked against physical stocks on hand at least once a year and whenever there is any change of the officer in charge of an office, institution or establishment or of an occupant of Government quarters or Government assigned residence.

### **Discrepancies in inventory holdings**

**43. (1)** Accounting officers shall report to the controlling department any discrepancies found during inventory checks of furniture and equipment.

**(2)** Discrepancies found at a handing-over of inventory holdings shall be dealt with in accordance with regulation 100.

### **Authority for write-off**

**44. (1)** All furniture and equipment shall remain on charge in the master control register and in departmental inventories until authority to write-off has been given by the Financial Secretary.

**(2)** Un-serviceable or obsolete items of furniture and equipment shall be dealt with in accordance with regulation 89.



PART 7

BUILDINGS, PLANT, EQUIPMENT AND TOOLS

**Responsibility for plant, equipment and tools**

**45. (1)** Accounting officers shall be responsible for all buildings, plant, equipment and tools assigned to departments under their control.

**(2)** Notwithstanding paragraph (1), any officer to whom plant, equipment and tools have been issued shall bear personal responsibility for such plant, equipment and tools until they are returned into store or are condemned and disposed of in accordance with regulation 89.

**Register to be kept**

**46. (1)** All items of plant and equipment shall be entered in a plant and equipment register which shall record—

- (a) the description of the plant or equipment;
- (b) the name of the manufacturer;
- (c) the registration and serial numbers;
- (d) the date received;
- (e) the source of supply;
- (f) any period of warranty;
- (g) ancillary equipment and spares supplied.

**(2)** A tools register shall be maintained for all items of tools received and issued for use.

**Plant operating records**

**47.** Accounting officers shall ensure that plant operating records are maintained for plant equipment in which shall be recorded details of operating house, down time, servicing, overhauls and repairs.

**Log books**

**48. (1)** Accounting officers shall ensure that log books are kept in respect of each vehicle or other equipment assigned to his department.

**(2)** Log books shall be in such form as the Accountant General may approve from time to time and shall be used to record—

- (a) details of travelling done or work performed;
- (b) details of oils, fuels and spares used;
- (c) details of servicing or repairs;
- (d) authorisation for travel or other operation.

(3) Accounting officers shall designate authorised officers who shall be responsible for checking log books and reporting on any misuse of or damage to vehicles or equipment assigned to their departments.

(4) Accounting officers shall ensure that log books are checked at least once every month and that reports of misuse of or damage to vehicles or equipment are submitted to the Financial Secretary.

(5) If it is proved to the satisfaction of the Financial Secretary that an officer should be held responsible for any misuse of or damage to any vehicle or equipment assigned to him or to his control, such officer may be liable under Part 10 of the Act.

### Stocks to be verified

49. (1) At least once every six months accounting officers shall cause checks to be made to verify stocks of plant, equipment and tools against the balances shown in the plant and equipment register or the tools register as the case may be.

(2) Any deficiencies found in stocks shall be reported at once to the Financial Secretary.

(3) A copy of any report on deficiencies discovered shall be sent to the Auditor General.

### Register of buildings

50. The Accountant General shall maintain a register of all permanent Government buildings in which shall be recorded—

- (a) the description of designation of the building;
- (b) date of completion or purchase;
- (c) plan reference;
- (d) site reference;
- (e) prime cost or purchase price;
- (f) cost and date of structural alterations.

## PART 8

### LIVESTOCK

### Records to be kept

51. (1) Accounting officers shall ensure that records are kept of any livestock assigned to or maintained by their departments.

(2) Such records shall show the date of receipt, sale, transfer or death of the animals, any additions due to re-production and the total number of each category on charge.

**Sale of livestock**

52. When any animal is sold the weight, selling price and receipt number shall be entered in the records.

**Death of livestock**

53. (1) In the event of death of any animal any certificate of death and disposal shall be obtained from a Veterinary Officer or any other officer authorised to issue such certificate.

(2) The cause of death and the manner of disposal shall be entered in the records.

**Checks to be made**

54. Accounting officers shall ensure that at least twice every year the number of animals in stock is checked against the number shown in the records.

**Surpluses or deficiencies**

55. (1) Accounting officers shall investigate any surpluses or deficiencies in stock reported to them, and if it becomes necessary to do so, submit a report to the Financial Secretary.

(2) A copy of any report on deficiencies discovered shall be sent to the Auditor General.

(3) If it is proved to the satisfaction of the Financial Secretary that any officer should be held responsible for the death of any animal or for any loss or deficiency in stock, such officer may be liable under Part 10 of the Act.

## PART 9

## RECEIPTS

**Stores to be received in stock**

56. Except for goods purchased in small quantities for immediate use, all goods received shall be taken into allocated or un-allocated stores as may be appropriate.

**Stores received vouchers**

57. (1) All goods received shall be entered on a stores received voucher which shall be supported by one of the following—

- (a) invoices or bills;
- (b) the triplicate copy of local purchase orders;
- (c) in the case of stores received from un-allocated stores into allocated stores a copy of the stores issue vouchers;
- (d) the original copy of a stores conversion form.

(2) Stores received vouchers shall be in duplicate and shall be pre-numbered serially or in such other form as may be approved by the Accountant General.

### **Stores conversion form**

**58. (1)** Where stores are issued from a store for conversion into a different article, the article produced shall be received back into the same store and shall be supported by a stores conversion form.

(2) Stores conversion forms shall be prepared in duplicate and shall record in detail the quantities and values of the stores converted and the quantities and values of the article produced.

### **Unused stores**

**59.** Stores which have been issued but not used shall be returned to the original store and taken on charge on a stores received voucher at the current issue price irrespective of the price at which they were originally issued.

### **Used stores**

**60. (1)** Used stores which are no longer required for the purpose for which they were issued shall be returned to the original store and taken on charge on a stores received voucher.

(2) Used stores shall be kept separate from general stores whether allocated or un-allocated.

### **Surplus stores**

**61.** Surplus stores found by a board of survey or as a result of stock verification, internal stock-taking or over-delivery shall be taken on charge on a stores received voucher.

### **Verification of deliveries**

**62. (1)** It shall be the responsibility of any officer receiving goods to ensure that goods received are in accordance with goods invoiced.

(2) No payment for goods shall be made except on a certificate by the receiving officer that such goods have been correctly delivered and received into store.

### **Examination of goods**

**63. (1)** As soon as possible after the receipt of goods, the receiving officer shall examine every item, package or other container to ensure that the goods making up the consignment are exactly equal to the quantity and specifications shown on the accompanying invoices, delivery notes, packing-slips or other documents.

(2) A certificate of examination shall be prepared and signed by the receiving officer.

(3) Any damaged or spoiled goods shall be recorded in detail on the certificate of examination.

(4) Perishable food items shall be examined immediately and any spoilage or any item considered to be unfit for the purpose intended shall be reported to a Public Health Officer who shall issue a certificate of condemnation in respect of such items.

### **Bulk supplies**

64. (1) Bulk supplies shall be checked on discharge and on receipt into stores.

(2) The contents of broken containers and any quantities retrieved from sweepings shall be accounted for before any shortages are determined.

### **Delivery of stores**

65. (1) All stores transferred on any vehicle or vessel shall be accompanied by a delivery slip which shall be signed by the officer consigning the stores and the driver of the vehicle or vessel.

(2) The officer receiving such stores shall check the quantities delivered against the quantities shown on the delivery slip.

(3) A copy of the delivery slip signed by the receiving officer shall be returned to the consigning officer with notation of any shortages or surpluses discovered.

### **Stores received short**

66. (1) In all cases where stores have been received short or damaged the receiving officer shall immediately report the shortage or damage to the accounting officer.

(2) The accounting officer shall immediately investigate such shortage or damage and shall, as soon as possible thereafter, report the matter to the Financial Secretary.

(3) If it is proved to the satisfaction of the Financial Secretary that any officer should be held responsible for any such shortage or damage, such officer may be liable under Part 10 of the Act.

### **Accounting procedure where goods are received short or damaged**

67. (1) Where goods are received short or damaged the quantity shown on the invoice or bill shall be taken on charge.

(2) A stores issue voucher shall be issued for the quantity of goods found short or damaged which shall be charged against the appropriate head of expenditure.

### **Claims register**

68. (1) Goods received short or damaged shall be accounted for in a claims register.

(2) No claim shall be considered settled until either the value has been recovered in full or the authority of the Financial Secretary has been granted to write-off or waive the claim.

(3) Any recovery in respect of a claim shall be entered in the claims register.

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## Reusable containers

69. Wherever it is economical to do so reusable containers shall be returned to the suppliers as soon as possible after the discharge of goods.

## PART 10

### ISSUES

## Issue of Stores

70. Stores shall not be removed from allocated or un-allocated stores except on the authority of a stores requisition duly signed by an authorised officer.

## Stores issue vouchers

71. (1) On receipt of a requisition for un-allocated stores, the officer in charge of stores, if he is satisfied that the requisition is in order and the stores requisitioned are in stock, shall prepare or caused to be prepared a serially numbered stores issue voucher in triplicate.

(2) Stores issue vouchers shall be signed by the officer in charge of stores or any other officer specifically authorised to do so.

(3) The officer receiving the stores shall sign the original and duplicate copies of the store issue voucher in acknowledgement of the receipt of the stores.

(4) The original copy of the store issue voucher shall be retained by the officer in charge of stores for accounting purposes.

(5) The duplicate copy of the stores issue voucher shall be returned to the requisitioning officer.

(6) The triplicate copy shall be sent to the Auditor General.

## Stores to be charged

72. Subject to the provisions of regulations 73 and 74 stores issue vouchers shall indicate the expenditure head and item number to which the charge should be made.

## Stores issued for conversion

73. Stores may be issued from un-allocated stores for conversion to a different article on the authority of a conversion form duly signed by an authorised officer.

## Sale of Stores

74. (1) Un-allocated or allocated stores may be sold to private persons only on the authority of the accounting officer.

(2) An official receipt for the full value of stores to be sold shall be presented together with the requisition for the release of stores.

(3) The officer in charge or any other officer authorised by him shall prepare a stores issue voucher for the quantity and value of the stores sold.

### Responsibility of officers signing stores issue voucher

75. Any officer who signs a stores issue voucher shall be responsible for ensuring that the voucher is accurate and complete in all respects and that the stores to be issued correspond with the requirements for the stores requisition signed by the authorised officer.

### Issue before stores are priced

76. (1) If, in an emergency, stores are required to be issued before the prices are determined, a store issue voucher shall be prepared showing the quantities of stores issued with the notation “**prices to follow**”.

(2) As soon as possible after the prices of the stores have been determined, a debit advice shall be sent to the requisitioning officer for the full cost of the stores issued.

### Monthly summaries of issues

77. (1) As soon as possible after the end of each month the officer in charge of stores shall prepare a monthly summary of stores issued from un-allocated stores in such form as may be approved by the Accountant General.

(2) The original copy of the monthly summary of stores issued shall be submitted to the Accountant General for accounting purposes.

## PART 11

### STOCK VERIFICATION

#### Appointment of stock verifier

78. The Financial Secretary shall have the power to appoint a stock verifier whenever it becomes necessary to verify stock holdings in any department.

#### Duties of stock verifier

79. The duties of a stock verifier shall include—

- (a) the detailed comparison of stores ledger balances, bin card balances and inventory balances with the physical stock on hand;
- (b) the initial investigations into the reasons for any discrepancies;
- (c) an assessment of the security and storage arrangements and safeguards against loss, fraud and other irregularities;
- (d) an assessment of the management of stocks with special regard to overstocking, wastage and obsolescence;
- (e) checking and evaluating inventory holdings;
- (f) the identification of unserviceable or obsolete stores;
- (g) supervising the disposal of condemned stores;
- (h) any other duties assigned by the Financial Secretary.

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**Stock to be verified**

80. The Financial Secretary may at any time arrange for stores held in any department to be verified by a stock verifier.

**Report of stock verifier**

81. (1) The stock verifier shall report to the Financial Secretary on any discrepancy, defects, obsolescence or damage or any deficiency in the arrangements for accounting, storage, security and other safeguards which have come to his notice during the stock verification.

(2) The Financial Secretary, on receipt of the stock verifier's report, may require the accounting officer concerned to answer to any discrepancy, defect, damage or deficiency discovered by the stock verifier.

**Inspection of stores**

82. (1) Every accounting officer shall arrange for stores under his control to be inspected at least twice each year.

(2) The inspecting officer shall report to the accounting officer any loss, leakage, damage, wastage, deterioration or irregularity observed in the course of his inspection.

(3) The accounting officer shall, on receipt of the inspecting officer's report, take immediate action to correct any defects, deficiencies or irregularities reported.

## PART 12

## SURVEY OF STORES

**Appointment of board of survey**

83. (1) The Financial Secretary may at any time appoint a board of survey to check allocated or un-allocated stores held in any department.

(2) A board of survey shall consist of not less than 2 persons one of whom shall be designated chairman.

(3) Copies of the letters of appointment of the members of a board of survey shall be sent to the accounting officer concerned and the Auditor General.

(4) No officer of the Audit Department or of the department in which the survey is to be carried out shall be appointed as a member of the board of survey.

**Method of conducting**

84. (1) Unless otherwise directed in the letter of appointment, a survey of stores shall include a complete check of quantities of all stores on hand or in the process of conversion.

(2) The quantities found shall be compared with the quantities shown in the stock ledger and bin cards and any discrepancies found shall be noted for inclusion in the survey report.



(3) Stores which appear to be unserviceable or obsolete shall be entered on a form prescribed for that purpose with recommendations for their condemnation or disposal.

(4) Stores which are found to be in excess of the balances shown in the stores ledger shall be brought to account on a stores receipt voucher.

### **Report of board of survey**

**85. (1)** The chairman of a board of survey shall, immediately after the completion of a survey, submit a report on the survey signed by him and the other members of the board, to the Financial Secretary.

(2) Copies of the report shall be sent to the accounting officer concerned and the Auditor General.

(3) The board of survey's report shall include the following—

- (a) the opinion of the board on the condition and adequacy of storage and storage facilities;
- (b) the opinion of the board on the effectiveness of security arrangements and safeguards against fire and deterioration;
- (c) a statement on any difficulties experienced by the board in carrying out its duties;
- (d) a list of unexplained surpluses and shortages together with any comments or remarks thereon which the board may consider necessary;
- (e) a list of stores which, in the opinion of the board, are unserviceable or obsolete;
- (f) a certificate that the procedure laid down in regulation 84 have been followed.

(4) The Financial Secretary may after considering the recommendations of the board of survey issue such directions as he deems necessary.

(5) Within three months of any directions given by the Financial Secretary the accounting officer concerned shall report to him of actions taken in pursuance of such directions.

## PART 13

### CONDEMNATION AND DISPOSAL OF STORES

#### **Appointment of board of condemnation**

**86. (1)** The Financial Secretary may, on the recommendation of an accounting officer, a stock verifier or a board of survey, appoint a board of condemnation to inspect stores which have been reported to be unserviceable or obsolete and to make recommendations for their disposal.

(2) Any board of condemnation appointed under paragraph (1) shall consist of—

(a) a stock verifier; or

(b) not less than 2 officers, one of whom shall be designated chairman.

(3) Except where technical considerations make it unavoidable, no officer of the department responsible for the stores to be condemned shall be appointed to the board of condemnation.

(4) An officer of the Audit Department shall not be appointed to any board of condemnation.

(5) The Financial Secretary shall notify the accounting officer concerned of the appointment of the board of condemnation.

(6) The stock verifier or the chairman of the board of condemnation as the case may be shall notify the accounting officer concerned of the place and time of the inspection of the stores to be condemned.

(7) Any officer appointed to serve on a board of condemnation shall report immediately to the Financial Secretary if he is unable to do so and shall give valid reasons for his inability to serve.

#### **Method of conducting board of condemnation**

87. (1) The board of condemnation shall inspect each item of the stores to be condemned.

(2) The board of condemnation shall identify each item listed and shall determine whether or not the items identified are unserviceable or obsolete.

(3) The accounting officer concerned or any officer authorised by him shall be present during the inspection by the board of condemnation.

#### **Report of board of condemnation**

88. (1) The stock verifier or the chairman of the board of condemnation shall, immediately after the inspection, submit a report signed by himself and, in the case of a board, by the other members of the board, to the Financial Secretary.

(2) Copies of the report shall be sent to the accounting officer concerned and the Auditor General.

(3) The report shall identify the stores which, in the opinion of the board, should be condemned and shall include recommendations for their disposal.

(4) The board shall report on any cases of misuse, abnormal damage or deterioration or any other cause which, in the opinion of the board, have contributed to the unserviceable or obsolete condition of the stores inspected.

(5) The Financial Secretary may after considering the recommendations of the board of condemnation issue such directions as he deems necessary.

#### **Disposal of condemned stores**

89. (1) Accounting officers shall ensure that condemned stores authorised to be written-off and destroyed are disposed of in the manner directed by the Financial Secretary.

(2) The accounting officer concerned shall appoint an officer or officers of his department to carry out the destruction or disposal of the stores.

(3) The stock verifier or a member of the board of condemnation shall witness the destruction or disposal of the stores.

(4) The accounting officer concerned shall prepare a list of the stores destroyed or disposed of for submission to the Financial Secretary together with the following certificate—

“I hereby certify that the stores listed have been destroyed or disposed of by ..... (method of destruction or disposal) ..... in accordance with the Financial Secretary’s directions as given in ..... (reference to authority) ..... dated ..... in the presence of the witness who has signed below.

Signed .....	.....
(witness)	Accounting Officer
Name .....	Designation .....
Designation.....	Department .....
Date .....	Date .....

(5) Copies of the list together with the certificate shall be sent to the Financial Secretary, the Auditor General and the Accountant General.

### **Sale of condemned stores**

**90.** Condemned stores may be sold by public auction, by public tender or in any other manner authorised by the Financial Secretary.

### **Gift of condemned stores**

**91.** Subject to regulation 93, the Financial Secretary may authorise the gift of condemned stores to educational, scientific, cultural or charitable institutions or organisations.

### **Condemnation by accounting officer**

**92. (1)** Notwithstanding any other provisions in these Regulations (but subject to paragraph (4), accounting officers may, in any financial year, condemn and dispose of small quantities of un-expendable stores which normally have a short life (as in the case of glass ware, china, cooking utensils, small tools, and medical instruments, brushes and similar articles.

(2) The accounting officer shall submit a list of the items of stores, including the value of each item condemned and disposed of to the Financial Secretary together with the following certificate—

“I hereby certify that I have personally inspected the stores listed which have become unserviceable through fair wear and tear and that they have been disposed of by ..... (method of destruction or disposals) .....

Signed .....

Accounting Officer

Designation .....

Department .....

Date .....

(3) Copies of the list of stores destroyed or disposed of shall be sent to the Auditor General and the Accountant General.

(4) In any financial year the value of stores condemned or disposed of under paragraph (1) shall, in the case of—

(a) a single item, not exceed \$ .....; and

(b) more than one item, not exceed \$..... .

#### **Accounting for stores destroyed or disposed of**

93. Whenever the destruction, disposal, sale or gift of condemned stores has been authorised by the Financial Secretary or the accounting officer as the case may be, a stores issue voucher shall be prepared by the officer in charge of stores before such stores are removed from stock.

### PART 14

#### LOSSES OF STORES

##### **Definition of loss**

94. In this Part, the term “loss” includes damage or deterioration arising other than from fair wear and tear.

##### **Initial report of loss**

95. (1) An accounting officer shall report immediately to the Financial Secretary any loss of stores which occur in the department for which he is responsible.

(2) An initial report shall be made in every instance whether or not restitution has been made and such report shall not be delayed to enable investigation to be carried out or restitution to be sought.

### Investigation of losses

**96.** An accounting officer shall cause an immediate investigation to be made into any loss of stores occurring in the department for which he is responsible, and in cases where misappropriation, theft or fraud is suspected, he shall report the loss immediately to the Police.

### Final report of loss

**97. (1)** An accounting officer shall, as soon as possible after the investigation into any loss is complete, report to the Financial Secretary on the result of the investigation.

**(2)** Any such final report shall include the following—

- (a) the nature of the loss and the quantity and book value of the stores involved;
- (b) the place and date of the loss;
- (c) the circumstances in which the loss occurred;
- (d) an opinion as to whether the loss was due to a fault in the accounting or store-keeping system;
- (e) a statement on whether misappropriation, fraud, negligence or irregularity was involved;
- (f) the name and designation of the officer or officers responsible for the loss;
- (g) the reasons why internal checks and controls failed to prevent the loss;
- (h) the measures taken or recommended to prevent a recurrence of similar losses;
- (i) an account of any restitution or recovery of the loss;
- (j) advice on any action already taken against the office responsible for the loss;
- (k) recommendations for any disciplinary or other action required;
- (l) a report by the Police, if applicable.

### Write-off of losses

**98.** The Financial Secretary may authorise the write-off of any loss reported to him if he is satisfied that it is just and reasonable to do so.

### Accounting for losses written-off

**99.** A Stores Issue Voucher shall be prepared for any lost stores for which authority to write-off has been granted, provided that, in the case of negligence or other irregularity the value of the stores shall be charged against an advance account in the name of the officer responsible for the loss.

## PART 15

## HANDING-OVER OF STORES

**Procedure for handing-over of stores**

**100. (1)** Whenever a storekeeper or other officer responsible for stores is proceeding on leave or transfer or will be absent from his office for any other reason, the accounting officer responsible for such stores shall arrange for the handing-over of the stores to another officer.

(2) The procedure for handing-over of stores shall be as follows—

- (a) the physical stock of stores shall be checked in detail by the incoming officer and by the outgoing officer and compared with the balances in the stores ledger or inventory;
- (b) the incoming officer and the outgoing officer shall sign a handing-over certificate in the form prescribed for that purpose.

(3) The outgoing officer shall endorse a statement listing any deficiencies or defects found during the handing-over, which shall be attached to the handing-over certificate.

(4) The incoming officer shall submit the handing-over certificate to the account officer immediately after it has been signed.

(5) The outgoing officer shall be responsible for all deficiencies or defects reported at the handing-over.

**Procedure when outgoing officer is unable to attend**

**101. (1)** If the outgoing officer is unable to attend the handing-over because of illness or has been authorised by the accounting officer to leave his office before the handing-over takes place, the accounting officer shall apply to the Financial Secretary for a board of survey to be appointed to survey the stores to be handed-over.

(2) The incoming officer shall be in attendance during the survey and shall sign the handing-over certificate prepared and endorsed by the board of survey.

## PART 16

## LOAN, HIRE AND SALE OF STORES

**Authority for loan or hire of stores**

**102. (1)** Except for the hire of plant and equipment where an authorised procedure and standard hire charges are in operation, no stores may be issued on loan or hire without the prior authority of the Financial Secretary.

(2) Any hiring out of stores shall be supported by an agreement signed by the hirer in a form approved by the Attorney General.

**Accounting for stores on loan or hire**

**103. (1)** The officer in charge of stores shall ensure that stores issue vouchers are prepared and signed by the borrower or hirer in respect of all stores issued on loan or hire.

**(2)** Whenever stores which have been issued on loan or hire are returned into store, such stores shall be accounted for on a stores receipt voucher.

**Authority for sale of stores**

**104. (1)** Stores may be sold by auction, tender or in any other manner authorised by the Minister.

**(2)** The Financial Secretary shall have the power to authorise the sale of stores not exceeding \$10,000 in value.

**Accounting for stores issued on sale**

**105. (1)** The selling price of stores to be issued on sale shall be determined by taking the ledger price and adding a charge of not less than 33 and 1/3 percent for departmental costs.

