

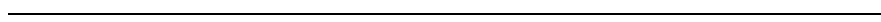
**M O N T S E R R A T**

**PENAL CODE (AMENDMENT) BILL 2024**

No. 17 of 2024

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**I ASSENT**

**Governor**

DATE:

M O N T S E R R A T

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**A BILL FOR**

AN ACT TO AMEND THE AGE OF CRIMINAL RESPONSIBILITY AND TO UPDATE THE PROVISIONS RELATING TO FRAUD AND DECEPTION.

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

**1. Short title**

This Act may be cited as the Penal Code (Amendment) Act, 2024.

**2. Interpretation**

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

**3. Section 12 amended**

Section 12 of the principal Act is deleted and the following is substituted—

**“12. Immature age**

- (1) A person under the age of twelve years is not criminally responsible for any act or omission.
- (2) A person under the age of fourteen years is not criminally responsible for an act or omission unless it is proved that at the time of doing the act or making the omission, the person had capacity to know that he ought not to do the act or make the omission.
- (3) A person under the age of twelve is presumed to be incapable of unlawful sexual intercourse.”.

**4. Section 246 amended**

Section 246 of the principal Act is deleted and the following is substituted—

**“246. Fraud by false representation**

- (1) A person commits an offence if he—
  - (a) dishonestly makes a false representation;  
and
  - (b) intends, by making the representation—
    - (i) to make a gain for himself or another;  
or
    - (ii) to cause loss to another or to expose another to a risk of loss.
- (2) A representation is false if—
  - (a) it is untrue or misleading; and
  - (b) the person making it knows that it is, or might be, untrue or misleading.

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- (3) **“Representation”** means any representation as to fact or law, including a representation as to the state of mind of—
- (a) the person making the representation; or
  - (b) any other person.
- (4) A representation may be express or implied.
- (5) For the purposes of this section, a representation may be regarded as made if it, or anything implying it, is submitted in any form to any system or device designed to receive, convey or respond to communications, with or without human intervention.”.

**5. Sections 246A to 246C inserted**

The principal Act is amended by inserting the following as sections 246A to 246C—

**“246A. Fraud by failing to disclose information**

A person commits an offence if he—

- (a) dishonestly fails to disclose to another person information which he is under a legal duty to disclose; and
- (b) intends, by failing to disclose the information—
  - (i) to make a gain for himself or another; or
  - (ii) to cause loss to another or to expose another to a risk of loss.

**246B. Fraud by abuse of position**

(1) A person commits an offence if he—

- (a) occupies a position in which he is expected to safeguard, or not to act against, the financial interests of another person;

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- (b)* dishonestly abuses that position; and
  - (c)* intends, by means of the abuse of that position—
    - (i)* to make a gain for himself or another; or
    - (ii)* to cause loss to another or to expose another to a risk of loss.
- (2) A person may be regarded as having abused his position, whether his conduct consisted of an omission or an act.

**246C. Penalty for fraud**

A person who commits an offence under section 246, 246A or 246B is liable—

- (a)* on summary conviction, to twelve months' imprisonment; or
- (b)* on conviction before the High Court, to ten years' imprisonment.”.

**6. Section 247 amended**

Section 247 of the principal Act is deleted and the following is substituted—

**“247. Interpretation of “gain” and “loss”**

- (1) The references to gain and loss in sections 246, 246A and 246B are to be read and construed in accordance with this section.
- (2) **“Gain”** and **“loss”**—
  - (a)* extend only to gain or loss in money or other property; and
  - (b)* include any gain or loss, whether temporary or permanent.
- (3) **“Gain”** includes a gain by keeping what one has, as well as a gain by getting what one does not have.

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(4) “**Loss**” includes a loss by not getting what one might get, as well as a loss by parting with what one has.

(5) For the purposes of subsection (2)(a), “**property**” means any property whether real or personal (including things in action and other intangible property).”.

**7. Section 248 amended**

Section 248 of the principal Act is deleted and the following is substituted—

**“248. Possession etc. of articles for use in fraud**

(1) A person commits an offence if he has in his possession or under his control any article for use in the course of or in connection with any fraud.

(2) A person who commits an offence under this section is liable—

(a) on summary conviction, to twelve months’ imprisonment; or

(b) on conviction before the High Court, to five years’ imprisonment.”.

**8. Sections 248A and 248B inserted**

The principal Act is amended by inserting the following as sections 248A and 248B—

**“248A. Making or supplying articles for use in fraud**

(1) A person commits an offence if he makes, adapts, supplies or offers to supply any article—

(a) knowing that it is designed or adapted for use in the course of or in connection with fraud; or

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- (b) intending it to be used to commit, or assist in the commission of fraud.
- (2) A person who commits an offence under this section is liable—
  - (a) on summary conviction, to twelve months' imprisonment; or
  - (b) on conviction before the High Court, to ten years' imprisonment.

**248B. Interpretation of “article”**

For the purposes of sections 248 and 248A, “**article**” includes any program or data held in electronic form.”.

**9. Section 249 amended**

Section 249(1) of the principal Act is amended by deleting “\$2,000” and substituting “\$5,000”.

**10. Section 249A inserted**

The principal Act is amended by inserting the following as section 249A—

**“249A. Obtaining services dishonestly**

- (1) A person commits an offence if he obtains services for himself or another—
  - (a) by a dishonest act; and
  - (b) in breach of subsection (2).
- (2) A person obtains services in breach of this subsection if—
  - (a) the services are made available on the basis that payment has been, is being or will be made for or in respect of them;
  - (b) he obtains the services without any payment having been made for or in

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respect of them or without payment having been made in full; and

- (c) when he obtains the services, he knows—
- (i) that the services are being made available on the basis described in paragraph (a); or
  - (ii) that the services might be made available on the basis described in paragraph (a),

but intends that payment will not be made or will not be made in full.

- (3) A person who commits an offence under this section is liable—
- (a) on summary conviction, to twelve months' imprisonment; or
  - (b) on conviction before the High Court, to five years' imprisonment.”.

**11. Section 253 amended**

Section 253 of the principal Act is deleted and the following is substituted—

**“253. Destruction, etc. of valuable security, will or document etc.**

- (1) A person who dishonestly—
- (a) with a view to gain for himself or another person; or
  - (b) with intent to cause loss to another person, destroys, defaces or conceals any valuable security, any will or other testamentary document or any original document of or belonging to, or filed or deposited in, a court of justice or a government department commits an offence and is liable on conviction



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before the High Court, to seven years' imprisonment.

- (2) For the purposes of this section, “**valuable security**” means any document—
- (a) creating, transferring, surrendering or releasing any right to, in or over property; or
  - (b) authorising the payment of money or delivery of any property; or
  - (c) evidencing the creation, transfer, surrender or release of any such right or the payment of money or the delivery of any property, or the satisfaction of any obligation.”.

**SPEAKER**

Passed by the Legislative Assembly this    day of                    , 2024.

**CLERK OF THE LEGISLATIVE ASSEMBLY**