**(2)** No issue on sale shall be made until the selling prices of the stores have been received in full.

**(3)** A store issue voucher shall be prepared for any stores issued on sale.

## PART 17

## STORAGE AND SECURITY OF STORES

**Storage**

**106. (1)** Stores shall be secured against interference by unauthorised persons.

**(2)** No unauthorised person shall be permitted to enter a store room or building except in the presence of the storekeeper.

**Precautions against deterioration or fire**

**107. (1)** Clothing and other stores susceptible to deterioration by damp or pests or other cause shall be examined regularly and shall be stored above floor level.

**(2)** Fluids in tins or drums shall, whenever possible, be stored above ground level.

**(3)** Inflammable stores and explosives shall be stored in accordance with any legislation relating to such substances or in the absence of any legislation, any instructions issued by the manufacturers of such stores.

## PART 18

## ACCIDENTS

**Appointment of Accident Investigation Board**

**108.** The Financial Secretary shall appoint an Accident Investigation Board to inquire into the causes and costs of any accidents reported to him and to assess the extent of any blame or negligence on the part of any driver or operator responsible for or in control of the vehicle or plant involved.

**Accident reports**

**109.** Whenever an accident involving a Government vehicle or plant occurs, the driver or operator as the case may be shall immediately complete an accident report and submit such report to the accounting officer.

**Assessment of damage**

**110.** The accounting officer, on receiving an accident report, shall refer the report to the officer in charge of the mechanical workshop or garage for an assessment of the damage or damages sustained and an estimate of the cost of repair, or, in the case where the vehicle or plant is beyond repairs, the cost of replacement.

**Report to be submitted to Accident Investigation Board**

**111.** The accounting officer shall submit the accident report together with the assessment made by the officer in charge of the mechanical workshop or garage and police report, if any, to the Accident Investigation Board.

**Proceedings by the Accident Investigation Board**

**112. (1)** The Accident Investigation Board may summon any person to give any evidence or explanation concerning the accident which it may consider to be necessary.

**(2)** The Accident Investigation Board shall submit a report on its findings together with any recommendations as to the action to be taken against the driver or operator responsible for the accident, to the accounting officer.

**Action to be taken**

**113. (1)** The accounting officer shall submit the accident report and the Accident Investigation Board's report together with his recommendations on the extent of any surcharge against the driver or operator responsible for the accident, to the Financial Secretary.

**(2)** Any surcharge imposed on the driver or operator by the Financial Secretary shall be recovered in accordance with any directions given by the Financial Secretary.



**Claims by Government**

**114.** Where the Accident Investigation Board recommends that a claim be made against any person or insurance company in respect of any liability for an accident, the accounting officer shall prepare the claim and submit it to the Attorney General for his approval before it is issued.

**Claims against Government**

**115.** In the event of a claim being made against the Government for liability in respect of an accident, the claim shall be referred immediately to the Attorney General for his advice on the action to be taken.

**Repairs to damaged plant or vehicle**

**116.** As soon as possible after an assessment has been made by the officer in charge of the mechanical workshop or garage and except as may be advised by the Accident Investigation Board or Attorney General, the accounting officer shall proceed to carry out repairs to the vehicle or plant involved in the accident.

## PART 19

## MISCELLANEOUS

**Miscellaneous**

**117.** The Accountant General may prescribe such forms as are required for the efficient working of these Regulations.

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ACCOUNTABILITY) REGULATIONS**  
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**PUBLIC FINANCE (MANAGEMENT AND ACCOUNTABILITY) REGULATIONS –  
SECTION 58**

*(S.R.O.s 35/2009 and Act 9 of 2011)*

**Commencement**

*[1 September 2009]*

**PART 1**

**PRELIMINARY**

**Short title**

1. (1) These Regulations may be cited as the Public Finance (Management and Accountability) Regulations.

(2) These Regulations apply to all financial transactions and business of the Government, and to the management of all public moneys and public property.

**Interpretation**

2. In these Regulations, unless the context otherwise requires—

“**Accountant General**” means the person designated as such under section 8 of the Act;

“**Accounting officer**” means a person designated as such under section 9 of the Act;

“**Act**” means the Public Finance (Management and Accountability) Act;

“**Appropriation Act**” means any Act applying a sum of money out of the Consolidated Fund and Development Fund for the service and development programme for a financial year;

“**assets**” means any item of economic value owned by a Ministry, department or agency of the Government especially that which could be converted to cash;

“**Audit Committee**” means a committee of non-executive status established with the primary function of assisting an accounting officer in his oversight responsibilities by reviewing the financial information to be provided to the various stakeholders, systems of internal control which have been established, and the audit process;

“**Auditor General**” means the person appointed or deemed to have been appointed Auditor General under section 101 of the Constitution;

“**bid**” means an offer to provide or to acquire works, services or supplies or any combination thereof, and shall include pre-qualification where applicable;

“**Consolidated Fund**” means the Consolidated Fund of the Government of Montserrat and includes the Development Fund;

“**corrupt practice**” means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;

- “Department”** means one of the several units in an organisation, such as sections or units for financial management purposes;
- “financial year”** means a period of twelve months ending on 31 March;
- “Financial Secretary”** means a person appointed under the Constitution of Montserrat;
- “fraudulent practice”** means any action or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial benefit or to avoid an obligation;
- “generally accepted accounting practice”** means accounting practices and procedures recognised by the accounting profession in Montserrat, and approved by the Accountant General as appropriate for reporting financial information relating to the Government, a Ministry or department, a fund, an agency or other reporting unit, and which are consistent with the Act and any relevant Appropriation Act;
- “general warrant”** means a warrant issued by the Minister under section 25 of the Act;
- “Government”** means the Government of Montserrat;
- “Head of Department”** means the head of one of the departments or units in a Ministry or Institution, and includes any head of a unit which is regarded by the Financial Secretary or the Legislative Assembly as having departmental status; (*Amended by Act 9 of 2011*)
- “instruction”** means any written directive or order issued under the authority of the Act;
- “internal audit”** means an independent process to measure, evaluate and report to the management of a Ministry, department or other agency of the Government on the efficacy of the system of internal control used to ensure the validity of financial and other information;
- “internal control”** means a set of systems to ensure that financial and other records are accurate, reliable, complete and ensure adherence to the management policies of a Ministry, department or other agency of the Government, the orderly and efficient conduct of the Ministry, department or agency, and the proper recording and safeguarding of its assets and resources;
- “inventories”** are assets in the form of materials or supplies to be consumed in the production process; or in the form of materials or supplies to be consumed or distributed in the rendering of services; or held for sale or distribution in the ordinary course of operations; or in the process of production for sale or distribution;
- “item”** means a thing or unit included in a list or collection;
- “liabilities”** are obligations of a Ministry, department, or agency of the Government arising from events or action, the settlement of which is expected to result in an outflow from that Ministry, agency or department of resources with an economic benefit or service potential;

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

“**outputs**” means goods produced or services provided;

“**pre-qualification**” means a screening process designed to ensure that invitations to bid are confined to capable providers;

“**procurement process**” means the successive stages in the procurement cycle of goods and services including planning, choice of procedure, measures to solicit offers from bidders, examination and evaluation of those offers, award of contract, and contract management as carried out under the Procurement Regulations;

“**programme**” means a collection of activities funded by an appropriation with the aim of creating the impact or impacts set forth in the programmes stated in the economic and fiscal management plan;

“**propriety**” means the requirement that expenditure and receipts must be dealt with in accordance with the intentions of the Legislative Assembly and in particular those expressed through the Public Accounts Committee of the Legislative Assembly; (*Amended by Act 9 of 2011*)

“**provider**” means a natural person or an incorporated body including a consultant, contractor or supplier who provides services in the normal course of business;

“**public moneys**” and “**public funds**” means money that is—

- (a) received or receivable by an Agency;
- (b) raised by an instrument that is issued from an Agency from which it can be reasonably inferred that the Government accepts liability in the case of default;
- (c) spent by an Agency;
- (d) distributed by an Agency to a person for a public purpose.

In this definition “**Agency**” includes ministries, departments, statutory bodies, public organisation and government companies;

“**public officer**” means a person holding or acting in an office in the public service;

“**public organisation**” means an enterprise, authority, body or entity to which section 45(7) of the Act applies;

“**public property**” means resources owned by the Government or in the custody or care of the Government;

“**public service**” means service in any civil capacity of the Government the emoluments for which are payable directly from the Consolidated Fund or directly out of moneys provided by the Legislative Assembly; (*Amended by Act 9 of 2011*)

“**regularity**” means the requirement for all items of expenditure and receipts to be dealt with in accordance with the legislation authorising them, including the Act and any applicable delegated authority, regulations, directives and instructions issued under the Act;

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

“**revenue**” means the total amount of money received by the Government for goods sold or services provided during a certain time period;

“**statutory expenditure**” means expenditure charged on the Consolidated Fund by the Constitution, an Act of the Legislative Assembly or Statute, but does not include the expenditure of moneys appropriated or granted by an Appropriation Act or Supplementary Appropriation Act; (*Amended by Act 9 of 2011*)

“**Supplementary Appropriation Act**” means any Act, the purpose of which is to supplement the appropriation already granted by an Appropriation Act;

“**surcharge**” means a monetary penalty that may be imposed for causing loss to the Government;

“**tender**” means “**bid**”;

“**value for money**” means the economic, efficient and effective utilisation of resources;

“**vote**” means a group of estimates of expenditure, including statutory expenditure, for which an appropriation has been made by an Appropriation Act or a Supplementary Appropriation Act.

## PART 2

### FINANCIAL MANAGEMENT AND CONTROL

#### Compliance with and availability of Regulations

3. It is the duty of all Permanent Secretaries, heads of departments and accounting officers to ensure that all public officers under their control—

- (a) have access to copies of these Regulations; and
- (b) comply, and are otherwise fully conversant, with the procedures and requirements embodied in these Regulations.

#### Power to authorise expenditure

4. (1) In accordance with section 12 of the Act, all public moneys shall be paid into the Consolidated Fund, unless an Act of the Legislative Assembly provides for such moneys to be paid into another special fund or to be retained by a department of the Government that received them for the purposes of defraying expenses of that department. (*Amended by Act 9 of 2011*)

(2) In accordance with section 19 of the Act, the right to authorise public expenditure is vested solely in the Legislative Assembly through the enactment of Appropriation Acts. (*Amended by Act 9 of 2011*)

(3) In accordance with the Constitution and the provisions of the Act, three types of issues may be made from the Consolidated Fund as follows—

- (i) statutory expenditure (for “**Consolidated Fund Services**”);

- (ii) voted expenditure (for “Supply Services”); and
- (iii) expenditure in advance of the Appropriation Act.  
(Amended by Act 9 of 2011)

### **Voted expenditure**

5. (1) The Appropriation Act, incorporating the approved estimates of expenditure, constitutes the means by which the Legislative Assembly exercises control over the expenditure of public moneys by the Government during the year to which the expenditure relates. (Amended by Act 9 of 2011)

(2) Upon the approval of the estimates and the enactment of the relevant Appropriation Act, the expenditure for the year is held to be definitely arranged in accordance with the Votes and account classifications; and such expenditure—

- (a) is to be limited by the provision in each item shown in the estimates of expenditure; and
- (b) can only be increased or varied by the Legislative Assembly or in accordance with the provisions of the Act or under general or specific authority delegated by the Legislative Assembly.  
(Amended by Act 9 of 2011)

(3) The allocation of funds under a vote is controlled by the Minister under the authority of section 19 of the Act, and any variation in the amount allocated shall have the prior approval of the Minister.

### **Expenditure in Advance of Appropriation**

6. Where the Appropriation Act has not come into force at the commencement of any financial year, the Minister may, by provisional warrant under his hand, addressed to the Accountant General, authorise a withdrawal from the Consolidated Fund for the purposes of meeting the expenditure necessary to carry on the services of the Government until the expiration of four months from the beginning of that financial year, or the coming into operation of that Act, whichever is earlier.

### **Legislative control of revenue**

7. Public revenue is subject to control by the Legislative Assembly in the sense that the revenues from any source and the circumstances in which they are required to be paid are controlled by the Legislative Assembly by the enactment of the relevant Acts and promulgation of appropriate statutory instruments. (Amended by Act 9 of 2011)

### **Expenditure in respect of public debt**

8. For the avoidance of doubt, in no circumstances may public moneys be spent if their expenditure would contravene—

- (a) the terms and conditions attached to any grant or loan received or accepted by the Government from any other Government, Institution or authority; or

- (b) any instructions regulating the issue of money from that Government, Institution or authority's funds;

and where the terms of any grant or loan prescribe that specified procedures should be followed, those procedures shall take precedence over the procedures prescribed in these Regulations for the expenditure of such moneys.

### PART 3

#### DUTIES AND RESPONSIBILITIES OF THE MINISTER, MINISTRIES, ETC.

#### **Duties and responsibilities of the Minister**

9. (1) The Minister is responsible for—

- (a) the development and implementation of the macro-economic and fiscal policies and plans of the Government as outlined in the directions or instructions;
- (b) ensuring the Legislative Assembly is kept fully informed of the state of the economy of Montserrat; (*Amended by Act 9 of 2011*)
- (c) enhancing the control of the Legislative Assembly over public moneys, public property and public resources; and (*Amended by Act 9 of 2011*)
- (d) the supervision, control and direction of all matters relating to the financial affairs of the Government.

(2) Without limiting the generality of sub-regulation (1) of this Regulation, the Minister is responsible for—

- (a) the co-ordination of international and inter-governmental financial and fiscal relations;
- (b) advising the Government on the total of resources to be allocated to the public sector in the light of the Government's economic objectives and the economic and financial environment of Montserrat;
- (c) advising the Government on the level of resources appropriate for individual programmes, taking account of the Government's policies and commitments;
- (d) management of the Consolidated Fund and the supervision and control of all matters relating to the financial affairs of the Government;
- (e) ensuring the maintenance of systems both centrally and in Ministries, and departments for the planning, allocation, budgeting and control of resources;
- (f) ensuring that goods and services procured by the Government are done in a fair, equitable and cost-effective manner;

- (g) supervising the use of resources by the Government to ensure that they are used economically, efficiently and effectively and that value for money is achieved; and
- (h) approving the estimates of revenue and expenditure for presentation to the Legislative Assembly. (*Amended by Act 9 of 2011*)

(3) For the purposes of discharging the responsibilities specified in subregulations (1) and (2), the Minister is empowered under section 6 of the Act to give instructions or directives that may appear to him to be necessary and expedient.

#### **Duties and responsibilities of Ministries, Departments, Agencies, etc.**

10. (1) The primary responsibility of a Ministry, department or agency of the Government is to execute the policies of the Government and its statutory functions in the most economic, efficient and effective manner within its overall financial allocation and any cash or other financial limits imposed by the Minister.

(2) A Ministry, department or agency referred to in subregulation (1) shall ensure that—

- (a) all resources, including money, human capital and capital assets are allocated and deployed to best effect;
- (b) steps are taken to minimize—
  - (i) risks;
  - (ii) liabilities; and
- (c) all control totals such as those contained in the approved estimates and warrants are strictly observed.

(3) It is the responsibility of a Ministry, department or agency of the Government to co-operate with the Ministry responsible for finance regarding the provision of information to enable proper and effective advice to be given to the Minister on the effective discharge of his duties and responsibilities as specified in the Act and Regulation 9.

(4) For the purposes of subregulation (3), Ministries, departments and agencies of the Government shall, in particular—

- (a) consult with the Financial Secretary for his approval on any new proposals which would commit the Government to find additional resources, before submitting a Cabinet Memorandum to the Governor acting on the advice of Cabinet.
- (b) consult with the Financial Secretary at a formative stage in policy discussions which could have substantial implications on public resources.

(5) In accordance with section 9 of the Act, responsibility for the discharge of the duties specified in this Regulation rests on accounting officers designated by the Financial Secretary with the prior approval of the Minister.

## PART 4

DUTIES AND RESPONSIBILITIES OF FINANCIAL SECRETARY,  
ACCOUNTANT GENERAL, ACCOUNTING OFFICERS AND AUDITOR GENERAL**The Financial Secretary**

11. (1) The Financial Secretary is responsible —

- (a) to the Minister for the effective application of the provisions of the Act, these Regulations and any instructions or directives issued under the Act;
- (b) for ensuring that the needs of the Minister in the discharge of his responsibilities are responded to and in particular that prompt and effective advice is made available to the Minister.

(2) For the purpose of discharging his duties under the Act and these Regulations and to ensure compliance with any instruction or direction issued under the Act, the Financial Secretary or any person authorised by him may at all times —

- (a) inspect any offices of the Government and have access to all books, records and other information;
- (b) require any accounting officer to provide any information, document or records relating to public moneys or public property he may require;
- (c) require any accounting officer or head of any entity which manages any assets of the Government to supply information necessary to enable the Minister to meet his obligations under Regulations 9;
- (d) within the limitations imposed by the Act and these Regulations, give such directions and instructions as he may consider necessary for the advantage, economy and safety of public resources.

(3) An accounting officer shall consult the Financial Secretary on any matter concerning the application of the Act and these Regulations, and bring to his attention any defect in the Act or these Regulations which may result in a diminution of control over the assets and finances of the Government.

(4) The Financial Secretary is particularly responsible for ensuring that—

- (a) an effective system is in place for the collection of information to ensure the timely and effective preparation of the annual estimates of revenue and expenditure for consideration and approval by the Minister and submission to the Legislative Assembly; and (*Amended by Act 9 of 2011*)
- (b) the annual estimates are prepared in accordance with any general or specific direction of the Minister and that they reflect, as can best be ascertained at the material time, value for money in the use of Government's resources.

(5) Subject to section 7(5) of the Act, these Regulations and any directives or instructions issued under the Act, the Financial Secretary may give directives and



instructions he considers necessary for the effective and efficient discharge of the intents and purposes of the Act.

### **The Accountant General**

**12. (1)** The Accountant General is responsible for the compilation and management of the accounts of the Government and the safety of the public moneys, property and resources, and is the chief adviser to the Financial Secretary and the Minister on accounting matters.

**(2)** For the purposes of discharging his duties and responsibilities under sub-regulation (1), the Accountant General shall—

- (a)* define and approve the basis of accounting and the system of accounts to be established in each Ministry, department and agency of the Government, and to issue written orders and instructions and to provide the guidance necessary to ensure the application of the basis of accounts and the maintenance of those systems of accounts;
- (b)* ensure that a classification system, compatible with an internationally recognised system of national accounts and these Regulations, is established and maintained and ensure that all moneys paid or received by the Government are fully, promptly and properly brought to account in accordance with that system;
- (c)* supervise the expenditure and other disbursements of the Government to ensure compliance with the provisions of any law, regulation or instruction in respect of that expenditure and for this purpose he shall—
  - (i)* ensure that effective systems are established in the Ministries, departments and agencies of the Government which record all commitments and transactions entered into by accounting officers;
  - (ii)* ensure that effective systems are established which facilitate the prompt settlement of any commitment properly incurred by accounting officers;
  - (iii)* ensure that the system of internal control in every Ministry, department, fund, agency or other reporting unit required to produce accounts under section 41 of the Act is appropriate to the needs of the Ministry, department, fund, agency or reporting unit concerned and conforms to internationally recognised standards;
  - (iv)* ensure that the internal audit function in each Ministry, Department, fund, agency or other reporting unit required to produce accounts under section 41 of the Act, is appropriate to the needs of the Ministry, department, fund, agency or other reporting unit concerned and such a function conforms to internationally recognised standards;
  - (v)* reject any payment which he considers wrong or deficient in content, or that contravenes the provisions of the Constitution,

- the Act, these Regulations or any directives or instructions properly made or given under the Act, or that is in any way unacceptable in support of a charge on public funds;
- (vi) report to the Financial Secretary in writing, any expenditure or disbursement which after due enquiry appears to him to be excessive, extravagant or unauthorised;
  - (d) ensure that adequate provision is made for the safe custody of public moneys, stamps, securities, revenue receipt books, licenses and other documents of value;
  - (e) exercise supervision over the collection of public revenue by accounting officers to ensure that it is promptly collected and accounted for; and in the performance of this duty the Accountant General shall ensure that he obtains regular returns of revenue from accounting officers;
  - (f) carry out sufficient checks, including surprise inspections in all Ministries, departments and other offices, to ensure that all regulations, orders, directions and instructions relating to the receipt, disbursement, safety, custody and control of public moneys, stamps, securities, stores and other public property are being complied with, and to ensure that the accounts and controls provide full and effective protection against losses or irregularities;
  - (g) report to the Financial Secretary in writing any defects in the custody, control or collection of public moneys, stamps, securities, stores and other public property;
  - (h) ensure that the financial terms and conditions of any trust, loan, grant or grant-in-aid are fully complied with;
  - (i) prepare promptly and accurately all financial statements and returns for which he is responsible and to render the accounts promptly for audit;
  - (j) report annually to the Financial Secretary, copied to Auditor General, on the discharge of his duties under the Act, together with the reports required under section 41 of the Act, and identifying—
    - (i) the basis of the standards required by section 8(3)(a) of the Act; and
    - (ii) any defect, shortcoming or other factor which in his opinion has affected materially the Minister's responsibility under section 4 of the Act.
  - (k) in accordance with section 8(2)(a) of the Act, issue instructions in respect of compilation and management of the accounts of the Government;

### Accounting officer

**13. (1)** Pursuant to section 9 of the Act, the Financial Secretary shall designate an accounting officer in writing with the prior approval of the Minister, to be personally and pecuniary responsible for each vote of revenue and expenditure; and the accounting officer shall have overall responsibility and accountability for the collection and receipt of all revenue or for all disbursements of expenditure under his control.

**(2)** Without limiting the generality of subregulation (1), an accounting officer shall prepare in consultation with the Minister, economic and fiscal programmes and work plans for his Ministry, department or agency for such periods as may be specified by the Minister—

- (a) prepare and sign the appropriation and other accounts assigned to him, and in doing so accepts personal responsibility for their proper presentation in accordance with the provisions of the Act or as approved by the Accountant General;
- (b) ensure that the financial procedures established by the Act, these Regulations and any instructions issued under the Act and these Regulations are followed and that accounting records are maintained in a form approved for accounting purposes;
- (c) ensure that the public moneys, property and resources for which he is responsible as accounting officer are properly managed and safeguarded;
- (d) ensure effective systems of internal control are in place in respect of all transactions and resources under his control;
- (e) ensure that, in the consideration of policy proposals relating to the income or expenditure for which he is accounting officer, all relevant financial considerations are taken into account, and where necessary brought to the attention of his Minister;
- (f) report to the Financial Secretary with a copy to the Accountant General and the Auditor General, any cases of apparent waste or extravagant administration or failure to achieve value for money in addition to any weakness in financial procedures;
- (g) produce when required by the Financial Secretary, or the Auditor General or Accountant General or by such public officers as may be authorised by them, all cash, stamps, books, records or vouchers in his charge;
- (h) reply substantively to any queries addressed to him by the Auditor General and Accountant General and within any time period prescribed or specified in the Act;
- (i) ensure that there are efficient and effective arrangements for revenue collection from the public;
- (j) ensure steps are taken to minimize—
  - (i) risk;

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(ii) liabilities.

- (k) keep the Financial Secretary, the Auditor General and the Accountant General suitably informed of any new financial procedures, or other aspects of the administration of his Ministry, department or agencies, that may assist him in carrying out his statutory duties.

(3) An accounting officer may authorise in writing other public officers under his control to exercise or perform such part of his powers and duties as he may think fit; and the limits of any such delegation shall be set out sufficiently clearly and unequivocally to avoid dispute or misunderstanding.

(4) A delegation under subregulation (3) shall not relieve the accounting officer of any of his responsibilities under the Act and these Regulations.

### **The Auditor General**

14. The appointment, powers and duties of the Auditor General are specified in the Audit Act.

## PART 5

### LOSSES

#### **Register of losses in Ministries, departments, etc.**

15. (1) All losses incurred by or in any Ministry, department or agency of the Government shall be brought to the attention of the Accountant General who, as the chief accountant of the Government, shall keep a register of such losses; and the Accountant General shall soon after the end of each financial year, prepare a statement of the losses for submission to the Auditor General as part of the accounts for each financial year concerned.

(2) A register of all losses incurred by or in any Ministry, department, or agency of the Government, showing the nature of the loss and action taken, shall be maintained by each Ministry, department or agency.

#### **Nature of losses**

16. Loss of public stores and property will include damage and deterioration which cannot be attributed to fair wear and tear.

#### **Cash and store losses**

17. (1) Cash losses may take the form of—

- (a) losses of cash by fraud, theft, errors, omissions, un-collectable arrears of revenue, or other irregularities, including unauthorised or excess payments; and
- (b) losses of cash through fire, caused deliberately or otherwise and other natural disasters.

(2) Store loss may take the form of—

- (a) losses of stores by fraud, theft, arson, errors, omissions, sabotage or other irregularities;
- (b) losses from fire caused deliberately or otherwise, stress of weather or accident beyond the reasonable control of any responsible person;
- (c) losses due to deterioration in store, arising from a defect in administration; and
- (d) losses due to natural causes such as evaporation.

### **Losses through claims waived or abandoned**

**18.** Losses of public moneys or resources through claims waived or abandoned may occur where—

- (a) a claim either for services rendered by the Government or for an actual contractual or other legal obligation of a contractor or other person to the Government is not made or pursued or is waived or abandoned by the Ministry, department or agency of the Government concerned;
- (b) a claim such as is described in paragraph (a) is made but payment is not received.

### **Losses through nugatory payments**

**19.** Losses of public moneys may also occur through nugatory payments if the payment is unavoidable and there is no benefit to the Government, such as a payment of a retainer for professional services where these services are not in fact used, a payment for accommodation rented but not used or a payment for goods wrongly ordered or accepted through irregularity or negligence other than an error of judgment.

### **Unauthorised or excess payment**

**20.** Any payment which has not been properly authorised under an Appropriation Act shall be treated as a large or unusual loss and shall be referred to the Board of Enquiry established under these Regulations; and any such referral shall not affect the opinion of the Auditor General and his obligation to report that loss to the Legislative Assembly. (*Amended by Act 9 of 2011*)

### **Loss of accountable documents**

**21.** Loss of accountable documents such as stamps, fixed fee receipts or licenses, should be treated as a loss of cash and dealt with under these Regulations; however in the case of the loss of accountable documents such as miscellaneous receipts, invoices and orders, which do not have a predetermined value but which nevertheless might be misused if they fell into the wrong hands—

- (a) the loss shall be reported immediately to the Accountant General and the Auditor General; and
- (b) a notice in a form approved by the Attorney General shall be placed in the local print and electronic media, advising the public not to accept documents bearing the serial numbers of the documents in question.

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**Action by public officers on discovery of losses**

22. (1) It is the duty of every accounting officer to ensure that there is a mechanism in place for prompt detection and reporting of losses.

(2) Any public officer who becomes aware of any loss shall at once report the loss to the appropriate accounting officer, and in the report describe the nature, amount and circumstances of the loss, shortage, damage or destruction.

(3) The accounting officer shall report the losses, in writing, to the Financial Secretary, copied to the Accountant General and Auditor General.

(4) Any loss whether restituted or not shall be reported promptly, and no report may be deferred on grounds of conducting an investigation.

(5) Immediately on receipt of the report of any loss, the accounting officer shall investigate the loss; and where he has reason to suspect that a crime has been committed such as misappropriation, theft or fraud, he shall also make an immediate report to the Police.

(6) After investigating the loss, the accounting officer shall submit a full report to the Financial Secretary with copies to the Accountant General and the Auditor General.

(7) The report referred to in subregulation (6) shall be signed personally by the accounting officer concerned and shall state the following—

- (a) the nature of the loss;
- (b) the amount involved;
- (c) the place, and, if known, date on which the loss occurred;
- (d) the date and if applicable, time of discovery of the loss;
- (e) the exact circumstances in which the loss arose;
- (f) whether the loss was the result of a failure to observe current regulations or accounting instructions;
- (g) whether the loss was due to a fault in the accounting system;
- (h) whether the loss was discovered as the result of the internal control and if not, why the internal control failed to reveal it;
- (i) whether misappropriation, fraud, negligence or other irregularity was involved;
- (j) the name and designation of the public officer considered to be responsible for the loss;
- (k) whether that public officer has made good the loss;
- (l) whether that public officer's suspension or interdiction from duty is recommended;
- (m) whether disciplinary or surcharge action in accordance with Part 10 of the Act is recommended and against whom and, if not, why not;

- (n) whether the loss was reported to the police, if so, a police report should be attached; and
- (o) the measures taken or recommended to prevent the recurrence of a similar loss or shortage.

(8) In any other case of loss such as when an overpayment occurs which cannot be recovered or in which revenue or other debt due to the Government is deemed un-collectable, the accounting officer shall submit a full report to the Financial Secretary, with a copy to the Accountant General and to the Auditor General.

(9) The report referred to in subregulation (8) shall be signed personally by the accounting officer and shall state the following—

- (a) the nature of the overpayment, revenue or other debt;
- (b) the name and designation of the public officer who made the overpayment or is responsible for the failure to collect the revenue or debt;
- (c) the amount involved, supported where appropriate by detailed lists showing the names of the defaulters, the amounts outstanding in each case, and in the case of revenue the year in which it was due, and the dates on which demands and reminders were dispatched;
- (d) the reasons why the overpayment occurred or the revenue or other debt cannot be recovered;
- (e) the action taken to recover the overpayment, revenue or debt, including any legal means taken, whether this is considered to have been adequate, and the action taken by the accounting officer personally;
- (f) whether the overpayment or failure to collect arose from a failure to observe current accounting instructions or from a fault in those instructions or in the accounting system;
- (g) whether the amount involved has been made good by the public officer responsible;
- (h) whether disciplinary or surcharge action in accordance with Part 10 of the Act is recommended and against whom and, if not, why not; and
- (i) the measures taken or recommended to prevent the recurrence of a similar overpayment or failure to recover revenue or debts.

### **Establishment of a Board of Enquiry**

23. (1) The Financial Secretary may establish a Board of Enquiry to investigate the circumstances of any large or unusual losses referred to it by the accounting officer.

(2) The Board of Enquiry shall comprise at least three members, who shall not be employees of the same Ministry or department, appointed by the Financial Secretary.

(3) With respect to cases which have been reported to the Police and in respect of which criminal action is pending, action by the Board of Enquiry shall, subject to any written law, be deferred until such proceedings have been completed or discontinued.

(4) The Financial Secretary shall maintain a register showing details of all cases referred to Boards of Enquiry and their disposal, and shall circulate copies of all referrals as necessary.

(5) The Board of Enquiry may meet at the time and place most suitable for the purpose of its enquiry; but it shall hold its first meeting within seven working days of any referral.

(6) The Board may regulate its own procedure and take evidence from such persons as it may consider appropriate, either orally or in writing, except that such evidence shall not be taken on oath.

(7) On completion of its enquiries the Board shall, without delay, report its findings to the Financial Secretary with copies to any accounting officer concerned, and circulate as necessary.

(8) The report referred to in subregulation (7) shall include—

- (a) a statement of the amount and nature of the shortage; and if the amount cannot be established precisely, the Board shall estimate it, giving the basis on which the calculation has been made;
- (b) an opinion on whether the system or its application was at fault, together with recommendations for any corrective action which should be taken to prevent the recurrence of a similar loss or shortage;
- (c) whether police or legal action was taken in respect of the loss or shortage and, if so, the details and outcome of the action;
- (d) an opinion on who, if any, was responsible for the loss or shortage, the degree of that responsibility and if more than one person was responsible, the apportionment of the loss;
- (e) whether disciplinary or surcharge action is recommended and against whom and, if not, why not; and
- (f) any other matters which the Board considers should be brought to the attention of the Financial Secretary.

(9) In the case of any loss, overpayment or failure to collect monies due to Government in which defects in systems, procedures, or instructions appear to have been either wholly or partially responsible, action to correct the fault shall be taken immediately by the relevant accounting officer, Accountant General or Financial Secretary as appropriate; and such action should not be deferred pending the decision on whether to write-off the amount or recover it from the public officer responsible.

#### **Action to be taken by Minister in respect of losses**

**24. (1)** In the light of the reports submitted under Regulation 23(7) and (8) of these Regulations and any report of the Board of Enquiry under Regulation 23 of these



Regulations and the results of any Police or legal action, the Financial Secretary shall make recommendations to the Minister who shall decide whether—

- (a) the amount involved in any loss should be written-off; or if outside his powers, be recommended for write-off; or
- (b) disciplinary or surcharge action should be taken against the public officer considered to be responsible for the loss.

(2) The Minister's decision or recommendation under subregulation (1) shall be in writing and communicated by the Financial Secretary to the accounting officer concerned, the public officer considered to be responsible for the loss or shortage, the Accountant General, the Auditor General and, where appropriate, the Secretary to the Board of Enquiry.

(3) Where it is decided that disciplinary action should be taken against the public officer considered to be responsible for the loss, the matter shall be referred to the responsible authority under the public service law. However if a surcharge is the sanction to be applied, the Financial Secretary shall determine the amount of the surcharge—

- (a) bearing in mind the amount of the loss sustained by the Government; and
- (b) in accordance with Part 10 of the Act.  
*(Amended by Act 9 of 2011)*

(4) The Financial Secretary shall, in writing, notify the public officer concerned of the Minister's decision, and send a copy of the notification to the relevant accounting officer, the Accountant General and the Auditor General.

(5) The notification shall call upon the public officer concerned, within such period as the Financial Secretary may determine, being not less than thirty days from the date the notification is received by the public officer, to show cause why he should not be surcharged with the amount determined under subregulation (3).

(6) On receipt of the reply by the public officer, the Financial Secretary shall confirm, reduce or remit the surcharge and advise the Minister who shall review the decision of the Financial Secretary, and no action shall be taken to implement the decision of the Financial Secretary until such review is completed and the decision confirmed, varied or set aside or reversed by the Minister.

(7) The decision of the Minister shall be communicated by the Financial Secretary to the public officer concerned, the relevant accounting officer, the Accountant General and the Auditor General.

(8) The amount of any surcharge imposed by the Financial Secretary and confirmed by the Minister shall—

- (a) subject to any counterclaim by the public officer in the courts, or any judicial review by the courts; and
- (b) subject to the provisions of Part 10 of the Act,

be recovered as a civil debt due to the Government, and may be deducted from any salary or other amount due by the Government to the public officer concerned.

(9) The Minister's powers under subregulation (1) may be delegated by the Minister to the Financial Secretary in writing.

## PART 6

### INTERNAL AUDIT AND AUDIT COMMITTEES

#### Internal Auditing

25. (1) In order to discharge his responsibilities under these Regulations, an accounting officer shall engage the services of the Internal Audit Unit to carry out an effective internal audit function throughout the Ministry, department or agency or other reporting unit of the Government for which he is responsible.

(2) The Accountant General shall ensure that the internal audit function in each Government Ministry, agency, or other reporting unit required to produce accounts under section 41 of the Act is appropriate to the needs of the organisation concerned and conforms to internationally recognised standards in respect of its status and procedures.

(3) The Accountant General shall seek to ensure that the internal audit function is capable of operating independently from the management of a Ministry, department or agency, and that no limitation is placed on its access to information.

(4) As far as practical, an accounting officer shall ensure that all such recommendations of the internal auditor are enforced and/or implemented.

#### Duties of the internal audit function

26. (1) The duty of the internal audit function in a Ministry, department, agency or unit of the Government is to appraise the soundness and application of accounting, financial and operational controls and in particular review and report on—

- (a) proper control over the receipt, custody and utilisation of all financial resources of that unit;
- (b) conformity with financial and operational procedures laid down in any legislation or any regulation or instruction issued under such legislation and good accounting practice as from time to time defined by the Accountant General for incurring obligations and authorising payments and which ensure effective control over the expenditure of the unit;
- (c) the correct classification and allocation of revenue and expenditure accounts;
- (d) the reliability and integrity of financial and operating data so that information provided allows for the preparation of accurate financial statements and other reports for the information of the unit and the general public and as required by legislation;
- (e) the systems in place used to safeguard assets, and, as appropriate, the verification of the existence of such assets;

- (f) operations or programmes to ascertain whether results are consistent with established objectives and goals and on the attainment of value for money;
- (g) the adequacy of action by management in response to internal audit reports, and assisting management in the implementation of recommendations made by those reports and also, where appropriate, recommendations made by the Auditor General;
- (h) achievement of approved Ministry, departmental and agency objectives outlined in their work plans along with their implications and consisting with the government of Montserrat overall macro-economic and fiscal programme;
- (i) identifying risks to systems, procedures and programmes undertaken by any public organisation;
- (j) the adequacy of controls built into computerised systems in place in the unit; and
- (k) any other matters as assigned by the accounting officer.

(2) The responsibility of the internal auditor for checking and reporting risk, shortcomings in connection with the accounts, finances and related operations of the Ministry, department or agency, does not absolve any public officer from responsibility for complying, or securing compliance with instructions within the scope of his own authority.

(3) The prevention, detection and investigation of fraud are the responsibility of management, although in conducting audit assignments the internal auditor shall be alert to opportunities, such as control weaknesses that could allow fraud; and where fraud is suspected, the appropriate authorities within the department shall be informed.

### **Audit Committees**

27. (1) In accordance with section 9 of the Act, an accounting officer may, and shall if so required by the Minister or in the case of a person responsible for a non-ministerial department, establish and maintain an Audit Committee, which shall have such composition, powers and duties as may be determined by the Minister.

(2) Without prejudice to subregulation (1)—

- (a) the scope, purpose, powers and constitution of an Audit Committee shall be in accordance with guidelines approved in the Charter for Audit Committees as approved by the Minister; and
- (b) the Audit Committee shall assist the accounting officer in carrying out his oversight responsibilities relating to financial practices, internal controls, corporate governance issues, compliance with laws, regulations and ethics and all audit matters.

### **Duties and responsibilities of Audit Committee**

28. (1) The Audit Committee shall function in an advisory capacity to the accounting officer, but its powers shall not be limited in any way which would prevent

it from properly performing its advisory duties, and for this purpose, the Audit Committee shall have unrestricted access to records and employees to obtain information needed to perform its duties.

(2) Without limiting the generality of Regulation 27 and sub-regulation (1), the duties of an Audit Committee are to—

- (a) advise on strategic and operational plans of the internal audit function;
- (b) liaise and work closely with the Office of the Auditor General, the Attorney General, the Police and the Board of Enquiry established under Regulation 23;
- (c) discuss with accounting officers, audit findings and recommendations, and to review and monitor implementation of the recommendations;
- (d) through the Chairperson of the Audit Committee, represent concerns of the internal audit to the relevant accounting officer, the Accountant General, the Financial Secretary or the Minister;
- (e) facilitate risk assessment to determine the amount of risk exposure of the entity's assets and the probability of loss occurring with a view to mitigating the risks;
- (f) review arrangements established by the accounting officers for compliance with regulatory and financial reporting requirements; and
- (g) review the financial statements prepared by the accounting officers to ensure that disclosure is adequate and fair presentation is achieved.

(3) The Audit Committee shall comprise of a minimum of three persons, all of whom shall be appointed as outlined in Regulation 27 and shall have relevant qualifications, knowledge and competence and moral integrity required to carry out their duties.

(4) The scope, purpose, constitution and authority of the Audit Committee shall be in accordance with guidelines issued and approved by the Financial Secretary.

## PART 7

### CONSOLIDATED FUND

#### **Annual estimates and macro-economic and fiscal policy**

29. (1) For the purpose of discharging his duties and responsibilities under section 3 of the Act, the Minister shall provide the information to the Legislative Assembly which includes —

- (a) a statement of macro-economic policy;
- (b) estimates of all revenue to be raised during the financial year to which the budget relates;
- (c) estimates of total recurrent expenditure for the financial year;

- (d) estimates of interest and debt servicing charges, and any repayments on loans;
- (e) estimates of capital expenditure for the financial year and future financial years broken down by project or categories, and the recurrent operating or maintenance costs arising from such projects;
- (f) proposals for financing any anticipated deficit;
- (g) intentions regarding borrowing and other forms of public liability; as allowed and that will increase public debt during that financial year and for three financial years;
- (h) the projected revenue, expenditure and any borrowing for the financial year that will be ending shortly after the budget is tabled; and
- (i) such other details as are necessary to ensure that the comprehensiveness and transparency of the information supplied enables the Legislative Assembly to arrive at informed decisions.

*(Amended by Act 9 of 2011)*

(2) In respect of proposed issues from the Consolidated Fund and other public moneys or funds, the Financial Secretary shall, each year, at an appropriate time, issue a budget call circular requiring all accounting officers to submit by specified dates detailed proposals, applications, requirements and all other explanations relevant to their staff establishment, their anticipated revenue, anticipated expenditure and the anticipated outputs of the following year and to prepare and submit draft estimates in the required form for the revenue and expenditure and outputs for which they are responsible.

(3) The budget call circular shall also communicate to accounting officers ceilings of proposed expenditure as approved by the Minister.

(4) To ensure that the budgetary processes are not delayed and, in particular, that the Legislative Assembly has sufficient time to complete its scrutiny of the proposals and to ensure that the Minister can lay the annual estimates before the Legislative Assembly before the commencement of each financial year, accounting officers shall comply strictly with the timings set out in the budget call circular. *(Amended by Act 9 of 2011)*

(5) Accounting officers shall comply strictly with the timings set out in the budget call circular to ensure that the budgetary processes are not delayed and, that the Legislative Assembly has sufficient time to complete its scrutiny of the proposals and the annual estimates before the commencement of each financial year. *(Amended by Act 9 of 2011)*

(6) Any proposals submitted by an accounting officer outside the deadlines set in the budget call circular may be referred to the Head of the Public Service for disciplinary action.

### Corrections

30. (1) Accounting officers shall have an opportunity to make corrections to the draft estimates when they are being considered by the Legislative Assembly at the

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Committee stage; and accounting officers who wish to make such corrections shall seek the approval of the Speaker and the appropriate Minister to do so in writing or in person. (*Amended by Act 9 of 2011*)

(2) This Regulation shall apply to the correction of minor errors or omissions in the budget submissions, and it is not intended to accommodate significant reallocations or adjustments within the budget of votes.

### Estimates of revenue and expenditure

31. Estimates of revenue and expenditure shall be prepared in accordance with budget instructions issued by the Financial Secretary after consultation with the Minister and shall be arranged according to an accounts classification system approved by the Accountant General.

### Ambit of vote

32. (1) The purposes of expenditure under each head and the services to be provided under it must be outlined in a preamble to the head, which forms the ambit of the relevant vote.

(2) The ambit of a vote sets out a formal description of the nature of the transactions to be financed from the vote, and the wording of the ambit is incorporated in the annual Appropriation Act and therefore provides the statutory description in that Act of the purpose for which the funds sought in the estimate are granted.

(3) By virtue of subregulation (2)—

- (a) no expenditure may be charged to a head which does not fall within the ambit of a vote;
- (b) the Appropriation Act shall not be used to extend the statutory functions of a Ministry, department or agency of the government; and
- (c) expenditure on a new transaction which is outside the ambit of a vote shall not proceed unless the approval of the Legislative Assembly is obtained through a Supplementary Estimate which proposes to change the ambit as necessary. (*Amended by Act 9 of 2011*)

(4) Each estimate shall state the Ministry or department and the accounting officer responsible for accounting for the Vote and set out the gross provision sought in the estimates by item; this is because although the Legislative Assembly approves expenditure by vote it controls it by item. (*Amended by Act 9 of 2011*)

## PART 8

### DEVELOPMENT FUND

### Definition

33. (1) In this Part—

**“Development Programme”** means a programme of economic and social development and approved by the Governor acting on the advice of Cabinet and laid in the Legislative Assembly:

Provided that, in the absence of a Development Programme the annual estimates of expenditure from the Development Fund as passed by the Legislative Assembly shall constitute the Development Programme for the financial year to which such estimates relate; (*Amended by Act 9 of 2011*)

**“development project”** means a project, scheme or programme of work contained in a Development Programme or a project of the Government for economic or social development which is not contained in a Development Programme but which has received the approval as such of the Governor acting on the advice of Cabinet;

**“Fund”** means the Development Fund established by section 13 of the Act.

(2) The terms and expressions set out in section 2 of the Act shall, where they occur in this Part, have the meanings assigned to them by that section and shall be construed accordingly. (*Amended by Act 9 of 2011*)

### **Use of the Fund**

**34.** No provision shall be made for expenditure to be charged on the Fund other than for the purpose of a development project.

### **Payments out of the Fund**

**35. (1)** No moneys shall be paid out of the Fund except where the payment of those moneys has been authorised by an Appropriation Act or by a warrant under the hand of the Minister given in accordance with the provisions of the Act or this Part.

(2) No expenditure chargeable on the Fund shall be incurred in anticipation of the receipt of any grant or loan, other than a loan authorised by law, without the consent of the grantor or lender as the case may be.

### **Fund not to be overdrawn**

**36. (1)** The liabilities of the Fund shall at no time exceed the assets.

(2) Without prejudice to the generality of the powers and duties conferred and imposed upon the Accountant General by section 8 of the Act, the Accountant General shall refuse payment on any voucher the encashment of which would cause the unspent balance of the Fund to become overdrawn.

### **Conditions attached to grants or loans to be observed**

**37.** Any conditions which may be attached to any grant or loan of moneys which by virtue of section 13 of the Act are paid into the Fund shall be observed and shall have effect in relation to the moneys so granted or loaned as if the same were prescribed under this Part.

### Annual Estimates

**38. (1)** The Minister shall cause to be prepared before the commencement of each financial year estimates of the revenue and expenditure of the Fund and such estimates shall form part of the annual estimates of revenue and expenditure of the Government to be laid before the Legislative Assembly as required by section 19(1) of the Act. *(Amended by Act 9 of 2011)*

- (2)** The estimates of expenditure from the Fund shall—
- (a)* conform with the requirements of section 19 of the Act; and
  - (b)* assign a separate subhead of expenditure (which may contain one or more items) for each development project provided for therein and the various subheads shall be grouped under development fund votes according to the Ministries and departments responsible for carrying out the development projects concerned; and
  - (c)* in respect of each development project provided for therein show—
    - (i)* the estimates of total cost;
    - (ii)* the total actual expenditure to the end of the previous financial year;
    - (iii)* the approved estimate for the current financial year;
    - (iv)* the sum required for the following financial year.
- (3)** The estimates shall be accompanied by a statement showing—
- (a)* the estimated assets and liabilities of the Fund and the estimated balance at the commencement of the following financial year; and
  - (b)* the estimated total revenue accruing to and the estimated total expenditure from the Fund during such financial year.

### Supplementary Estimates

**39.** If in the course of any financial year it is found—

- (a)* that the sum appropriated for that financial year for any development project by an Appropriation Act is insufficient; or
- (b)* that a need has arisen to proceed with a development project for which no sum has been appropriated in that financial year, a supplementary estimate (substantially in the form prescribed by section 20(2) of the Act of the sum required to meet such deficiency or such need as the case may be, shall be prepared and shall be laid before the Legislative Assembly in accordance with the provisions of section 20(1) of the Act.

*(Amended by Act 9 of 2011)*

### Development Fund warrant

**40. (1)** Subject to Regulations 34 and 35 and Regulation 36(1), if in the course of any financial year the circumstances described in Regulation 39(*a*) and (*b*) arise, and

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in the judgment of the Minister expenditure from the Fund is so urgently required that it cannot, or cannot without serious detriment to the public interest, be delayed until adequate financial provision can be made for it by the Legislative Assembly, the Minister may by a Development Fund Warrant under his hand and in anticipation of the grant of an appropriation by the Legislative Assembly authorise an advance from the Fund to meet such expenditure and shall forthwith report his action to the Governor acting on the advice of Cabinet:

Provided that, the total of the sums so authorised to be advanced in anticipation of the grant of an appropriation shall not exceed the amount of any grant or loan of moneys received by or pledged to the Government for the carrying out of the Development Project in respect of which the advance is made. (*Amended by Act 9 of 2011*)

(2) Where any advance is made from the Fund under this Regulation, a supplementary estimate, substantially in the form prescribed by Regulation 39, of the sum required for the development project for the purpose of which the advance was made, shall be prepared and laid before the Legislative Assembly at its meeting next following the date on which the Development Fund Warrant was issued and shall be included in a Supplementary Appropriation Bill for appropriation. (*Amended by Act 9 of 2011*)

(3) Upon the grant of an appropriation to meet the expenditure in respect of which an advance was made under this Regulation, the Development Fund Warrant shall lapse and shall cease to have effect and the advance shall be deemed to have been made for the purpose of the grant and shall be accounted for accordingly.

### **Re-allocation of funds**

41. (1) No surplus arising from under-expenditure on any development project shall be applied in aid of any other development project unless the supplementary expenditure on such other development project has been authorised under Regulation 39 or 40.

(2) Subject to Regulation 40, if the requirements of a development project for which a sum has been appropriated in an Appropriation Act for any financial year, render it expedient so to do, the Minister may direct by means of a Development Re-allocation Warrant that any surplus arising from under-expenditure on any item contained in the subhead of expenditure assigned to such development project shall be applied in aid of any other item therein or in aid of any new item therein to be created:

Provided that, the sum appropriated for that subhead is not thereby exceeded.

(3) Any Development Re-allocation Warrant issued in accordance with paragraph (2) shall be laid before the Legislative Assembly at its meeting next following the date on which such warrant was signed. (*Amended by Act 9 of 2011*)

(4) The Minister may by writing under his hand delegate to the Financial Secretary the powers conferred upon him by paragraph (2).

## Accounts and audit

**42. (1)** The accounts of the Fund shall be audited, certified and reported on annually by the Auditor General in accordance with the provisions of the Audit Act.

**(2)** If in the course of audit it is found that moneys have been expended on any development project in excess of the total amount made available to the Government for the carrying out of that development project by way of a grant or loan, the excess shall be included in a statement of Expenditure in Excess and shall be dealt with in the manner approved for Votes in Excess by section 21 of the Act.

## PART 9

### AUTHORITY FOR EXPENDITURE

#### The General Warrant

**43. (1)** The authority for the expenditure of public moneys is contained in an Appropriation Act, which vests authority in the Minister to issue out of the Consolidated Fund the total sum shown in the approved estimates, and therefore an accounting officer shall identify, for all expenditure to be incurred by him, the appropriate authority in that Act before committing Government to any expenditure.

**(2)** No accounting officer shall take any action which in any way anticipates the approval of the Legislative Assembly for expenditure. (*Amended by Act 9 of 2011*)

**(3)** Authority to make payments and accept charges is conveyed to the Accountant General by a warrant signed by the Minister.

**(4)** On receipt of the warrant, the Accountant General shall issue a warrant under his signature to accounting officers authorising them to incur expenditure for the purposes and up to the amount specified in the warrant; and the amount authorised by such warrant shall not exceed the amount specified in the warrant issued by the Minister.

#### Departmental Warrant

**44. (1)** Where it becomes necessary for work to be done by one department on behalf of another, the accounting officer of the department on whose behalf the work is to be done may authorise the accounting officer of the department undertaking the work, by means of a departmental warrant, to incur expenditure against a vote under his control.

**(2)** An accounting officer to whom such authority is given shall maintain an account of all expenditures incurred against the vote stated in the warrant and shall submit monthly reports in respect thereof to the accounting officer from whom authority has been received.

**(3)** An accounting officer to whom a warrant is issued shall be personally responsible for all expenditure incurred in excess of the amount stated in the warrant.

#### Departmental control of expenditure

**45.** An accounting officer shall—

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- (a) control and oversee the expenditure in respect of any service under his control;
- (b) ensure that the provision for that service as authorised by a warrant is not exceeded, and he shall be held personally and pecuniary responsible for any excess expenditure which is incurred without proper authority.

### Supplementary provision

**46. (1)** Where any further disbursements are required in respect of a service which—

- (a) could not have been foreseen;
- (b) may not be postponed without detriment to the public interest;
- (c) cannot appropriately be charged to an existing item of the estimates;  
or
- (d) would cause an excess on the estimates,

prior approval for authority to incur such expenditure shall be sought.

**(2)** Where expenditure cannot be met by virements within the vote from items with savings, then provision for supplementary funds shall be sought, in which case an application for supplementary funds may be made to the Financial Secretary.

**(3)** Applications for supplementary provision shall be reviewed by the Financial Secretary and submitted to the Minister for consideration; and if after examination and, where necessary, consultation with the accounting officer concerned, the need for the supplementary provision is agreed, the amounts of such provision shall be included by the Minister in supplementary estimates to be submitted to the Legislative Assembly for appropriation by a Supplementary Appropriation Act. (*Amended by Act 9 of 2011*)

**(4)** Notwithstanding that supplementary estimates may have been submitted to the Legislative Assembly for approval, no action shall be taken by any accounting officer which creates a commitment on public funds before the Legislative Assembly approval is obtained. (*Amended by Act 9 of 2011*)

### Virements or re-allocations within a vote

**47. (1)** The Financial Secretary has discretionary powers to vary the amount allocated within a vote, provided that—

- (a) the total amount authorised by the Legislative Assembly for that vote in an Appropriation Act is not exceeded;
- (b) the variation is not so large or important as to represent a change in policy;
- (c) the changes made are not novel or contentious; and

- (d) any virements made will from the outset not involve heavy liabilities in future years.

*(Amended by Act 9 of 2011)*

(2) All virements within a Vote shall be the subject of an application for virements addressed to the Financial Secretary—

- (a) showing the amounts involved;
- (b) identifying the items where extra provision is required;
- (c) identifying, where appropriate, any delegated authority for the re-allocation;
- (d) giving appropriate explanation for the shortfall in the original provision;
- (e) clearly identifying the items with the anticipated savings; and
- (f) giving appropriate explanations and the reasons for the savings being available.

(3) In order to ensure that the savings identified are genuine, items from which funds have been transferred will no longer be eligible for the provision of additional funds by a Supplementary Appropriation Act or subsequent virements.

(4) On approval of an application by the Financial Secretary under this Regulation, a warrant for virements within a vote shall be issued to the Accountant General and copied to the Accountant Officer and Auditor General.

(5) Expenditure on the item which has had its available funds increased by the warrant shall at all times remain within the limits of any warrant currently in force.

(6) A schedule of all virements approved under this Regulation shall be laid before the Legislative Assembly not less than two times during the financial year.

*(Amended by Act 9 of 2011)*

### **Excess and unauthorised expenditure**

48. (1) The Legislative Assembly has the ultimate right to approve expenditure of public moneys prior to its being incurred, and has an equal right to investigate the reasons behind any failure of an accounting officer to comply with this legal requirement, and it is the duty of each accounting officer to attend personally before the Legislative Assembly when required to do so and provide explanations to the issues raised. *(Amended by Act 9 of 2011)*

(2) Any failure by an accounting officer to attend before the Legislative Assembly without a reason acceptable to the Legislative Assembly shall be subject to disciplinary action; and expenditure without adequate supporting documents shall be treated as unauthorised expenditure under these Regulations. *(Amended by Act 9 of 2011)*

(3) Within three months after the close of each financial year, the Accountant General shall cause to be prepared schedules showing the net excess expenditure incurred on each item of the estimates during that financial year; and the schedules shall be laid before the Legislative Assembly at its next meeting for consideration.

*(Amended by Act 9 of 2011)*

## PART 10

### BASIS OF ACCOUNTING AND PREPARATION OF ANNUAL ACCOUNTS

#### **Basis of accounting**

49. (1) The Legislative Assembly votes funds for “**the service of the financial year**” on the basis of the amounts expected to be available in the course of the year; and therefore only actual receipts and expenditure during a financial year can be recorded in the Appropriation Accounts. *(Amended by Act 9 of 2011)*

(2) By virtue of sub-regulation (1), no entry shall be made in the accounts of government by any accounting officer which anticipates the receipt of revenue or the expenditure by Government.

(3) In accordance with section 41 of the Act, the Accountant General shall submit to the Auditor General and the Minister, within 4 months of the end of the financial year, the statements set out in paragraph 1 of the Schedule to the Act.

(4) The approved estimates form the basis of the accounts for the year to which they relate and the classification and sub-division of the statements of revenue and expenditure shall accord with those estimates.

(5) The statements to be provided include but are not necessarily restricted to those contained in the Schedule to the Act; and this is because the fundamental requirement is to ensure that the financial position of the Government is fully disclosed to the Legislative Assembly; and therefore the Accountant General shall provide such other accounts or provide such additional information as he considers necessary to achieve this objective. *(Amended by Act 9 of 2011)*

#### **Accounting in respect of commercial Government activities**

50. (1) It is essential that costing of the services offered by any Government commercial activity is done properly to avoid hidden subsidies.

(2) In order to achieve the objective mentioned in sub-regulation (1), it is essential that all costs are captured, including those of a non-cash nature such as depreciation; consequently, the management of such commercial Government activities may run the activities on commercial principles in order that they can achieve the objective, and its attempts to do so can be properly measured by an appropriate accounting system.

(3) In order to achieve the objective set out in subregulations (1) and (2), such activities shall not be subject to the prior authorisation requirements of the Consolidated Fund, but may be established with funds provided in Special Funds established under section 14 of the Act, and separate accounting instructions shall be issued for each special Fund by the Accountant General.

(4) The establishment of each Special Fund shall require the following initial action—

- (a) the purposes for which the Fund is being established are to be defined by the accounting officer responsible for the facilities to be used by the Special Fund, as agreed by the Minister; and
- (b) such definition shall include details and values of all fixed and current assets and all liabilities to be transferred to the Special Fund from the Consolidated Fund to form the initial capital of the Special Fund, and shall be recorded on its balance sheet as an asset with a corresponding liability to the Consolidated Fund being entered in the books of account.

(5) The assets and any other things accruing to the Special Fund after its establishment shall be returned to Consolidated Fund on the winding up, for whatever reason, of the Special Fund.

(6) While a Special Fund may have its own peculiarities requiring individual procedures to be included, the statutory instrument setting up each such Fund shall contain provisions relating to the following—

- (a) no expenditure may be incurred by the Fund except as authorised by the Minister;
- (b) day-to-day management of the activities falling under the Fund shall be the responsibility of the accounting officer referred to in subregulation (4)(a);
- (c) proper books of account must be kept by the accounting officer responsible for the Fund, and in this respect the accounting officer shall comply with all instructions issued or except otherwise agreed by the Accountant General;
- (d) the financial year for all the Funds shall coincide with that of Government;
- (e) the relevant accounting officer shall, within three months of the end of the financial year, forward to the Minister and the Auditor General, with a copy to the Accountant General, statements of account in such form as the Accountant General may, from time to time, determine;
- (f) the accounting officer shall forward to the Minister by the end of the financial year in accordance with a timetable set by the Financial Secretary, estimates of income and expenditure of the Fund for the following financial year;
- (g) the estimates referred to in paragraph (f) shall, if approved by the Minister, be laid before the Legislative Assembly; and, with the exception of statutory expenditure, no warrant shall be issued by the Minister for any issues from the Fund until such estimates have been appropriated; (*Amended by Act 9 of 2011*)

- (h) subject to the power of the Minister under section 14 of the Act to wind up the Fund at any time, the Fund shall cease operations when the balance of the Fund is exhausted.

### Administration of trust funds

**51. (1)** A trust shall be administered and the payment of moneys therefrom shall be governed by the terms of the law, deed of trust, trust instrument or agreement, as the case may be, creating that trust.

**(2)** If, in relation to any trust, no law, deed of trust, trust instrument or agreement exists or, in the opinion of the Financial Secretary a law, deed of trust, trust instrument or agreement is inadequate for its proper administration, the Financial Secretary shall give directions in respect of matters in relation to the trust as he considers appropriate.

## PART 11

### RECEIPTS

### Responsibility for revenue collection

**52. (1)** An accounting officer is personally responsible for ensuring that—

- (a) all revenue invoiced is paid;
- (b) adequate safeguards exist and are applied for the prompt collection and deposit of, and proper accounting for, all Government revenue and other public moneys relating to their Ministries, departments or agencies;
- (c) all persons liable to pay revenue are informed by bills, demand notes or other appropriate notices of debts due, and that they are reminded promptly and frequently of revenue which is in arrears; and
- (d) adequate measures, including legal action where appropriate, are taken to obtain payment;
- (e) official receipts are issued for all moneys paid to Government of Montserrat.

**(2)** An accounting officer who experiences difficulty in collecting moneys due to the Government must report the circumstances to the Accountant General without delay, and copy such reports to the Financial Secretary.

**(3)** The Accountant General shall report to the Financial Secretary—

- (a) any failure on the part of any accounting officer to receive and duly account for any sums receivable by him; and
- (b) any case in relation to which he considers, after due enquiry, that the revenue is unduly falling into arrears.

**(4)** All regular collectors of revenue who receive any duties, taxes, fees, rents or other public moneys, whether of a revenue nature or otherwise, shall pay the whole amount of such moneys daily or at the earliest opportunity, into a bank account

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authorised by the Accountant General or a public officer designated by the Accountant General, and obtain a receipt for the moneys so paid in.

(5) Except with the authority of the Accountant General, no public officer may convert public moneys received in local currency into foreign currency and *vice versa*.

### Revenue collectors

53. (1) No public officer may collect public moneys unless he is specifically authorised to do so.

(2) Except with the specific authority of the Accountant General, in no case may a public officer whose duty involves the posting of assessment registers, rent rolls and similar documents be authorised to collect public moneys or to post collections into a cash book.

### Revenue to be accounted in gross

54. In all cases, the gross amounts of moneys received shall be accounted for; and any charges against revenue received shall require appropriate authority as expenditure incurred by the Government and shall appear as a charge on public funds in the books of account, duly supported by proper vouchers.

### Restriction on method of payment

55. No payment of moneys due to the Government may be made by electronic funds transfer, credit card or promissory notes, without the prior approval of the Accountant General.

### Responsibility for control of receipts

56. (1) Accounting officers are responsible for ensuring that a proper system exists for the safe custody, recording and proper use of all receipts, licences and other documents issued for the receipt of public moneys.

(2) All receipt books issued shall on completion be returned to the Accountant General.

### Receipts to be issued immediately

57. (1) A receipt in the approved form must be issued immediately for any public moneys received; and when the payer presents himself or herself in person, the receipt must be handed to him at once.

(2) Where moneys are received by post, the receipt must be sent by mail on the same day.

### Foreign currency receipts

58. Except with the prior approval of the Accountant General, no foreign currency notes or coins, and no foreign stamps or cheques drawn in foreign currency may be accepted in payment of any moneys due to government.



### Acceptance of cheques

**59. (1)** A cheque may be accepted in payment of moneys due to the Government; however the relevant receipt will be recognised and acknowledged only after that cheque has been cleared or credited on Account.

**(2)** A cheque referred to in sub-regulation (1) shall be made payable to the authorised Government of Montserrat bank account and crossed “**Account Payee only**”; any cheque received which is not so crossed shall be crossed by the receiver immediately on receipt, and in no circumstance may a post dated cheque be accepted.

**(3)** In any case where a cheque is dishonoured, recovery measures shall be instituted immediately by the accounting officer; and all instances of dishonoured cheques shall be brought to the immediate attention of the Accountant General.

**(4)** All original dishonoured cheques shall be retained and kept in safe custody; this is because such cheques represent important *prima facie* evidence of a debt due to Government and may be used in any legal action which may be taken to recover the amount due and any incidental expenses that may have been incurred.

### Recording of receipts

**60.** All public officers responsible for revenue collection shall ensure that the relevant records are kept in such form as approved by the Accountant General.

### Refunds of revenue and drawbacks

**61. (1)** Refunds of revenue may become necessary because of collections or over-collections made in error or because, although properly collected in accordance with an Act or regulation, provision exists under the Act or regulation for the revenue to be reclaimed under certain circumstances in the form of a rebate or drawback.

**(2)** Refunds of revenue and drawbacks shall be in accordance with instructions issued by the Accountant General.

### Arrears of revenue returns

**62.** Within sixty days after the close of the financial year, each accounting officer shall submit to the Accountant General in a form approved by the Accountant General with a copy to the Auditor General, a return of all arrears of the revenue for which he is responsible.

## PART 12

### LOANS, GUARANTEES AND GRANTS

#### Authority to raise loans, issue guarantees and accept grants

**63. (1)** Subject to section 30 of the Act, the authority to raise money by loan, to issue guarantees and accept grants is vested solely in the Minister.

**(2)** The Minister may, if he considers it necessary or expedient in the public interest to do so, with the approval of the Legislative Assembly, raise a loan on such terms and conditions as he may think fit; and the proceeds of any loan raised shall be

paid into the Consolidated Fund, except where a loan has been raised for a purpose for which a Special Fund has been established under section 14 of the Act, in which case the Minister may direct that the whole or part of the amount of the loan shall be paid into and form part of that Fund. (*Amended by Act 9 of 2011*)

(3) Borrowing under subregulation (2) of this Regulation shall be by way of the issue of treasury bills, bonds, development bonds, a fluctuating overdraft or any other method the Minister may think fit.

(4) The Minister may at any time, on such terms and conditions as he considers fit and where necessary, with the consent of the lender, repay any loan by Government or convert any loan into any other such loan or loans provided it does not substantially change the terms approved by the Legislative Assembly. (*Amended by Act 9 of 2011*)

(5) All principal, interest, and other moneys payable by the Government under this Regulation shall be a charge upon, and be payable out of the Consolidated Fund without further appropriation.

### Power to give guarantees

64. (1) The Minister, on behalf of Government and with the approval of the Legislative Assembly, may, if it is considered necessary or expedient in the public interest, give a guarantee for the repayment of the principal money and the payment of the interest and other charges on any loan raised either within or outside Montserrat by—

- (a) a statutory body;
- (b) any authority established by an Act which is in receipt of a contribution from, or the operations of which may, under the Act establishing it or any Act relating to it, impose or create a liability upon the public funds of Montserrat; and
- (c) any public organisation which has in any of its financial years received a loan from public funds.

*(Amended by Act 9 of 2011)*

(2) Any money required to be paid by virtue of any guarantee given by the Minister under the provisions of the Act shall be charged on and paid out of the Consolidated Fund.

(3) Any money paid in respect of any guarantee given shall constitute a debt due to Government by any public organisation or statutory body in respect of which the guarantee was given shall be recoverable as such in a manner the Minister may direct; and in addition, any collateral or security for the liability guaranteed shall form a collateral or security to the Government immediately on payment, without prejudice to any additional security or collateral that the Minister considers necessary.

### Acceptance and receipt of grants

65. Any grants made to the Government shall be received by the Minister on behalf of Government and shall be paid into and form part of the Consolidated Fund or a Special Fund established for a specific purpose.

PART 13

PAYMENTS

**Authority for payment**

**66.** No payment shall be made out of the Consolidated Fund except with the specific authority of the Minister. Authority shall be given by the Minister under his hand by the issue of any one of the following—

- (a) Provisional General Warrant;
- (b) General Warrant;
- (c) Advance Warrant;
- (d) Imprest Warrant;
- (e) Development Fund Warrant.

**Control and method of payments**

**67. (1)** Payments of public moneys to persons outside Montserrat shall be made by direct payment to such persons by banker's draft or otherwise through the banking system; and where direct payment is considered to be inappropriate, payment shall be made on the authority of the Accountant General through agents duly appointed for the purpose with the approval of the Financial Secretary.

**(2)** To avoid a conflict of interest purchases of goods and services can only be made directly from public officers where it can be demonstrated there is no other supplier in the private sector.

**(3)** Goods and services should only be purchased through a business or person registered under the relevant legislation or approved by the Accountant General.

**Charging to year of account**

**68. (1)** The date of payment of any amount governs the date of the record of the transaction in the accounts; and therefore in no circumstance may payments be made before they are due for the purpose of utilising an anticipated saving on an item; nor may the unexpended portion of any item be retained for the purpose of setting it in reserve to meet impending payments or to be carried to a deposit or other account.

**(2)** Expenditure properly chargeable to the account of a given year must, as far as possible, be met within that year and must not be deferred for the purpose of avoiding an excess on the amount provided in the estimates.

**Payment vouchers or electronic documentation**

**69. (1)** All disbursements of public moneys shall be properly vouched on payment vouchers or electronic documentation approved by the Accountant General.

**(2)** An accounting officer may designate in writing and by name, specific persons who have the authority to sign payment vouchers on his behalf, and prescribe the financial limits and other conditions within which the authority may be exercised.

**(3)** The Accountant General and the Auditor General shall be—

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- (a) advised of the names of the public officers so designated and the financial limits within which they may exercise their authority,
- (b) provided with the specimen signatures of those public officers; and
- (c) advised when the authority of any public officer to sign payment vouchers or an electronic documentation is withdrawn.

(4) A public officer who signed an incorrect certificate in consequence of an unauthorised or irregular payment shall be required to explain the circumstances, and if found to have been negligent may be subject to disciplinary action.

(5) All payments due shall be made as soon as possible to the persons entitled to receive them.

(6) Each accounting officer shall keep a Vote Control Register in the form approved by the Accountant General, showing separately each estimate for which he is responsible.

### Payments in advance

70. Except in the case of a payment in advance duly authorised under the provisions of section 26 of the Act, no money shall be paid to any person other than the amount due for the value of work certified to have been done or services certified to have been performed by such person.

### Payment process

71. (1) All payments shall be made in accordance with instructions issued by the Accountant General.

(2) The instructions referred to in subregulation (1) shall establish payment points which shall be staffed by public officers authorised by the Accountant General to make payments, and accounting officers shall submit payment vouchers or approved electronic documentation to a payment point designated by the Accountant General.

(3) When payments are made to persons other than those named in a payment voucher or approved electronic documentation, the authorities under which such payments are made, such as powers of attorney or letters of administration, shall be attached to the vouchers themselves or shall be registered in the Treasury and notified on the payment vouchers or approved electronic documentation.

### Missing vouchers or supporting documents

72. (1) If any voucher on which payment has been made is lost, misplaced or inadvertently destroyed, the accounting officer shall notify the Accountant General immediately, and the Accountant General shall in turn report the full circumstances to the Financial Secretary, with a copy to the Auditor General.

(2) Where after due enquiry, the Financial Secretary is satisfied as to the circumstances of such loss, mislaying or destruction and that payment has been properly and correctly made, he may recommend to the Minister to authorise the payment to stand charged in the accounts.

(3) Where the Financial Secretary is not satisfied as to the circumstances of the loss, mislaying or destruction, he shall recommend an appropriate remedy or penalty.

(4) For the purposes of this Regulation, a payment voucher or approved electronic documentation which is incomplete because its supporting documents are missing, shall be regarded as a missing voucher.

## PART 14

### IMPRESTS

#### Authorisation of imprests

73. (1) The Accountant General is authorised, under the advances warrant issued to him by the Minister under the authority of section 26 of the Act, to issue imprests to public officers who require cash to be readily available to meet immediate payments for authorised expenditure.

(2) Imprests referred to in subregulation (1) shall include standing imprests issued to accounting officers to meet payments during the financial year and temporary imprests or advances issued to public officers for specific purposes.

(3) Lists of standing imprests required by accounting officers in the next or forthcoming financial year shall be submitted to the Accountant General at least fourteen days before the beginning of the financial year.

(4) Requests for temporary imprests or advances shall be made as the need arises and shall be submitted to the Accountant General at least fourteen days before the money is required.

(5) An imprest shall be restricted to the minimum amount required for the purpose for which it is issued.

(6) All imprests of whatever nature shall be issued in the names of the public officers who will hold them, and they shall remain their personal responsibility until they are refunded or discharged by the submission of properly completed payment vouchers or approved electronic documentation or properly handed-over to another authorised public officer unless approved by the Financial Secretary.

(7) An imprest holder shall not be relieved of any part of his responsibility by delegating the custody or operation of an imprest to another public officer.

#### Retirement of imprests

74. (1) All imprests shall be retired as soon as the necessity for their use ceases to exist and in any event, except as provided in subregulation (4), by the close of business on the last working day of the financial year in which they were issued.

(2) Except as provided in subregulation (4), where a public officer to whom an imprest of whatever nature has been issued fails to retire it in full within thirty days after the close of the financial year, or otherwise on the demand of the Accountant General—

- (a) the amount outstanding may forthwith be recovered from any salary or other emoluments or from any other amounts due to the public officer; and
- (b) where no such salary, emoluments or amounts are available from which to recover the imprest, the amount may be charged as a personal advance in the name of the imprest holder, and may be recovered as a civil debt due to the Government.

(3) Imprest holders are not relieved of their responsibilities under this Regulation until payment vouchers or approved electronic documentation submitted have been examined and found to be correct.

(4) Notwithstanding the general rule that all imprests must be retired by the close of the financial year, a temporary imprest advance issued in one financial year in respect of a duty journey which has not been completed by the end of that financial year may be retained by the public officer; but it shall be accounted for as soon as the public officer returns to his normal place of work.

(5) Where the duty may not have been completed, so far as is practicable, the public officer shall submit a voucher or electronic documentation for the expenditure incurred by him against the imprest before the end of the financial year, so that the expenditure can be included in the accounts of that year.

(6) No further imprest advances shall be issued to a public officer for the purposes of a duty journey if he is still in possession of an un-retired imprest previously issued to him for a similar purpose unless approved by the Financial Secretary.

## PART 15

### LOANS, ADVANCES AND INVESTMENTS

#### Authority for loans and advances

**75. (1)** The grant of loans and advances from public moneys or funds is strictly limited and such loans and advances may only be made by the Accountant General under the authority of an advance warrant under the hand of the Minister and for the purposes stated in the Act.

(2) All such advances shall be retired in the financial year in which they are made, and no advance account or loan account shall be opened, nor will any action be taken by any public officer, which will result in the issue of an advance or loan without the prior approval of the Accountant General.

(3) Any public officer taking action prohibited under subparagraph (2) shall be liable to a surcharge under Part 10 of the Act.

#### Loans and advances to be secured by agreements

**76. (1)** All loans and advances, other than those for Standing or Temporary imprests and those in respect of staff advances shall be secured by legally enforceable agreements in a form approved by the Attorney General.

(2) The agreements, which must clearly specify the full details of the advance, including the amount, the terms of repayment or recovery, the collateral security (if any) and the rates of interest, shall be properly executed by all parties, and shall be retained in safe custody in a strong-room or safe.

### **Accountant General to control issues and repayments**

77. (1) The Accountant General shall be responsible for ensuring that repayments of advances are made strictly in accordance with the terms and conditions attached to the advances.

(2) Without limiting the generality of sub-regulation (1), the Accountant General shall, in particular ensure that—

- (a) payments are made only to persons entitled to them;
- (b) suitable terms and conditions have been approved to safeguard the repayment or recovery of the advance;
- (c) interest is charged where applicable;
- (d) recovery of the advance is not overlooked or delayed;
- (e) where appropriate, collateral security is held by the Government; and
- (f) proper accounts and controls are kept and the necessary recoveries effected.

### **Investments of public moneys**

78. (1) Subject to section 16 of the Act, any money held to the credit of the Consolidated Fund may be invested with a bank at call, or subject to notice not exceeding twelve months, or in an investment authorised by law for the investment of trustee funds and approved by the Minister.

(2) All interest received and recoveries made from any such investment shall be paid into the Consolidated Fund.

(3) All costs, charges and expenses incurred in connection with negotiating, placing, managing, servicing or converting any investment made in accordance with these Regulations may be paid out of the Consolidated Fund without further appropriation.

(4) The costs, charges and expenses referred to in paragraph (3) shall not exceed the income earned over the life of the investment.

(5) Public and private organisations that receive public funds must present financial statements upon request, prepare monthly and annual financial statements as are required for audit and management purposes.

## PART 16

## SALARIES AND WAGES

**Payment of salaries, etc. in the Public Service**

**79. (1)** Subject to the Public Service Regulations, this Regulation shall apply to payment of salaries and wages.

**(2)** It is a fundamental principle for the management of personal emoluments that activities relating to the authorisation of appointments, the authorisation of payments and the recording of those payments may not be performed by the same person.

**(3)** Accounting officers are responsible for ensuring that personal emolument records maintained for all of the permanent staff within their Ministries, departments and other agencies of the government are correct, and that all changes and variations in applicable rates are duly notified to the Accountant General.

**(4)** The rates of salary and other personal emoluments for members of the established service are as authorised in the salary scales published in the estimates, except in the case of contract public officers where the scale is as stated in the relevant contract.

**(5)** Notification of changes shall be sent to the Accountant General to be issued at an appropriate date by the Accountant General in consultation with Department of Human Resources Management prior to the implementation of the change.

**(6)** No employee shall be included on the payroll until a copy of the letter of appointment and a copy of the letter of acceptance of the appointment have been received by the accounting officer; and no action will be taken which would result in changes of salary or allowance to any public officer until proper authority has been received.

**(7)** Any balance of salary or allowance due to a public officer who has been convicted for misappropriation of public moneys or Government funds, or theft of Government property, or dismissed, or whose appointment has been terminated leaving sums due to the Government, shall not be paid without the prior authority of the Accountant General on the advice of the Attorney General.

**(8)** An Accounting officer is responsible for ensuring that an appropriate record is maintained in respect of persons employed on a daily wage basis, and ensuring that payment is made only for days actually worked.

**(9)** Any unpaid wages shall be repaid to the Accountant General, and in no case shall money be paid to any public officer, sub-contractor, foreman or any other person for distribution unless authorised by the Accountant General on the advice of the Attorney General.



PART 17

PENSION

**Records of retiring benefits**

**80. (1)** The Accountant General shall maintain a record of all approved retiring benefits showing in respect of each retired officer —

- (a) the name of the officer;
- (b) the office held on the date of his retirement;
- (c) the date of birth and date of retirement;
- (d) the cause of retirement;
- (e) the date from which pension is payable;
- (f) the amount of gratuity;
- (g) the rate of pension;
- (h) the file reference number;
- (i) the address of the pensioner.

**Notice of retirement**

**81. (1)** Accounting officers shall submit to the Permanent Secretary, Human Resources Management not later than four months before the end of each financial year the names and pensionable emoluments of all officers in their department who will be retiring from the public service during the following financial year.

**(2)** An officer shall not later than six months before the end of a financial year give notice to the accounting officer in his department of intention to retire from the service during the following financial year.

**Deferred payments of retiring officer**

**82.** Any failure on the part of an officer to give the required amount of notice of his intention to retire from the public service may result in the deferment of the payment of any retiring benefits due to him in respect of his service with government for not more than one year after such payment is due.

PART 18

ACCOUNTING AND BOOK KEEPING

**Accounting and book keeping in the Public Service**

**83. (1)** The approved estimates form the basis of the accounts for the year to which they relate and the analysis and classification of the accounts of revenue and expenditure shall accord with those estimates.

(2) Every entry in the books of accounts shall be supported by a voucher and other approved documents containing the full details and particulars of the item or items to which it relates.

(3) A book, account or record that is required to be kept under the provisions of the Act or these Regulations may be kept or prepared—

- (a) by making entries in a bound or loose-leaf book;
- (b) by recording or storing the data concerned on electronic or other media by means of a mechanical, electronic or other device; or
- (c) in any other manner approved by the Accountant General.

(4) Notwithstanding subregulation (3), where a book, account or record is to be kept or prepared by a mechanical, electronic or other device or to be stored on electronic or other media—

- (a) the data recorded or stored shall be capable, at any time, of being reproduced in a hard copy or any other form approved by the Accountant General; or
- (b) a reproduction of the data shall be kept in a hard copy approved by the Accountant General,

and the provisions of the Act and these regulations with respect to written records shall, with necessary changes, apply.

#### **Use of computer based accounting systems**

**84. (1)** Where the data recorded or stored on electronic or other material by a mechanical or electronic device forms part of a system of account under the control of an Accounting officer, the prior approval of the Accountant General shall be obtained and any changes to the system shall similarly be approved.

(2) An accounting officer shall take all reasonable precautions to guard against damage to, destruction of, or falsification of or in, and for discovery of falsification of or in, any book, account, record or part of a book, account or record required to be kept by the Act or these Regulations; and in particular shall ensure that all instructions issued by the Accountant General in this respect are implemented and enforced.

(3) An accounting officer shall, in particular, satisfy himself that where the system involves the authorisation, approval, deletion or alteration of any transaction or data by electronic means, or any means other than in writing, an audit trail is provided, which enables the person giving such authorisation or approval or deleting or altering a transaction to be identified beyond reasonable doubt and the nature and, if applicable, the amount of the authorisation, approval, deletion or alteration to be ascertained.

(4) An accounting officer shall also satisfy himself as to—

- (a) the security of the means of storage and the method of processing of electronic media and its data;
- (b) the proper documentation of any software involved,

and shall implement and enforce any instructions issued by the Accountant General in this respect.

(5) In particular access to data and data processing areas shall be controlled and the method of control documented.

(6) Where passwords are used as a security check for accessing data in a computer based accounting system for whatever purpose, including the authorisation or approval of transactions by electronic means or the alteration or deletion of any data, the passwords shall be kept secret by the person to whom they are allocated.

(7) Any public officer who communicates a password to another public officer and causes loss or damage to the Government shall be liable to disciplinary action.

(8) Proper technical support shall be readily available for both hardware and software; and effective backup and disaster recovery procedures shall be instituted to cater for a partial or complete breakdown or loss of the storage media or processing equipment.

(9) The objective of the requirements of subregulation (8) of this Regulation is to ensure that the administration of the Government, and in particular the collection of revenue, is not adversely affected.

### **Treasury cash books**

85. The Accountant General and any public officer appointed by him, shall keep in his office a cash book, batch sheets or other records including electronic copies showing the allocation of receipts and payments, journals and ledgers together with such other books and registers as may be necessary for the proper maintenance and production of the accounts.

### **Deposit Accounts**

86. Deposit accounts may only be opened with the specific approval of the Accountant General and for the purpose of accounting for moneys owed to a third party.

(2) The responsibility for keeping proper accounts for deposits which relate solely to the Accountant General or which otherwise do not fall within the responsibility of any other Ministry, department or other agency of the government, rests with the Accountant General.

(3) With respect to deposits other than those referred to in subregulation (2) of this Regulation, the prime responsibility for keeping proper accounts for such deposits lies with the Accounting officer concerned; and in such cases, the Accountant General also has a responsibility to investigate and take any necessary action to deal with a deposit account which becomes overdrawn or which has been dormant for any considerable period of time or which has not been reconciled with the Treasury accounts.

(4) Any deposit which has remained unclaimed for a period of five years may, with the approval of the Accountant General, be paid into the Consolidated Fund;

thereafter the Accountant General may refund the deposit to any person entitled to it where he is satisfied that the claim is authentic.

(5) Any refunds after the deposit has been transferred to the Consolidated Fund shall be paid from voted expenditure.

### Public debt

87. The Accountant General shall maintain a register or such records as shall be sufficient to show details of all loans raised by the Government and other forms of public debt.

### Standard forms

88. Standard forms and vouchers required for accounting procedures shall be approved by the Accountant General; and the prior authority of the Accountant General shall be obtained before the introduction of any special forms or vouchers for use in individual Ministries, departments or agencies.

### Preservation of accounting records

89. The Accountant General shall—

- (a) issue instructions to Accounting officers specifying the precautions to be taken in particular cases to safeguard accounting records and documents and, in particular, those which have been stored on electronic or other media;
- (b) ensure that all receipts and payment vouchers or approved electronic documentation lodged with him are properly secured, and that they and all other accounting documents are kept in an orderly manner so that they are available when required.

### Destruction of accounting records

90. (1) All classes of books of account and records shall be carefully preserved and shall not be destroyed without the prior written approval of the Accountant General and the concurrence of the Auditor General.

(2) An accounting officer is responsible for the care and safe-keeping of receipts, payments instruments and other accounting records in his custody and shall retain them until they are destroyed.

(3) Accounting records may be destroyed with the approval of the Accountant General after the expiry of the following periods—

Principal Treasury ledgers, cash ledgers and journals	twenty years
Abstract, subsidiary journals, cheques, receipt forms and counterfoil .....	seven years
Payment instruments, and subsidiary records .....	five years
Special ledgers and records e.g. Savings Bank records	twenty years
Salaries and wages .....	thirty five years

Procurement contracts ..... fifteen years.

(4) Where in the opinion of the Accountant General, a receipt, payment instrument or other accounting record is required for purpose of any litigation, inquiry, investigation or other examination, he may direct an accounting officer as the case may be to delay destruction of the receipt, payment instrument or other accounting record until it is no longer needed for that purpose.

## PART 19

### CUSTODY AND SECURITY OF PUBLIC MONEYS

#### Provision of security facilities

91 (1) Strong-rooms, safes and cash boxes shall be provided for the safe custody of public moneys and valuables in all Government premises in which public moneys and other valuables are received and retained either temporarily or permanently.

(2) The cost of such strong-rooms, safes and cash boxes shall be met from the vote of the relevant accounting officer unless otherwise approved by the Minister of Finance.

(3) The necessity and specifications for a strong-room, safe or cash-box shall be determined by the Accountant General; however it is the responsibility of an accounting officer to report to the Accountant General where he is not satisfied that adequate facilities are available within the premises for the proper and safe custody of public moneys and valuables.

(4) The Accountant General shall give guidelines relating to the maximum amount of public moneys and, where appropriate, the limitation on valuables which may be retained in a strong-room, safe or cash box overnight.

(5) Where the maximum amount of public moneys referred to in subregulation (4) is likely to be exceeded, the excess will be placed in a locked or sealed secure container and temporarily deposited in a strong-room or safe of higher security grading, and a receipt obtained from the key holder of that strong-room or safe or deposited into a bank account authorised by the Accountant General.

(6) In exceptional circumstances where large amounts are involved, the matter should be reported to the accounting officer, who in his discretion may arrange for the strong-room or safe to be placed under armed escort.

## PART 20

### BANK ACCOUNTS AND CHEQUES

#### Operation of bank accounts

92. (1) The Minister may designate any bank in Montserrat to be bankers to the Government for the custody of public moneys and other official funds and for the transaction of official banking business.

(2) Except with the prior authority of the Accountant General no public officer shall open a bank account for the deposit, custody or withdrawal of public moneys or other moneys for which he is responsible in his official capacity or for the transaction of official banking business; and where given, such authority shall be conveyed in writing to the accounting officer concerned and copied to the Financial Secretary.

(3) No public officer, statutory body or public organisation shall overdraw an official bank account or obtain any advance or loan from a bank for official purposes, without the prior authority of the Minister.

(4) Accounting officers may nominate senior public officers who may sign cheques drawn on bank accounts for which they are responsible; and at least two signatures, one of which shall be of the accounting officer shall be required for the operation of any such bank account.

(5) The names and designations of the public officers referred to in subregulation (4) of this Regulation and their specimen signatures shall be advised to the bank where the account is held, and copies of the advice shall be sent to the Accountant General and the Auditor General.

(6) Any change in the specimen signatures referred to in subregulation (5) shall be similarly advised to the bank and copied to the Accountant General and Auditor General.

(7) The Accountant General may—

- (a) give directions as to the terms and conditions under which any bank account may operate; and
- (b) close or suspend the operation of a bank account at any time.

(8) Accounting officers may not cause the closure or suspension of any bank account without the prior approval of the Accountant General.

(9) The Auditor General may request from any person or organisation any information in relation to any bank account and such information shall be supplied.

(10) In order that a bank account may continue to operate regardless of any circumstances that may arise in respect of the authorised signatories, arrangements shall be made by the accounting officer for the account to be capable of being operated by the Accountant General in an emergency; and subregulation (4) relating to the number and status of the signatories shall apply to such arrangements.

(11) The balance of every bank account as shown in the bank statement shall be reconciled with the corresponding cash book balance at intervals determined by the Accountant General, but in any case at least monthly; and the reconciliation statement, where appropriate, shall be either filed or recorded in the cash book.

(12) A reconciliation similar to the one described in subregulation (11) shall be carried out when responsibility for any bank account or cheque book is handed-over from one public officer to another and on the occasion of any surprise inspection or survey.

(13) Copies of reconciliation statements approved by the accounting officer shall be sent to the Accountant General, and copies of the reconciliation of any account operated by the Accountant General shall be sent to the Financial Secretary.

### **Issue of cheques**

93. Unless authority is given by the Accountant General for a cheque to be opened, all cheques drawn on official Government accounts shall be crossed.

### **Computerized Cheques**

94. (1) Cheques may be issued by the use of mechanical or electronic equipment.

(2) Adequate security measures shall be taken to restrict entry to mechanical or electronic cheque-writing devices to persons specifically authorised by the Accountant General.

(3) The Accountant General may authorise the signing of cheques by the use of mechanical or electronic equipment capable of reproducing facsimiles of signature or signatures of the person or persons duly authorised by him to sign cheques.

### **Cheque books to be secured**

95. (1) Cheque books issued for use of an officer shall be secured when not in use.

(2) The counterfoil of used cheques and machine copy of each cheque shall be initialled by each signing officer and shall be secured for audit checking and verification.

### **Spoilt cheques**

96. (1) Spoilt cheques shall be retained and clipped to the matching counterfoil.

(2) Each spoilt cheque shall be marked or stamped across its face "Cancelled" and initialled by a designated officer.

### **Cheques not to be cashed**

97. In no circumstances should collector or receiver of revenue convert into cash, cheques received by him or cheques presented to him by any person whether or not that person is an officer.

## **PART 21**

### **BOARDS OF SURVEY**

#### **Boards of survey of cash and bank balances, etc.**

98. (1) The Financial Secretary may appoint a Board of Survey for each Ministry, department or other agency of the Government after the close of business on the last working day of each financial year, or before the start of business on the first working day of the new financial year, to survey the cash, bank balances and stores held by the accounting officer of each such Ministry, department or other agency of the

Government for statutory reporting purposes except for the Treasury at the end of the financial year.

(2) The Financial Secretary shall appoint a Board of Survey, for the write-off and condemnation of cash, stocks and inventory at any time during the year after the close of business on the last working day of each financial year or before the start of business on the first working day of the new financial year to survey the cash, bank balances and stores held by the Accountant General at the end of the financial year.

(3) The Accountant General or the Financial Secretary may appoint Boards of Survey at any other time in each year to conduct surprise surveys on the balances referred to in subregulations (1) and (2).

(4) Accounting officers may at their discretion, appoint Boards of Survey to conduct surprise surveys on cash and bank balances and stamp stocks held by public officers of their Ministries, departments or agencies.

### **Composition and reporting by Board of Survey**

99. (1) A Board of Survey shall comprise at least two public officers, one of whom shall be designated as Chairman by the Financial Secretary, the Accountant General or accounting officer as appropriate; however no public officer so appointed shall have any direct responsibility for the balances or stocks which he is required to check.

(2) The Accountant General, the Financial Secretary or accounting officer who appoints a Board of Survey shall notify the public officers concerned in writing of their appointment as Chairman and member or members respectively of the Board of Survey, and send a copy of the letter of appointment to the Auditor General and where appropriate, to the Accountant General or the Financial Secretary.

(3) Where a public officer is unable to serve on a Board of Survey, he shall notify the person that appointed him forthwith stating the reason for his inability to serve; and if the reason is acceptable to the person, a replacement public officer shall be appointed.

(4) Each Board of Survey, whether appointed by the Financial Secretary or not, shall at the conclusion of the survey, submit a report to the Financial Secretary in the form specified by the Accountant General and in accordance with the terms of reference of the Board.

(5) The Financial Secretary shall be responsible for ensuring that the duties assigned to the Board of Survey are effectively discharged, and appropriate action taken for any failure on the part of the Board to discharge its duties properly.

(6) Accounting officers shall follow up and implement the recommendations of the Boards of Survey as they apply to their respective Ministries, departments or agencies with the authority of the Financial Secretary; and the Accountant General shall ensure that accounting officers implement those recommendations.

(7) The Financial Secretary shall follow up the implementation of the recommendations of the Board of Survey carried out in respect of the Accountant General.



PART 22

HANDING-OVER PROCEDURES

**Duties of public officer handing-over**

**100. (1)** Accounting officers shall ensure that on every occasion on which cash, receipt books, keys, are handed-over from one public officer to another, the hand-over shall be evidenced in writing, and shall be conducted in such a manner as to leave no doubt or ambiguity as to the items handed-over and taken over.

**(2)** A handing-over statement shall be prepared and submitted to the Accountant General and the Auditor General.

**(3)** Every handing-over statement shall be endorsed by the accounting officer concerned.

**Items handed-over to be checked**

**101. (1)** Every item to be handed-over shall be checked in the presence of the officer handing-over and the officer taking over and recorded in detail in the handing-over statement.

**(2)** The handing-over of keys of strong-rooms, safes and cash-boxes shall be recorded on the handing-over statement.

**(3)** Copies of all orders, circulars, books, regulations and instructions issued to the officer handing-over shall be handed-over to the officer taking over.

**(4)** Cash ledgers, stamp registers and other accounting records shall be balanced as at the date of the handing-over and signed by both officers.

**Shortages and discrepancies found during hand-over**

**102. (1)** Where, during a hand-over, shortages or discrepancies are noted between the balances or stocks of cash, receipt books, being handed-over and those recorded in the relevant cash books and registers, the full facts relating to the shortage or discrepancies shall be recorded in detail in the handing-over statement, together with an explanation of the shortage or discrepancy given by the public officer who is handing-over.

**(2)** Where the shortage or discrepancy is other than of a very minor nature, the public officer taking over shall make an immediate report to the accounting officer who shall forthwith investigate the shortage or discrepancy and submit his report to the Accountant General with a copy to the Auditor General.

**(3)** In the case of a hand-over between outgoing and incoming accounting officers, the report shall be made to the Accountant General who shall forthwith investigate the shortage or discrepancy and submit his report to the Financial Secretary with a copy to the Auditor General.

**Procedure in case of illness or absence of public officer**

**103. (1)** Where because of illness or for any other reason an outgoing public officer is unable to hand-over his duties and responsibilities in person, he will forward the

keys of the strong-rooms, safes, cash-boxes, in his custody to his accounting officer by hand under sealed personal cover.

(2) The accounting officer shall then appoint at least two public officers who shall, on behalf of the outgoing public officer, jointly perform the hand-over duties approved in Regulations 101 and 102 and sign the handing-over statement in place of the outgoing public officer.

(3) A procedure similar to that approved in subregulation (2) of this Regulation shall be followed if a key-holder is unexpectedly absent from a duty, which cannot be held in abeyance until his return.

(4) Where for any reason an incoming public officer considers that the state of the records, balances, security, is such that he cannot conscientiously take them over, he must immediately seek instructions from his accounting officer and promptly submit to the accounting officer, a full written report of the circumstances of the case.

## PART 23

### INVENTORIES

#### Purchase and receipt of inventories

**104. (1)** Accounting officers are responsible for purchase and safe custody of inventories under their control.

(2) Every public officer is personally and pecuniary responsible for Government inventories under his control.

(3) Care must be taken to ensure that the inventories received are in good condition and conform to order requirements, and the procedures governing the receipt of inventories from suppliers into any Government store shall aim at ensuring that payment is made only for the quantities actually received in good order and condition and meeting the required specification.

(4) So far as is possible the task of receiving and checking inventories shall be carried out by a public officer other than the one who places the orders and authorises payment for the supplies, and the documentation should permit the various elements of the transaction, including ordering, receipt and payment, to be identified with and checked against each other.

#### Deliveries

**105. (1)** In order that investigations may be carried out and any claims supported, it is essential that—

- (a) a clear signature indicating that all the goods have been received intact and in good order, be given only when this fact has been ascertained;
- (b) intimation of any loss shall be given to the supplier and to the carrier without delay.

(2) Where any dispute is likely to arise, the storekeeper shall report the matter immediately in writing to his superior public officer so that an enquiry may be

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instituted to determine any responsibility; and in the event of loss to the Government, any failure to comply with this procedure shall be taken into account in determining responsibility for the loss.

### **Recording of inventories**

**106.** The Accountant General shall issue instruction on the format to be kept in respect of every inventory received and the procedure for the issuing of inventories.

### **Accountability for inventories**

**107. (1)** Inventories are accounted for by value as well as by quantity, and it is necessary to keep records so as to determine the unit cost of each inventory item and the reconciliation of the total value of the stocks of inventories with the financial records.

**(2)** All vouchers and ledger entries for inventories shall show the value as well as the quantity of the items concerned.

**(3)** All purchases of inventories shall be charged directly to the relevant expenditure lines immediately on purchase, and the records referred to in subregulation (1) shall not form part of the general ledger.

### **Inspection of inventories**

**108. (1)** Accounting officers shall arrange for the inventories for which they are responsible to be inspected regularly and for written reports to be made to them on the sufficiency of the storage accommodation and on the general condition of inventories and storage facilities.

**(2)** The inspecting public officer shall report to the accounting officer promptly and in writing, any case of loss, shortage, leakage, damage, waste, deterioration or irregularity observed in the course of his inspection and the Accounting officer shall take prompt and appropriate action to correct any defects or deficiencies reported.

**(3)** In addition to the departmental internal inspections, which are designed to satisfy Accounting officers that they are adequately discharging their own responsibilities for the correctness of inventories and stores records, the inventory holdings of all public stores shall be verified at least once a year by continuous stocktaking by an independent Stock Verifier or by Boards of Survey appointed by the Accountant General.

### **Boards of survey of inventories, etc.**

**109. (1)** In cases where inventories have not been fully checked during a financial year by a Stock Verifier, and in stores where, even though such a check has been made, exceptionally valuable or attractive items are held, a Board of Survey shall be appointed by the close of the financial year to check the stock holdings to such extent as specified in the terms of appointment.

**(2)** The appointment and composition of such Boards of Survey shall be similar to those approved in regulation 99 in respect of Boards of Survey of cash, bank balances and stamps.

**Hand-over of duties in respect of inventories by public officers**

**110. (1)** Accounting officers shall ensure that whenever one public officer relinquishes to another the whole or part of his responsibilities for any store, the inventories and stores ledgers are properly examined and the hand-over conducted in such a manner that there can be no doubt or ambiguity as to the items handed-over and taken over.

**(2)** The procedure for handing-over and taking over shall be similar to that approved in regulations 101, 102 and 103 for the hand-over of cash, bank balances and stamps.

**Losses of inventories**

**111. (1)** The procedure to be taken on the discovery of any loss or shortage of inventories or other Government property, the manner in which enquiries into the loss or shortage are to be conducted, and the procedure for surcharging or otherwise disciplining any public officers held to be responsible are approved in regulations 22, 23 and 24.

**(2)** In the context of inventories and other property, losses shall include any damage or deterioration which cannot be attributed to fair wear and tear.

**Write-off of inventories**

**112. (1)** Accounting officers may, with the authority of the Financial Secretary, write-off minor items of inventories which have been accidentally lost or broken beyond repair such as glassware and small tools, or perishable items which have become unserviceable, provided that, no question of fraud, theft or negligence is involved and the value does not exceed the maximum value determined by the Minister from time to time.

**(2)** In each case of minor articles lost or broken, the Accounting officer may order that the cost of the article shall be recovered from the public officer concerned.

**(3)** All write-offs shall be compiled and reported to the Financial Secretary for inclusion in a resolution to be introduced in the Legislative Assembly.

*(Amended by Act 9 of 2011)*

**Condemnation of unserviceable inventories, etc.**

**113. (1)** Where it is considered that inventories, vehicles, plant, equipment, have reached the end of their useful life, are beyond economical repair or are unserviceable for any other reason, or have become redundant through obsolescence, they shall be retained until a sufficient quantity has accumulated to merit the convening of a Board of Survey to inspect them; and it shall be the duty of such Board to determine the action to take.

**(2)** The Financial Secretary, if he thinks fit, appoint in writing a Board of Survey, comprising at least two public officers, one of whom shall be designated as Chairman, to inspect and report on the items referred to in subregulation (1); and where the items are of a mechanical or technical nature, at least one of the public officers appointed must be suitably qualified to express a technical opinion on the state of the items.

(3) Except where this consideration makes it unavoidable, no public officer concerned with the custody or use of the items should be appointed to the Board.

#### **Unwanted serviceable inventories, etc.**

114. Where inventories or items which, although serviceable, are no longer required by the Government are to be sold, they shall be disposed of by public auction or by tender after public advertisement; except where the specific approval of the Financial Secretary has been obtained for them to be sold through other means.

### PART 24

#### STOCK VERIFICATION

#### **Appointment of stock verifier**

115. The Financial Secretary shall have the power to appoint a stock verifier whenever it becomes necessary to verify stock holdings in any department.

#### **Duties of stock verifier**

116. The duties of a stock verifier shall include—

- (a) the detailed comparison of stores ledger balances, bin card balances and inventory balances with the physical stock on hand;
- (b) the initial investigations into the reasons for any discrepancies;
- (c) an assessment of the security and storage arrangements and safeguards against loss, fraud and other irregularities;
- (d) an assessment of the management of stocks with special regard to overstocking, wastage and obsolescence;
- (e) checking and evaluating inventory holdings;
- (f) the identification of unserviceable or obsolete stores;
- (g) supervising the disposal of condemned stores;
- (h) any other duties assigned by the Financial Secretary.

#### **Stock to be verified**

117. The Financial Secretary may at any time arrange for stores held in any department to be verified by a stock verifier.

#### **Report of stock verifier**

118. (1) The stock verifier shall report to the Financial Secretary on any discrepancy, defects, obsolescence or damage or any deficiency in the arrangements for accounting, storage, security and other safeguards which have come to his notice during the stock verification.

(2) The Financial Secretary, on receipt of the stock verifier's report, may require the accounting officer concerned to answer to any discrepancy, defect, damage or deficiency discovered by the stock verifier.

## PART 25

### NON-CURRENT ASSETS

#### Nature of non-current assets

**119. (1)** Non-current assets are assets that, by their nature, have useful lives extending over more than one fiscal year, and include all major items of furniture and equipment for either Government offices, quarters, plant, equipment, and larger tools for Government works, vehicles and launches, owned by the Government of Montserrat.

(2) Such assets are required to be retained until they are finally written-off and disposed of because they are either unserviceable or are of no further use to the Government; and while the overall responsibility for such assets or equipment rests with the relevant Accounting officer, the public officers to whom the assets are issued have the primary responsibility over their custody, maintenance, safeguarding and proper use until they are returned to store.

(3) When the occupant of an office, quarter or location, or other person having charge or use of the equipment or furniture changes, there shall be an appropriate hand-over to the incoming public officer.

#### Recording of assets

**120.** A register, in a form approved by the Accountant General shall be maintained for all assets, and all such assets shall also be appropriately marked or engraved to ensure that they are easily identifiable as Government assets.

#### Use of Government vehicles or conveyances

**121. (1)** Journeys may only be made in Government vehicles, launches or other conveyances when use of such vehicle, launch or conveyance has been approved by the relevant accounting officer or other public officer designated by the accounting officer to give such approval.

(2) The approval referred to in subregulation (1) shall be conveyed to the public officer in writing, with copies to the Accountant General.

(3) The public officer approving the journey shall ensure that the most economical vehicle or conveyance is used, commensurate with the duty to be performed, and shall satisfy himself that the distances travelled, time taken, are reasonable having regard to the conditions under which the work is executed or performed.

(4) Except with the express prior approval of the Financial Secretary, relevant accounting officer or appointing authority, no Government vehicle, launch or other conveyance may be used by any person for travel from home to place of work or for any other private purpose.

**Hire or loan of assets**

**122. (1)** Except where an authorised procedure exists and standard hire charges are in operation, Government property, plant or equipment may only be loaned or hired out to public officers or to the public in very exceptional circumstances.

**(2)** The loaning or hiring of Government property, plant or equipment under subregulation (1) of this Regulation shall—

- (a) be with the prior written approval of the relevant accounting officer; and
- (b) be supported by an agreement signed by the hirer on a form approved by the Attorney General,

and the hire charges must be paid before the plant, equipment or other non-current asset is released.

**Maintenance and security of assets**

**123.** Accounting officers are responsible to keep secure and maintain assets under their control in a reasonable state of repair in order to keep them suitable for purposes for which they were purchased.

**Sale of assets**

**124. (1)** No uniforms and equipment of a uniformed service which has become unserviceable or which are no longer required for public purposes shall be sold to any person, public officer or to the public.

**(2)** Where assets have become unserviceable or which no longer require for public purpose, no assets shall be sold to any person, public officer or to the public.

**(3)** Such a sale may only be made where the sale—

- (a) falls within the terms of a formal government contract, such as the sale of materials to a government workers contractor;
- (b) is made in accordance with a standing arrangement;
- (c) is otherwise made with the prior written authority of the Accountant General, which shall be given only in exceptional circumstances when no other source of supply is readily available, and the accounting officer concerned is satisfied that the items can be spared; and
- (d) complies with the Procurement Regulations, and any Regulations made under it or any other written law for the disposal of assets.

**(4)** Where authority has been duly obtained for the sale of any assets or non-current assets other than within the terms of a contract or in accordance with a standing arrangement, the assets shall not be supplied to the purchaser until payment in full has been received.

**(5)** Any Government mark or crest appearing on such assets shall be obliterated before the property is sold.

(6) In this Regulation, “**uniformed services**” means the Royal Montserrat Police Service, the Montserrat Defence Forces and such other institution or body as may be specified in general instructions issued by the Accountant General under section 8(2) of the Act. (*Amended by Act 9 of 2011*)

### **Boards of Survey of Assets**

**125. (1)** At the end of each financial year, Boards of Survey of Assets may be appointed to check the assets held by Ministries, departments and agencies of the Government.

**(2)** The appointment, composition and reporting of the Boards of Survey of Assets shall be as detailed in regulation 99.

## PART 26

### ACCIDENTS

#### **Appointment of Accident Investigation Board**

**126.** The Financial Secretary may appoint an Accident Investigation Board to inquire into the causes and costs of any accidents reported to him and to assess the extent of any responsible or negligence on the part of any driver or operator responsible for or in control of the vehicle or plant involved.

#### **Accident reports**

**127.** Whenever an accident involving a government vehicle or plant occurs, the driver or operator as the case may be shall immediately notify the police and complete an accident report and submit such report to the accounting officer.

#### **Assessment of damage**

**128.** The accounting officer, on receiving an accident report, shall immediately refer the reports to the officer in charge of the mechanical workshop or garage for an assessment of the damage or damages sustained and an estimate of the cost of repair, or, in the case where the vehicle or plant is beyond repairs, the cost of replacement.

#### **Report to be submitted to Accident Investigation Board**

**129.** Except where the accident is referred to the Court by the Police, the accounting officer shall submit the accident report together with the assessment made by the officer in charge of the mechanical workshop or garage and police report, if any, to the Accident Investigation Board. Where the matter has been referred to the Court, the Accounting Officer is obliged to await the decision of the Court and at that time all the documents including the Court decision shall be submitted to the Accident Investigation Board.

#### **Proceedings by the Accident Investigation Board**

**130. (1)** The Accident Investigation Board may summon any person to give any evidence or explanation concerning the accident which it may consider to be necessary.



(2) The Accident Investigation Board shall submit a report on its findings together with any recommendations as to the action to be taken against the driver or operator responsible for the accident, to the accounting officer.

### Action to be taken

**131. (1)** The accounting officer shall submit the accident report and the Accident Investigation Board's report together with his recommendations on the extent of any surcharge against the driver or operator responsible for the accident, to the Financial Secretary after consultation with the Attorney General's Chambers.

(2) Any surcharge imposed on the driver or operator by the Minister shall be recovered in accordance with any directions given by the Financial Secretary.

### Claims by government

**132.** Where the Accident Investigation Board recommends that a claim be made against any person or insurance company in respect of any liability for an accident, the accounting officer shall prepare the claim and submit it to the Attorney General for his approval before it is issued.

### Claims against government

**133.** In the event of a claim being made against the government for liability in respect of an accident, the claim shall be investigated by the Accounting Officer and both his report and the claim referred immediately to the Attorney General for his advice on the action to be taken.

### Repairs to damaged plant or vehicle

**134.** As soon as possible after an assessment has been made by the officer in charge of the mechanical workshop or garage and except as may be advised by the Accident Investigation Board or Attorney General, the accounting officer shall proceed to carry out repairs to the vehicle or plant involved in the accident. An accounting officer must ensure that cost to Government is minimised.

## PART 27

### MISCELLANEOUS

### Penalties

**135.** In accordance with section 52 of the Act a public officer who—

- (a) without reasonable excuse fails to provide by the due date any information that the Financial Secretary required under section 7 of the Act, such matter may be reported by the Financial Secretary to the responsible authority under the public service law for appropriate action; (*Amended by Act 9 of 2011*)
- (b) causes a loss of or deficiency in public money and damage to public property, the amount of loss or deficiency and the value of the property lost or destroyed and the cost of replacing or repairing the

damage to that property as the case may be, shall be a debt due to the Government and may be recovered from the public officer either administratively or through a court of competent jurisdiction.

### Surcharge

**136. (1)** Notwithstanding anything in these Regulations, where, in pursuance of Part 10 of the Act—

- (a) a loss or deficiency in public moneys or other moneys that has been advanced to or was under the control of a public officer occurs; or
- (b) a loss or deficiency of or damage to public property or other property occurs while in the care of a public officer, and the Minister is satisfied after due enquiry, that the negligence or misconduct of the public officer caused or contributed to the loss or deficiency,

the amount of the loss or deficiency; the value of the property lost or destroyed; the cost of replacing or repairing the damage to that property, as the case may be, shall be a debt due to the Government, and may be recovered from the public officer either administratively or through a court of competent jurisdiction.

(2) Where the negligence or misconduct of the public officer is not the sole cause of the loss, deficiency or destruction resulting in an action under subregulation (1) of this Regulation, the amount recoverable from the public officer may be restricted to only the cost of replacing or repairing the loss, deficiency, damage or destruction that the Minister considers, after due enquiry, to be just and equitable, having regard to the contribution made by the public officer to that loss, deficiency, damage or destruction.

(3) In this Regulation, reference to a public officer includes a person who at the time of the loss, deficiency or damage was a public officer.

### Forms

**137.** The Accountant General may prescribe such forms as are required for the efficient working of these Regulations.

**PUBLIC FINANCE (MANAGEMENT AND ACCOUNTABILITY)  
(PROCUREMENT) REGULATIONS**

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**PUBLIC FINANCE (MANAGEMENT AND ACCOUNTABILITY)  
(PROCUREMENT) REGULATIONS – SECTION 58**

*(S.R.O.s. 11/2012, 17/2012 and 21/2012)*

**Commencement**

*[1 April 2012]*

PART 1

PRELIMINARY

**Short title**

1. These Regulations may be cited as the Public Finance (Management and Accountability) (Procurement) Regulations.

**Interpretation**

2. In these Regulations—

“**Act**” means the Public Finance (Management and Accountability) Act;

“**construction**” means all works associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or works, such as site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing;

“**consulting services**” means services of an intellectual nature which may not lead to a physically measurable result;

“**Departmental Tenders Committee**” means a committee appointed under regulation 18;

“**domestic supplier**” means a supplier who has his principal place of business in Montserrat;

“**goods**” include raw materials, products, equipment and other physical objects of every kind and description, whether in solid, liquid, or gaseous form, and electricity;

“**Minister**” means the Minister with responsibility for finance; and “**Ministry**” shall be construed accordingly;

“**open tendering**” involves publicly publishing a request or invitation for tenders and considering all submissions received in response to the invitation;

“**prequalification document**” means any document submitted to suppliers in prequalification proceedings under regulation 6;

“**procurement**” means the acquisition of goods by any means including purchase, rental, lease or hire-purchase, and the acquisition of construction, consulting and other services;

“**procurement contract**” means a contract between the procuring entity and a supplier or contractor resulting from the procurement process;

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- “**procuring entity**” means any ministry, department, agency or other unit, or any subdivision of the Government or a public organisation that engages in procurement;
- “**public emergency**” means a period of public emergency declared in accordance with section 18 of the Montserrat Constitution Order 2010;
- “**Public Procurement Board**” means the Public Procurement Board established under regulation 15;
- “**public service law**” means any law relating to the matters referred to in section 24(2)(a) to (c) of the Montserrat Constitution Order 2010;
- “**publish**” has the meaning assigned in regulation 52;
- “**services**” means services of a general nature other than consulting and construction services;
- “**supplier**” means according to the context, any party or potential party to a procurement contract with the procuring entity and includes a consultant;
- “**tender document**” means any document that seeks to solicit proposals, offers or quotations from suppliers at any stage of the procurement process; and
- “**tender security**” means a security provided to the procuring entity to secure the fulfilment of any obligation under a procurement contract and includes such arrangements as bank guarantees, surety bonds, stand-by letters of credit, cheques on which a bank is primarily liable, cash deposits, promissory notes, and bills of exchange.

### Application

3. (1) These Regulations apply to all procurement by a procuring entity unless—
- (a) the procurement is for purposes of national defence, public emergency or national security; or
  - (b) the regulations conflict with a provision of an international agreement.

(2) The application of these Regulations may be extended to the type of procurement referred to in subregulation (1) if and to the extent that a procuring entity expressly declares the application of the Regulations to suppliers in its initial tender document.

## PART 2

### GENERAL PROVISIONS

#### Qualification of suppliers

4. (1) A supplier must qualify to participate in a procurement process by meeting the following criteria to the extent that the procuring entity considers appropriate in a particular procurement process—
- (a) the supplier possesses or has access to the technical competence, financial resources, equipment and other physical facilities, personnel,



managerial capability, experience and reputation, to complete the procurement contract;

- (b) the supplier has the legal capacity to enter into the procurement contract;
- (c) the supplier is not insolvent, in receivership, bankrupt or being wound up, its affairs are not being administered by a court or a judicial officer and its business activities have not been suspended;
- (d) the supplier is not the subject of legal proceedings for any of the matters mentioned in paragraph (c);
- (e) the supplier has fulfilled or has made substantial arrangements satisfactory to the relevant authorities, to fulfil its obligations to pay taxes and social security and other contributions of its employees;
- (f) the supplier has not, and its directors or officers have not, been convicted of any criminal offence related to—
  - (i) its professional conduct;
  - (ii) the making of false statements; or
  - (iii) misrepresentations as to its qualifications to enter into a procurement contract,

within a period of ten years preceding the commencement of the procurement process;

- (g) the supplier, its directors or officers have not been disqualified from a procurement process pursuant to suspension or debarment proceedings in this or other jurisdictions;
- (h) the supplier's past performance substantiated by documentary evidence is satisfactory and warrants serious consideration for the award of the procurement contract.

(2) If a supplier is a public officer or a public officer owns or has an interest in a supplier, the public officer may only qualify to participate in a procurement process if he declares his interest—

- (a) to the procuring entity on submission of a prequalification application, where submission is required; or
- (b) where the procuring entity does not engage in prequalification proceedings, to the Departmental Tender Committee or the Public Procurement Board, on submission of his tender document.

(3) If a public officer in subregulation (2) does not declare his interest, he or the supplier is liable to lose the procurement contract, if the tender is accepted.

(4) Subject to the right of a supplier to protect its intellectual property or trade secrets, the procuring entity may require suppliers or contractors participating in the procurement process to provide appropriate documentary evidence or other information to satisfy itself that the supplier is qualified in accordance with the criteria listed in subregulation (1).

(5) A procuring entity shall set out in any prequalification document or tender document the applicable criteria for qualification referred to in subregulation (1) and the criteria shall apply equally to all suppliers.

(6) A procuring entity shall not impose a criterion, requirement or procedure with respect to the qualifications of suppliers other than those identified in these Regulations.

(7) The procuring entity shall not establish a criterion, requirement or procedure with respect to the qualifications of suppliers that—

- (a) discriminates against or among suppliers or against categories of suppliers on the basis of nationality; or
- (b) that is not justifiable for the performance of the procurement contract,

except when it is in the national interest to do so and this is expressed in the tender documents.

### **Evaluation and disqualification of suppliers**

5. (1) A procuring entity shall evaluate the qualifications of suppliers in accordance with the qualification criteria and procedure set out in the prequalification or tender documents.

(2) A procuring entity may disqualify a supplier from a procurement process if it finds that the supplier knowingly submitted information concerning its qualifications that was materially inaccurate, materially incomplete or false.

(3) If a supplier knowingly submits information concerning its qualification which is materially inaccurate, materially incomplete or false on more than one occasion, a procuring entity may, with the approval of the Public Procurement Board—

- (a) suspend the supplier, for a period of one to two years, from being considered for any procurement contract by the procuring entity; or
- (b) debar the supplier from participation in any or a certain type of procurement process, subject to any condition it considers necessary.

### **Prequalification proceedings and documents**

6. (1) A procuring entity may conduct prequalification proceedings with a view to identifying suppliers that are qualified prior to the submission of tenders, proposals or offers in any procurement process.

(2) If the procuring entity decides to engage in prequalification proceedings it shall publish an invitation to prequalify which shall state—

- (a) the method of obtaining prequalification documents; and
- (b) the fee payable for the documents.

(3) A procuring entity shall provide prequalification documents to each supplier who requests them in the manner provided in the invitation to prequalify and who pays the applicable fee.

- (4) The prequalification documents shall include the following information—
- (a) instructions for preparing and submitting a prequalification application;
  - (b) a summary of the required terms and conditions of the procurement contract to be entered into at the conclusion of the procurement process;
  - (c) any document or other information that must be submitted by suppliers as evidence of their qualifications;
  - (d) the manner and place for the submission of applications to prequalify;
  - (e) the deadline for submission, expressed as a specific date and time; and
  - (f) any other requirements that may be established by the procuring entity in conformity with these Regulations.

(5) A procuring entity shall ensure that the deadline for submission of a prequalification application allows suppliers sufficient time to prepare and submit their applications but should also take into account the needs of the procuring entity.

(6) A procuring entity shall respond in a timely manner to a justifiable query by a supplier for clarification of the prequalification documents that is received by the procuring entity within a reasonable time, prior to the deadline for the submission of applications to prequalify.

(7) The response to any query in subregulation (6) shall, without identifying the source of the query, be communicated to all suppliers who received prequalification documents.

(8) A procuring entity shall only apply the criteria set out in prequalification documents when evaluating each prequalification application and deciding whether a supplier prequalifies to participate in the procurement process.

(9) A procuring entity shall promptly notify each supplier that submits a prequalification application whether or not it has prequalified and shall, upon request—

- (a) make available to any member of the public, the names of all suppliers that have prequalified; and
- (b) communicate to any supplier that has not been prequalified, the grounds for its decision.

(10) Only prequalified suppliers are entitled to participate further in the relevant procurement process.

(11) A supplier that has not satisfied the prequalification requirements may request a review of the decision in accordance with Part 7.

### **Form of communication**

7. (1) A document, notification, decision or other communication that these Regulations require—

- (a) a procuring entity to submit to a supplier; or

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(b) a supplier to submit to a procuring entity,

shall be in a form, electronic or otherwise, that provides a record of the content of the communication.

(2) If communication, referred to in subregulation (1), between the supplier and the procuring entity occurs by a form of communication that does not provide a record of the content of the communication, confirmation of the communication shall be given to the recipient of the communication by the sender in a form which provides a record of the confirmation.

(3) The procuring entity shall not discriminate against or among suppliers on the basis of the form in which they transmit or receive documents, notifications, decisions or other communications.

### **Rules concerning documentary evidence provided by suppliers**

8. (1) If a procuring entity requires notarization or authentication of a document provided by a supplier as evidence of the supplier's qualifications in the procurement process, the procuring entity shall not impose any requirement as to the authentication or notarization of the documents other than those provided for by law.

(2) The procuring entity shall require authentication or notarization of documents only from the bidder who submitted the lowest evaluated bid or the bidder who has been recommended to be awarded the tender.

### **Record of procurement process**

9. (1) The procuring entity shall maintain a record of the procurement process including the following information for at least five years—

- (a) a brief description of the goods, services, construction, or consulting services to be procured;
- (b) the names, addresses and other relevant contact information of suppliers that submitted prequalification applications, tenders, proposals, or quotations;
- (c) the name and address of the supplier or contractor with which the procurement contract is entered into and the contract price;
- (d) information relating to the qualification, or lack thereof, of suppliers or contractors that submitted prequalification applications, tenders, proposals, offers or quotations;
- (e) the price, or the basis for determining the price, and a summary of the other material terms and conditions of each prequalification application, tender, proposal, offer or quotation;
- (f) the means used to solicit suppliers and a record of any such advertisement;
- (g) the time and place for the opening of tenders;
- (h) the names of the suppliers or their representatives and members of the public attending the opening of tenders or proposals;

- (i) the form of tender and those pages containing the original bill of quantities for construction;
  - (j) a summary of the evaluation and comparison of tenders, proposals, offers or quotations; and
  - (k) any other information required to be recorded by these Regulations.
- (2) The portion of the record referred to in subregulation (1)(a) and (b) shall, on request, be made available to any person—

- (a) (i) after a tender has been accepted; and
- (ii) a notice under regulation 10 has been published; or
- (b) after the procurement process has been terminated.

(3) After a tender has been accepted or the procurement process has been terminated, the record referred to in subregulation (1)(c) to (j) shall, be made available on request, to suppliers that applied for prequalification or tenders.

(4) A court of competent jurisdiction may, at any stage of the procurement process, on the application of a supplier that submitted a prequalification application, tender, proposal or quotation, order the procuring entity to disclose a portion of the record referred to in subregulation (1), but, subject to the conditions of the order, the procuring entity shall not disclose information—

- (a) if its disclosure would—
  - (i) be contrary to law;
  - (ii) impede law enforcement;
  - (iii) not be in the public interest;
  - (iv) prejudice legitimate commercial interests of the other parties; or
  - (v) inhibit fair competition; or
- (b) relating to the examination or evaluation of tender proposals,

but non-disclosure shall not be construed as preventing the disclosure of scoring sheets or rankings, or any other documents that provide a qualitative or quantitative comparison of the tender proposals.

(5) The procuring entity shall not be liable to suppliers for damages solely for a failure to maintain a record of the procurement process in accordance with this regulation if the procuring entity has acted in good faith.

### **Publication of contract awards**

**10.** A procuring entity shall, within ten days of awarding a procurement contract, publish a notice of the contract, if the value of the contract exceeds—

- (a) \$10,000 for procurement of services; or
- (b) \$20,000 for any other procurement.

### Inducements from suppliers

11. A procuring entity or the Public Procurement Board shall reject a tender or proposal, if the supplier that submitted it offers, gives or agrees to give, to any current or former officer or employee of the procuring entity—

- (a) a gratuity in any form;
- (b) an offer of employment; or
- (c) any other thing or service or value;

as an inducement with respect to an act or decision of, or procedure followed by, the procuring entity in connection with the procurement process and the rejection of the tender or proposal and the reasons for the rejection shall be recorded in the record of the procurement process under regulation 9 and promptly communicated to the supplier.

### Rules regulating obstacles against the participation of suppliers

12. (1) A procuring entity shall not include or use in the prequalification documents or tender documents—

- (a) a specification, plan, drawing or design setting out the technical or quality characteristic of goods, services or construction;
- (b) a requirement concerning testing and test methods, packaging, marking or labelling or conformity certificate; or
- (c) a symbol, terminology or description of goods,

if it creates an obstacle, including obstacles based on nationality, to the participation of suppliers in the procurement process.

(2) Subject to subregulation (3), a specification, plan, drawing, design and requirement shall be based on the relevant objective technical and quality characteristics of the goods, services, or construction to be procured.

(3) There is no requirement for or reference to a particular trade mark, name, patent, design, type, specific origin or producer in a specification, plan, drawing, design or requirement, unless there is no other sufficiently precise or intelligible way of describing the characteristics of the goods, services, or construction to be procured.

(4) Where there is a requirement for or reference to a particular trade mark, name, patent, design, type, specific origin or producer, the words such as “or equivalent” must be included.

(5) Standardized features, requirements, symbols and terminology relating to the technical and quality characteristics of the goods, services, or construction to be procured shall be used, where available, in formulating any specifications, plans, drawings and designs to be included in the tender documents.

(6) Regard shall be had for the use of standardized trade terms, where available, in formulating the terms and conditions of all relevant aspects of the tender documents and the procurement contract to be entered into as a result of the procurement process.

**Splitting procurement contracts**

13. A procuring entity shall not—

- (a) split or cause a procurement contract to be split; or
- (b) divide or cause a procurement contract to be divided,

into separate procurement contracts where the sole purpose for doing so is to avoid the application of any provision of these Regulations.

**Language of documents**

14. All solicitations, invitations to tenders and other documents required under these Regulations shall be in English and may also be in any other language that the procuring entity specifies.

## PART 3

ADMINISTRATIVE STRUCTURE FOR  
PUBLIC PROCUREMENT**Establishment of a Public Procurement Board**

15. (1) There is established a body known as the Public Procurement Board.

(2) The Public Procurement Board shall consist of the Deputy Financial Secretary, who shall be an *ex officio* member and Chairperson, and five other members of personal and professional integrity, appointed by the Deputy Governor as follows—

- (a) a representative from the Ministry with responsibility for development policy;
- (b) a person with legal training, competence and experience;
- (c) a person with at least five years experience in finance or public auditing;
- (d) a person who has shown competence in business or administration; and
- (e) a person not in active practice who possesses technical expertise in engineering, architecture or other relevant technical field.

(3) A director, head of a department, a representative of a donor agency or a designated representative of a procuring entity may attend meetings of the Public Procurement Board when matters concerning the relevant procuring entity are being considered but shall not be entitled to vote.

(4) A term of membership on the Public Procurement Board shall be three years except in the case of the Deputy Financial Secretary.

(5) Three members, including the Chairman, shall constitute a quorum at meetings of the Public Procurement Board.

*(Amended by S.R.O. 21/2012)*

**Functions of the Public Procurement Board**

**16. (1)** The Public Procurement Board shall be responsible for—

- (a) exercising jurisdiction over tenders, the value of which, exceeds \$100,000;
- (b) maintaining efficient record keeping and quality assurance systems;
- (c) making rules governing procurement to carry out the provisions of these Regulations;
- (d) determining the forms of documents for procurement including, but not limited to—
  - (i) standard bidding documents;
  - (ii) prequalification documents;
  - (iii) procurement contracts;
  - (iv) anti-collusion statements to be signed by suppliers;
  - (v) evaluation forms; and
  - (vi) procurement manuals, guidelines, and procedures;
- (e) organising training seminars regarding procurement;
- (f) reporting annually to the Minister on the effectiveness of the procurement processes, and recommending any amendment to these Regulations that may be necessary to improve the effectiveness of the procurement process;
- (g) reviewing decisions of procuring entities, upon request, as provided for in regulation 46; and
- (h) adjudicating proceedings for the suspension or debarment of a supplier from procurement proceedings.

**(2)** The Public Procurement Board shall submit to the Financial Secretary, reports of its decisions and other activities every quarter and at any other time that the Financial Secretary requires.

*(Amended by S.R.O. 17/2012)*

**Secretariat of the Public Procurement Board**

**17. (1)** The Ministry shall provide to the Public Procurement Board, a secretariat, which is responsible for the operational and day-to-day activities of the Public Procurement Board.

**(2)** The Ministry shall ensure that the secretariat receives the training and other resources necessary to discharge its responsibilities.

**Appointment of Departmental Tender Committees**

**18. (1)** The Public Procurement Board shall appoint a Department Tenders Committee for each procuring entity which, subject to the functions of the Public Procurement Board under regulation 16, shall have jurisdiction for and oversee the

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administration of procurement by the relevant Ministry, department, agency or public organisation if the value of the procurement contract is less than \$100,000.

(2) A Departmental Tenders Committee shall consist of—

- (a) an accounting officer, who shall be the Chairman of the Committee; and
- (b) two other persons, one of whom shall be an employee of the procuring entity,

appointed after consultation with the relevant Minister.

(3) A Departmental Tenders Committee shall prepare tender documents, using standardized forms and criteria prepared by the Public Procurement Board, for tenders subject to its jurisdiction; and may, with the approval of the Public Procurement Board, make such minor alterations or modifications to the forms and criteria as are deemed necessary.

(4) A Departmental Tenders Committee shall determine whether suppliers satisfy the qualification requirements under regulation 33 and shall submit to the Public Procurement Board reports of decisions, justifications for decisions and the minutes of meetings when decisions are taken.

(5) Each procuring entity for which a Departmental Tenders Committee has been appointed is responsible for its operational and day-to-day activities and shall ensure that its officers receive the training and other resources necessary to discharge their responsibilities.

*(Amended by S.R.O. 17/2012)*

### **Procurement by corporations and certain other bodies**

**19. (1)** A corporations or other body in which the controlling interest is vested in the Crown may conduct procurement proceedings according to its own rules or regulations, provided that, those rules and regulations are approved by the Public Procurement Board.

(2) Despite subregulation (1), if the rules or regulations of the corporation or other public body conflict materially with these Regulations, these Regulations shall prevail.

(3) The Public Procurement Board may review the rules and regulations of the corporation or public body referred to in subregulation (1) from time to time, and may approve or revoke its approval of the rules and regulations unconditionally or subject to certain amendments.

(4) A corporation or other body that receives funds from the Consolidated Fund for a specific procurement shall for that procurement, follow the procedures set out in these Regulations.

## PART 4

METHODS OF PROCUREMENT OF GOODS, CONSTRUCTION  
AND SERVICES AND CONDITIONS FOR USE**Open tendering**

**20. (1)** A procuring entity shall, subject to subregulation (2), use public tendering for the procurement of goods, construction and services.

(2) A procuring entity may use a method of procurement other than open tendering proceedings in accordance with regulations 21, 22 and 23, and shall include in the record kept under regulation 9 a statement of the grounds and circumstances on which it relies to justify the use of that particular method of procurement.

**Restricted tendering**

**21. (1)** A procuring entity may engage in procurement by means of restricted tendering in accordance with this regulation when—

- (a) the goods, construction or service by reason of its highly complex or specialized nature, is available only from a limited number of suppliers or contractors;
- (b) the estimated cost of the procurement contract is below \$20,000; or
- (c) the time and cost required to examine a large number of tenders would be disproportionate to the value of the goods, construction or service to be procured.

(2) If a procuring entity relies on the ground in subregulation (1)(a) to engage in restricted tendering, all suppliers from whom the goods, construction or service is available shall be invited to submit tenders.

(3) When a procuring entity relies on any other ground to engage in restricted tendering, the procuring entity shall select suppliers from whom to solicit tenders in a non-discriminatory manner and shall select sufficient suppliers to ensure effective competition, but not fewer than two.

(4) When the restricted tendering procedure is used—

- (a) all the steps and requirements applicable to open tendering prescribed in this Part shall be complied with except that only suppliers invited by the procuring entity can submit tenders; and
- (b) the procuring entity shall cause a notice of the restricted tendering to be published.

**Request for quotations**

**22. (1)** The procuring entity may engage in procurement by means of a request for quotations for the procurement of readily available goods and services—

- (a) that are not specifically produced or provided to the particular specifications of the procuring entity; and
- (b) for which there is an established market,

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provided that, the estimated value of the procurement contract does not exceed \$20,000.

(2) Before awarding a procurement contract under this Regulation, the procuring entity shall obtain and compare quotations from as many qualified suppliers as reasonably practicable, but not fewer than two.

(3) The procuring entity shall use its best efforts to check prices on the internet and other sources to ensure the reasonableness of quoted prices and shall at least once quarterly, publish the price of its procurements that exceed the price of \$5,000.

(4) Each supplier is permitted to give only one price quotation, which it is not permitted to change, and the procuring entity is not permitted to engage in negotiations with a supplier with respect to a quotation submitted by the supplier.

(5) The procurement contract shall be awarded to the supplier that—

- (a) submitted the lowest priced quotation; and
- (b) complied with all the requirements of the request.

(6) The procuring entity shall keep a record of all quotations received.

### Single-source procurement

23. A procuring entity may engage in single-source procurement if—

- (a) the goods or construction is available only from a particular supplier, or a particular supplier has exclusive rights with respect to the goods or construction, and no reasonable alternative or substitute exists;
- (b) the services, by reason of their highly complex or specialized nature, are available from only one source;
- (c) owing to a public emergency or national disaster, there is an urgent need for goods, services or construction, and it is impractical to use the prescribed methods of procurement because of the time involved in using those methods;
- (d) the procuring entity, having procured goods, services, equipment or technology from a supplier, determines that additional supplies must be procured from that supplier for reasons of standardization or because of the need for compatibility with existing goods, services, equipment or technology, taking into account—
  - (i) the effectiveness of the original procurement in meeting the needs of the procuring entity;
  - (ii) the limited size of the proposed procurement in relation to the original procurement;
  - (iii) the reasonableness of the price; and
  - (iv) the unsuitability of alternatives to the original procurement; or
- (e) the procuring entity applies regulation 3(2), to procurement involving national defence or national security and determines, as a result of Copying/unauthorised distribution strictly prohibited.

national security concerns, that single-source procurement is the most appropriate method of procurement.

## PART 5

### PROCEDURE FOR SOLICITING TENDERS

#### *Subpart 1 – Invitation to Tender*

#### **Procedure for soliciting tenders**

**24. (1)** A procuring entity shall solicit tenders by causing an invitation to tender to be published.

(2) The invitation to tender shall contain the following information—

- (a) the name and address of the procuring entity;
- (b) the nature, quantity and place of delivery of the goods to be supplied, the nature and location of the construction to be effected or the nature of the services and the location where they are to be provided;
- (c) the desired time for the supply of the goods or for completion of construction or the timetable for the provision of services;
- (d) the criteria and procedures to be used under regulation 4 for evaluating the qualifications of suppliers;
- (e) the means of obtaining the tender documents and the place from which they may be obtained;
- (f) the price, if any, charged by the procuring entity for tender documents;
- (g) the language or languages in which the tender documents are available;
- (h) a copy of the anti-collusion statement prescribed by the Public Procurement Board; and
- (i) the place and deadline for the submission of tenders.

#### **Two-stage tendering**

**25. (1)** Subject to the approval of the Public Procurement Board, a procuring entity may engage in open tendering by means of two-stage tendering—

- (a) when the complex nature of the procurement contract makes it difficult for the procuring entity to—
  - (i) formulate detailed specifications for the goods or construction; or
  - (ii) in the case of services, identify the characteristics or elements of the service;
- (b) in order to obtain the most satisfactory solution for the procurement needs or to a problem;

- (c) when it is necessary to negotiate with suppliers because of the technical character of the goods or construction or because of the nature of the service; or
  - (d) when it seeks to enter into a procurement contract for the purpose of research, experiment, study or development.
- (2) Two-stage tendering may be preceded by pre-qualification proceedings in accordance with regulation 6.
- (3) During the first stage of a two-stage tender, suppliers shall be invited to submit—
- (a) technical proposals on the basis of a conceptual design or performance-based specifications provided in the tender documents; or
  - (b) proposals or offers as to possible solutions to a problem or the procurement needs of the procuring entity,
- without submitting prices and these proposals may then be subject to further specification on technical and commercial requirements.
- (4) During the second stage, suppliers shall be invited to submit final technical proposals with prices on the basis of revised tender documents, following the first stage.

### **Tender documents**

26. (1) The procuring entity shall provide tender documents to suppliers in accordance with the procedure and requirements specified in the invitation to tender and subject to the payment of the prescribed fee.
- (2) If pre-qualification proceedings have been conducted, the procuring entity shall provide tender documents to each pre-qualified supplier.
- (3) The tender documents shall include, at least, the following information—
- (a) instructions for preparing tenders;
  - (b) the criteria and procedures, in conformity with the provisions of regulation 4;
  - (c) the requirements as to documentary evidence or other information that must be submitted by suppliers to demonstrate their qualifications;
  - (d) the description, nature and technical or quality characteristics of the goods, construction or services to be procured, in conformity with regulation 12, and any incidental services to be performed; the location where the construction is to be effected or the services are to be provided; and the desired or required time, if any, when the goods are to be delivered, the construction is to be completed or the services are to be provided;
  - (e) the criteria to be used to determine the successful tender, including the relative weight to be assigned to each criterion;

- (f) the terms and conditions of the procurement contract, to the extent they are already known to the procuring entity, and the contract form, if any, to be signed by the parties;
- (g) the manner in which the tender price is to be formulated and expressed, including a statement as to whether the price is to cover elements other than the cost of the goods, construction or services, such as any applicable transportation and insurance charges, customs duties and taxes;
- (h) the currency or currencies in which the tender price is to be formulated and expressed;
- (i) the language or languages, in conformity with regulation 14, in which tenders are to be prepared;
- (j) any requirements of the procuring entity with respect to the issuer and the nature, form, amount and other principal terms and conditions of any tender security to be provided by suppliers;
- (k) any requirements for any security for the performance of the procurement contract to be provided by the supplier, including securities such as labour and materials bonds;
- (l) if applicable, a statement that a supplier may not modify or withdraw its tender prior to the deadline for the submission of tenders without forfeiting its tender security;
- (m) the manner, place and deadline for the submission of tenders, in conformity with regulation 28;
- (n) the means by which, pursuant to regulation 27, suppliers may seek clarification of the tender documents and a statement as to whether the procuring entity intends, at this stage, to convene a meeting of suppliers;
- (o) the period of time during which tenders shall be in effect, pursuant to regulation 30;
- (p) the place, date and time for the opening of tenders, pursuant to regulation 32;
- (q) the procedures to be followed for opening and examining tenders;
- (r) the currency that will be used for the purpose of evaluating and comparing tenders pursuant to regulation 33 and either the exchange rate that will be used for the conversion of tenders into that currency or a statement that the rate published by a specified financial institution prevailing on a specified date will be used;
- (s) references to these Regulations and other legislation directly pertinent to the procurement process, provided, however, that the omission of any such reference shall not constitute grounds for review under Part 7 or give rise to liability on the part of the procuring entity;

- (t) the name, functional title and address of one or more officers or employees of the procuring entity who are authorised to communicate directly with and to receive communications directly from suppliers in connection with the procurement process;
- (u) notice of the right provided under Part 7 to seek review of an unlawful act or decision of, or procedure followed by, the procuring entity in relation to the procurement process;
- (v) if applicable, a statement pursuant to regulation 34 that the procuring entity reserves the right to reject all tenders;
- (w) any formalities that will be required for a procurement contract to enter into force, once a tender has been accepted, including, where applicable—
  - (i) the execution of a written procurement contract pursuant to regulation 36;
  - (ii) the approval by the Governor acting on the advice of Cabinet; and
  - (iii) the estimated period of time following the dispatch of the notice of acceptance that will be required to obtain the approval; and
- (x) any other requirements established by the procuring entity in conformity with these Regulations and any other legislation relating to the preparation and submission of tenders and to other aspects of the procurement process.

### Clarification and modification of tender documents

27. (1) A supplier may request a clarification of the tender documents from the procuring entity and the procuring entity shall—

- (a) respond within a reasonable time to any request for clarification that is received so as to enable the supplier to make a timely submission of its tender; and
- (b) communicate the clarification to all suppliers to whom the procuring entity has provided tender documents, without identifying the source of the query.

(2) If the procuring entity convenes a meeting of suppliers prior to the submission of tenders, it shall prepare minutes of that meeting containing the queries submitted at the meeting for clarification of the tender documents and its responses to those queries, without identifying the sources of the queries.

(3) The procuring entity shall promptly provide the minutes of a meeting held under subregulation (2) to all suppliers to whom tender documents were given, to enable those suppliers to take the minutes into account in preparing their tenders.

(4) At any time prior to the deadline for submission of tenders, the procuring entity may, for any reason, whether on its own initiative or as a result of a request for clarification by a supplier, modify the tender documents, and may extend the deadline for submission of tenders.

*Subpart 2 – Submission of Tenders***Submission of tenders**

**28. (1)** Subject to subregulation (2), a supplier shall submit three signed written originals of each tender, by delivery, in a sealed envelope addressed to—

- (a) if the value of the tender is less than \$100,000, the relevant Departmental Tender Committee; or
- (b) if the value of the tender is \$100,000 or more, the Public Procurement Board.

(2) The supplier shall clearly mark on the envelope the name, functional title and address of the procuring entity or the representative of the procuring entity who is authorised to communicate with and to receive communications directly from suppliers in connection with the procurement process.

(3) Without prejudice to the right of a supplier to submit a tender in the form referred in a subregulation (1), a tender may alternatively be submitted in any other form specified in the tender documents that provides a record of the content of the tender and at least a similar degree of authenticity, security and confidentiality.

(4) A procuring entity shall record the time and date when the tender was received, and on request, provide the supplier with a receipt containing that information.

*(Amended by S.R.O. 17/2012)*

**Deadline for submission of tenders**

**29. (1)** The procuring entity shall fix—

- (a) the place; and
- (b) a specific date and time as the deadline,

for the submission of tenders.

(2) If pursuant to regulation 27, the procuring entity issues a clarification or modification of the tender documents, or holds a meeting with suppliers, it shall, prior to the deadline for the submission of tenders, extend the deadline if necessary to afford suppliers reasonable time to take the clarification or modification, or the minutes of the meeting, into account in their tenders.

(3) A procuring entity may, in its absolute discretion, prior to the deadline for the submission of tenders, extend the deadline where it considers, based on documentary evidence, that suppliers were prevented from meeting the deadline by factors beyond their control.

(4) A procuring entity shall promptly give notice of any extension of the deadline to each supplier to whom it provided the tender documents.

(5) A tender received by the procuring entity after the deadline for the submission of tenders shall be so marked, returned to the supplier and shall not be opened except for the purpose of ascertaining the name and address of the supplier.



**Periods of effectiveness of tenders; modification and withdrawal of tenders**

**30. (1)** Tenders shall be in effect during the period of time specified in the tender documents.

**(2)** Prior to the expiration of the period of effectiveness of tenders, the procuring entity may request a supplier to extend such period for an additional specified period of time.

**(3)** A supplier may refuse the request without forfeiting its tender security, and the effectiveness of its tender will terminate upon the expiration of the unextended period of effectiveness.

**(4)** A supplier who agrees to an extension of the period of effectiveness of its tender shall extend or procure an extension of the period of effectiveness of tender security provided by it or provide new tender security to cover the extended period of effectiveness of its tender and a supplier whose tender security is not extended, or that has not provided a new tender security, is considered to have refused the request to extend the period of effectiveness of its tender.

**(5)** Unless otherwise specified in the tender documents, a supplier may modify or withdraw its tender prior to the deadline for the submission of tenders without forfeiting its tender security and the modification or notice of withdrawal is effective if it is received by the procuring entity prior to the deadline for the submission of tenders.

**Tender security**

**31. (1)** When a procuring entity requires suppliers to provide a tender security—

- (a)* the requirement shall apply equally to all the suppliers;
- (b)* the tender documents may stipulate that the issuer of the tender security and the confirmer, if any, of the tender security, as well as the form and terms of the tender security, must be acceptable to the procuring entity;
- (c)* the procuring entity shall not reject a tender on the grounds that the tender security was not issued by an issuer in Montserrat if the tender security and the issuer otherwise conform to the requirements specified in the tender documents;
- (d)* a supplier may, prior to submitting a tender, request the procuring entity to confirm the acceptability of a proposed issuer of a tender security, or of a proposed confirmer, if required;
- (e)* the procuring entity shall respond promptly to a request under paragraph *(d)*;
- (f)* confirmation by the procuring entity of the acceptability of a proposed issuer or of any proposed confirmer does not preclude the procuring entity from rejecting the tender security on the ground that the issuer or the confirmer, as the case may be, has become insolvent or otherwise lacks creditworthiness;

(g) the procuring entity shall specify in the tender documents any requirements with respect to the issuer and the nature, form, amount and other principal terms and conditions of the required tender security.

(2) The procuring entity shall not make a claim to the amount of the tender security, and shall promptly return, or procure the return of, the tender security document, after any one of the following events—

- (a) the expiration of the tender security;
- (b) the entry into force of a contract and the provision of a security for the performance of the contract, if such a security is required by the tender documents;
- (c) the termination of the tendering proceedings without entry into force of a procurement contract; or
- (d) the withdrawal of the tender prior to the deadline for the submission of tenders, unless the tender documents stipulate that no such withdrawal is permitted.

### *Subpart 3 – Evaluation of Tenders*

#### **Opening of tenders**

**32. (1)** Tenders shall be opened—

- (a) at the time specified in the tender documents as the deadline for the submission of tenders; or
- (b) at the time specified in the last extension of the deadline,

at the place and in accordance with the procedures specified in the tender documents.

(2) All suppliers who have submitted tenders, or their representatives, may attend the opening of tenders.

(3) The name and address of each supplier whose tender is opened and the tender price shall, be announced to those persons present at the opening of tenders, and communicated, on request, to suppliers that have submitted tenders but are not present or represented at the opening of tenders, and recorded immediately in the record of the tendering process kept under regulation 9.

#### **Examination and evaluation of tenders**

**33. (1)** The procuring entity shall promptly transmit all tenders received from suppliers after the opening of tender under regulation 32 to—

- (a) the Departmental Tenders Committee if the value of the tender is less than \$100,000; or
- (b) the Public Procurement Board if the value of the tender is \$100,000 or more.

(2) A Departmental Tenders Committee or the Public Procurement Board shall, using only the evaluation criteria outlined in the tender documents—

- (a) evaluate tenders transmitted under subregulation (1);
- (b) determine the successful tender; and
- (c) convey its recommendation to the procuring entity within a reasonable period of time after it determines the successful tender, but not longer than fourteen days unless a review has been sought under regulation 46.

(3) The Public Procurement Board or the Departmental Tender Committee may co-opt up to 2 persons with relevant technical experience if the nature of the procurement or the evaluation criteria is such that such experience is necessary for the performance of its functions under subregulation (2).

(4) A person who is co-opted under subregulation (3) may advise the Board or Committee but that person is not entitled to vote and shall not be provided with more information than is required for the performance of an advisory function.

(5) The advice of a person co-opted under subregulation (3) shall be given or recorded in writing and signed by that person.

(6) The successful tender shall be the lowest evaluated tender ascertained on the basis of the criteria specified in the tender documents.

(7) In determining the lowest evaluated tender, a Departmental Tenders Committee or the Public Procurement Board shall, to the extent that it is practical, express all evaluation criteria in monetary terms based on the assigned weight to each criterion and may consider the following—

- (a) the tender price;
- (b) the cost of operating, maintaining and repairing the goods or construction;
- (c) the time for delivery of the goods, completion of construction or provision of the services;
- (d) the terms of payment and of guarantees in respect of the goods, construction or services;
- (e) the effect that acceptance of a tender would have on the balance of payments position and foreign exchange reserves of Montserrat;
- (f) the counter-trade arrangements offered by suppliers;
- (g) the extent of local content, including manufacture, labour and materials, in goods, construction or services being offered by suppliers;
- (h) the potential for economic development offered by tenders, including domestic investment or other business activity, the encouragement of employment, the reservation of certain production for domestic suppliers, the transfer of technology and the development of managerial, scientific and operational skills; and

(i) national defence, public emergency and security considerations.

(8) The Departmental Tenders Committee or the Public Procurement Board may, within a reasonable period of time, ask suppliers for clarifications of their tenders in order to assist in the examination and comparison of tenders but shall not seek, offer or permit a change to a matter of substance in the tender, including changes in price and changes aimed at making a non-responsive tender responsive.

(9) Despite subregulation (8), the Departmental Tenders Committee or the Public Procurement Board shall correct purely arithmetical errors or oversights that are capable of being corrected without affecting the substance of the tender that are discovered during the examination of tenders and shall give prompt notice of any such correction to the supplier that submitted the tender.

(10) A Departmental Tenders Committee or the Public Procurement Board shall reject a tender if—

- (a) the supplier that submitted the tender is not qualified;
- (b) the supplier that submitted the tender does not accept a correction of an arithmetical error made pursuant to subregulation (9);
- (c) the tender is not responsive; or
- (d) the circumstances referred to in regulation 11 exist.

(11) For the purpose of this regulation—

“**responsive tender**” means a tender which conforms to the requirements and conditions of the tender documents without material deviation or qualification; and

“**material deviation or qualification**” means a deviation or qualification which would—

- (a) detrimentally affect the scope, quality or performance of the goods, service or construction identified in the tender document; or
- (b) change the supplier’s risk and responsibilities under the procurement contract.

*(Amended by S.R.O. 17/2012)*

### Rejection of all tenders

34. (1) A procuring entity may reject all tenders at any time prior to the acceptance of a tender, subject to, if so specified in the tender documents, approval by the Public Procurement Board.

(2) Where the procuring entity rejects the tenders under subregulation (1), it shall—

- (a) promptly give notice of the rejection of all tenders to all suppliers who submitted tenders; and
- (b) upon request, communicate to any supplier who submitted a tender the grounds for its rejection of all tenders, but is not required to justify those grounds.

(3) A procuring entity shall not incur any liability towards suppliers that have submitted tenders, solely because it invoked subregulation (1).

### **Prohibition of negotiations**

**35. (1)** A procuring entity or a person engaged in the procurement process on behalf of a procuring entity shall not prior to the determination of the successful tender, engage in negotiation with a supplier in respect of a tender submitted by the supplier.

**(2)** A person who breaches subregulation (1) commits a summary offence and is liable—

(a) in the case of a member of a procuring entity who participated in the commission of the offence, to a fine of \$5,000 and to revocation of his appointment; or

(b) in the case of a person, to a fine of \$2,000 and to revocation of his appointment.

**(3)** In the case of a public officer, in addition to the penalties imposed under subregulation (2), he is subject to dismissal from the public service or any other punishment prescribed by the public service law.

### **Acceptance of tenders and entry into force of procurement contract**

**36. (1)** Subject to regulation 34, the tender that has been determined to be the successful tender shall be accepted and the procuring entity shall give—

(a) a notice of acceptance of the tender; and

(b) a copy of the procurement contract, if the supplier is required to sign a written procurement contract,

to the supplier who submitted the tender within twenty one days of receipt of the recommendation under subregulation 33(2)(c).

**(2)** Despite subregulation (6), the tender documents may require the supplier whose tender has been accepted to sign a written procurement contract conforming to the tender and in such case, the procuring entity and the supplier shall sign the procurement contract within a reasonable period of time after the notice referred to in subregulation (1) is given to the supplier.

**(3)** Subject to subregulation (4), where a written contract is required to be signed pursuant to subregulation (2)—

(a) the contract enters into force when the contract is signed by the supplier and by the procuring entity; and

(b) neither the procuring entity nor the supplier shall take any action that interferes with the entry into force of the contract or with its performance between the time when the notice referred to in subregulation (1) is given to the supplier and the entry into force of the contract.

(4) A procuring entity shall file the signed original of all procurement contracts at the office of the Attorney General and copies shall be distributed to the—

- (a) supplier;
- (b) Accountant General;
- (c) Ministry of Finance;
- (d) Auditor General.

(5) Except as provided in subregulation (3) a procurement contract in accordance with the terms and conditions of the successful tender enters into force when the notice referred to in subregulation (1) is given to the supplier who submitted the tender, provided that, notice is given while the tender is in force.

(6) For the purpose of this Regulation, notice is given when it is properly addressed or otherwise directed and transmitted to the supplier, in the form of communication prescribed by regulation 7.

(7) If the supplier whose tender has been accepted fails to sign a written contract, if required to do so, or fails to provide any required security for the performance of the procurement contract within a reasonable time, the procuring entity may, subject to the approval of the Departmental Tenders Committee or Public Procurement Board, withdraw the offer of tender to that supplier and offer it to the supplier who provided the second lowest evaluated tender.

(8) Despite subregulation (7) and regulation 34, the procuring entity may, subject to the approval of the Departmental Tenders Committee or Public Procurement Board, reject all remaining tenders.

### **Notice to other suppliers**

37. The procuring entity shall—

- (a) upon the entry into force of the procurement contract; and
- (b) if required by the tender documents, upon the provision by the supplier of a tender security for the performance of the contract,

give notice to the other suppliers, specifying the name and address of the supplier that has entered into the contract and the contract price.

## **PART 6**

### **METHOD OF PROCUREMENT FOR CONSULTING SERVICES**

#### **Request for proposal**

38. (1) A procuring entity shall request proposals for consulting services or, where applicable, applications to prequalify by causing a notice to be published, seeking expressions of interest in submitting a proposal.

(2) The notice shall contain, at a minimum, the name and address of the procuring entity, a brief description of the consulting service to be procured, the means of obtaining the request for proposals or prequalification documents and the

price, if any, charged for the request for proposals or for the prequalification documents.

### **Contents of the request for proposals**

**39.** The request for proposals shall include comparable information to that required for invitations to tender under regulation 24 and a statement of the manner in which the proposals are to be prepared and submitted and the draft procurement contract.

### **Criteria for the evaluation of proposals**

**40. (1)** The Public Procurement Board shall evaluate the proposals based on technical quality of the proposal, and shall take into account such considerations as the consultant's relevant experience and the expertise of its staff, the proposed work methodology and the price of the proposal.

**(2)** The method of selection shall be stated in the request for proposals and shall be based on—

- (a)* a combination of quality and price, according to the relative weights stated in the request for proposals;
- (b)* the quality of the technical proposal within a predetermined fixed budget specified in the request for proposals; or
- (c)* the best financial proposal submitted by a bidder that has obtained the minimum qualifying score.

### **Quality-based selection**

**41.** A procuring entity may select a consultant based exclusively on the technical quality of the submitted proposal where the consulting services are of an exceptionally complex nature, will have a considerable impact on future projects, or may lead to the submission of proposals, which are difficult to compare.

### **Clarification and modification of request for proposal**

**42. (1)** A consultant may request clarification of the request for proposals from the procuring entity prior to the deadline for submission of proposals and the procuring entity shall respond to a request for clarification within a reasonable time so as to enable the consultant to make a timely submission of its proposal and shall, without identifying the source of the request, communicate the clarification to all consultants to whom the request for proposals was provided.

**(2)** At any time prior to the deadline for submission of proposals, the procuring entity may, for any reason, whether on its own initiative, or as a result of a request for clarification by the consultant, modify the request for proposals by issuing an amendment and the amendment shall be communicated promptly to all consultants to which the procuring entity has provided the request for proposals and shall be binding on them.

**(3)** If the procuring entity convenes a meeting prior to the submission of proposals, it shall prepare minutes of the meeting outlining the requests submitted at

the meeting for clarification of the request for proposals, and its responses to those requests, without identifying the sources of the requests.

(4) The procuring entity shall promptly provide the minutes of the meeting to all consultants participating in the procurement process, so as to enable those consultants to take the minutes into account in preparing their proposals.

(5) The relevant provisions of these Regulations apply, as they apply to the procurement of goods or construction, *mutatis mutandis* to the procurement of services.

### Single-source procurement

43. A procuring entity may engage in single-source procurement where the services to be procured require that a particular consultant be selected due to the consultant's unique qualifications or where it is necessary to continue a project with the same consultant.

### Cost verification

44. Procurement contracts may be awarded only if the selected contractor agrees to be subjected to cost verification during the performance of the consulting services and the procurement contract shall indicate the accounting obligations of the contractor including the obligation to present appropriate accounts or documents allowing the determination of the cost of the services.

### Negotiations

45. (1) A procuring entity may, with the approval of the Public Procurement Board, negotiate the terms of the contract with the selected consultant but shall not, under any circumstances—

- (a) engage in negotiations with more than one consultant simultaneously;  
or
- (b) permit less than two persons to conduct the negotiations on its behalf.

(2) When a procuring entity engages in negotiations with a consultant, the procuring entity shall record the details of all negotiations with the consultant and forward a copy of those records to the Public Procurement Board.

## PART 7

### DISPUTE RESOLUTION

#### Right to review

46. (1) A supplier who claims to have suffered, or that he is likely to suffer loss or injury due to a breach of a duty imposed on a procuring entity by these Regulations may seek review under this Part.

(2) Despite subregulation (1), the following is not subject to review—

- (a) the method of procurement selected;



- (b) a decision of the procuring entity to reject all tenders under regulation 34; or
  - (c) an omission referred to in regulation 26(3)(s).
- (3) A supplier shall submit a request for review in writing within seven business days of the date of the notice of award of the procurement contract under regulation 37.
- (4) A request for review after the period stipulated in subregulation (3) will not be entertained.
- (5) The request for review must be submitted to—
  - (a) the Chairperson of the Public Procurement Board, if the procurement contract has not entered into force; or
  - (b) the Financial Secretary, if the procurement contract has entered into force.

#### **Review by the Public Procurement Board or Financial Secretary**

47. (1) Within fourteen days from the date on which a complaint is received by the Public Procurement Board or the Financial Secretary, the Public Procurement Board or the Financial Secretary shall either—
- (a) resolve the matter by mutual agreement with the supplier; or
  - (b) issue a written decision and reason for the decision to the supplier.
- (2) When a written decision is issued under subregulation (1), the Public Procurement Board or the Financial Secretary shall inform the supplier that a written request for an appeal of its decision may be lodged with the Complaints Commission within fourteen days of the supplier's receipt of the decision.
- (3) The decision of the Public Procurement Board or the Financial Secretary shall be final unless a written request for appeal is lodged within the fourteen day period referred to in subregulation (2).

#### **Appeal to Complaints Commission**

48. (1) Upon receipt of a written request for appeal, the Complaints Commission shall request all records in respect of the relevant procurement process from the procuring entity, the Public Procurement Board or the Financial Secretary.
- (2) The Complaints Commission shall recommend, in writing, appropriate resolution of the complaint and reasons for its recommendation within fourteen days of receipt of the request for appeal and a copy of the recommendation shall be given to the supplier, the procuring entity, the Public Procurement Board and the Financial Secretary.
- (3) The decision of the Complaints Commission shall be final and immediately binding upon the procuring entity and Public Procurement Board.
- (4) This Regulation shall not be construed as authorising the Complaints Commission to award a procurement contract.

## PART 8

## MISCELLANEOUS

**Information to be confidential**

**49. (1)** A Departmental Tenders Committee or the Public Procurement Board (each hereinafter in this Part referred to as “**a body**”), or a person concerned with the administration of these Regulations, shall regard as secret and confidential all documents, information and things disclosed to them in the execution of any provision of these Regulations and shall not divulge such information or the contents of any document to any person except to the extent necessary to discharge its or his functions under these Regulations or any other written law or for the purpose of prosecuting an offence or other legal proceedings.

**(2)** A member of a body or person referred to in subregulation (1) who violates subregulation (1) commits a summary offence and is liable—

- (a)* in the case of a member of a body who participated in the commission of the offence, to a fine of \$5,000, dismissal or revocation of his appointment; or
- (b)* in the case of a person, to a fine of \$2,000, dismissal or revocation of his appointment.

**(3)** A person who receives any information or any document or part of a document, having solicited the information, knowing or having reasonable ground to believe at the time he receives it, that it is communicated to him in contravention of this Regulation, is guilty of an offence and is liable on summary conviction to a fine of \$3,000 and to imprisonment for six months.

**(4)** Any person who, with the intention of gaining any advantage or concession for himself or any other person, offers—

- (a)* a member of a body or an officer thereof; or
- (b)* a person referred to in subregulation (1),

a gift of money or other thing with respect to a matter that is expected to come before the body or person, commits an offence and is, in addition to being disqualified from being awarded a contract, liable to a fine of \$5,000.

**(5)** Despite anything contained in any other written law, a person who—

- (a)* attempts to commit;
- (b)* conspires with any other person to commit;
- (c)* solicits, incites, aids, abets or counsels any other person to commit or;
- (d)* causes or procures or attempts to cause or procure the commission of,

an offence under subregulation (4) is, in addition to being disqualified from being awarded a contract, liable to be charged, tried, convicted and punished in all respects as if he were a principal offender.

(6) A member of a body or a person concerned with the administration of the body is not personally liable for any act of the body done in good faith in the course of its operations or administration.

### **General or special direction of the Minister**

50. (1) In the exercise of its powers and the performance of its functions, the procuring entity, the Public Procurement Board and the Departmental Tenders Committee shall conform with any general or special directions given to it by Cabinet.

(2) All directions given by the Cabinet must be in writing and must be in relation to the economy, development, national defence, security and other matters of public interest or support some principle aimed at improving the level of transparency, equity and fairness.

(3) The Cabinet may only give directions to a procuring entity, the Public Procurement Board or the Departmental Tenders Committee prior to the deadline for submission of a tender.

### **Disclosure of interest in procurement process**

51. (1) It shall be the duty of a member of a body who is in any way directly or indirectly, interested in any deliberations of that body regarding the bidding process, to declare the nature of his interest at a meeting of the body.

(2) The declaration required to be made by this regulation shall be made by the member at the meeting of the body at which the matters referred to in subregulation (1) are being considered for the first time or at the earliest opportunity thereafter.

(3) A member of a body shall not vote in respect of any of the matters referred to in subregulation (1) in which he is directly or indirectly interested and if he shall so vote his vote shall not be counted nor shall he be counted in the quorum at the meeting.

(4) Any member of a body who fails to comply with or contravenes this regulation shall on summary conviction be liable to a fine of \$200,000 and to imprisonment for 6 months.

### **Meaning of “publish”**

52. (1) Where a document or information is required to be published in these Regulations, the requirement for publication is satisfied if the contents of the document or the information is disseminated on an internet website created or designated by the Public Procurement Board for matters related to procurement proceedings and at least one of the following—

- (a) a newspaper of nationwide circulation;
- (b) a public notice board designated by the Public Procurement Board for this purpose; or
- (c) a local public radio or television broadcast station.

(2) A document or information that is required to be published under regulations 10 and 21 shall also be notified in the next issue of the *Gazette* after publication, as required under subregulation (1), and shall include a statement of the date, place and method in which the document or information was published.

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**PUBLIC FINANCE (MANAGEMENT AND ACCOUNTABILITY)  
(FORMS) (SURCHARGE) REGULATIONS – SECTION 58**

*(S.R.O. 63/2012)*

**Commencement**

*[10 December 2012]*

**Short title**

1. These Regulations may be cited as the Public Finance (Management and Accountability) (Forms) (Surcharge) Regulations.

**Forms**

2. (1) The form for use in surcharging a public officer is set out in the Schedule.
- (2) The form must be prepared in quadruplicate and issued as follows—
- (a) the original copy to the public officer surcharged;
  - (b) a copy to the Accounting Officer of the Ministry or Department within which the public officer is employed;
  - (c) a copy to the Accountant General; and
  - (d) a copy to the Auditor General.

**Service**

3. The form in regulation 2 must be served personally on the public officer who is surcharged.

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## SCHEDULE

**GOVERNMENT OF MONTSERRAT  
MINISTRY OF FINANCE**

**NOTICE OF SURCHARGE**

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Issued in accordance with Part 10 of the **Public Finance (Management and Accountability) Act, (Cap. 17.07)** and section 136 of the **Public Finance (Management and Accountability) Regulations (Cap. 17.07)**.

**Name of Public Officer surcharged:** .....

**Post of Public Officer:** .....

**Ministry/Department:** .....

**Name of Accounting Officer of  
Ministry/Department:** .....

**Grounds for surcharge:** (*see section 47 of the Act*)

*(The particulars are attached.)*

**Calculation of Surcharge**

**Annual basic salary of Public  
Officer:** .....

**Amount of moneys lost:** .....

*and/or*

**Value of public stores lost or  
damaged:** .....

**Total claimed:** .....

**Total surcharged:** .....

*(must not exceed 1/10 of the officer's annual salary)*

**Method of repayment:**

*(monthly installments must not exceed 1/4 of the officer's gross monthly salary or pension)*

**Right of Appeal**

Please note that you have the right to appeal to the Public Service Commission against the surcharge made against you, within one month from the date on which you are notified of the surcharge.

**Appeal against surcharge to be lodged on or before:** *(dd/mm/yyyy)*

Dated this ..... day of ....., 20...

.....  
Financial Secretary

**Acknowledgement of Receipt of Notice of Surcharge**

I, *(name of public officer)* acknowledge receipt of this '**Notice of Surcharge**' issued by the Ministry of Finance, Government of Montserrat, under Part 10 of the Public Finance (Management and Accountability) Act (Cap 17.07) and section 136 of the Public Finance (Management and Accountability) Regulations (Cap. 17.07) and delivered to me personally.

Signature:.....	
Name of Public Officer: .....	Date: .....
Witnessed by ( <i>signature</i> ): .....	
Name: .....	Date: .....
Delivered by ( <i>signature</i> ): .....	
Name: .....	Date: .....



