

M O N T S E R R A T

PENAL CODE (AMENDMENT) ACT 2022

No. 12 of 2022

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Penal Code (Amendment) Act, 2022
No. 12 of 2022

I ASSENT

Sgd. Sarah Tucker (Mrs.)
GOVERNOR

DATE: 29 November 2022

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No. 12 of 2022

AN ACT TO AMEND THE PENAL CODE TO MAKE PROVISION FOR SEXUAL OFFENCES, PROTECTION FROM HARASSMENT AND OFFENCES RELATED TO CYBERCRIME.

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, 2022.

2. Interpretation

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

3. Section 68 amended

Section 68 of the principal Act is amended by deleting the definition of “prohibited weapon” and inserting the following—

“**prohibited weapon**” means—

- (a) a weapon of whatever description designed or adapted for the discharge of any noxious liquid, gas or other thing;
- (b) a flick knife, gravity knife, butterfly knife, disguised knife, knuckleduster or crossbow; or
- (c) any other thing, whether or not similar to any of those mentioned in paragraph (a) or (b), that is manufactured or adapted without a legitimate purpose being an item suitable for use as a weapon for inflicting injury on a person or causing a person to fear injury.”.

4. Section 69 amended

Section 69 of the principal Act is deleted and the following is substituted—

“69. Restriction on importation and possession etc. of prohibited weapons

(1) A person who—

- (a) imports into Montserrat;
- (b) manufactures;
- (c) sells or hires or offers for sale or hire;
- (d) exposes or has in his possession for the purpose of sale or hire; or
- (e) carries or has in his possession a prohibited weapon commits an offence.

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- (2) A person who commits an offence under subsection (1) is liable—
- (a) on summary conviction, to a fine of \$2,000 or to two years' imprisonment or to both; or
 - (b) on conviction on indictment, to a fine of \$5,000, or to five years' imprisonment or to both.
- (3) Nothing in this section renders unlawful the importation of a prohibited weapon, with the permission of the Commissioner of Police, on the approval of the Governor, for issuance to a person for use in the execution of his duties with the Royal Montserrat Police Service, Royal Montserrat Defence Force, Her Majesty's armed forces, the Customs and Excise Unit or Her Majesty's Prison.
- (4) Nothing in this section renders unlawful the possession, carrying, using or repairing by a—
- (a) police officer, special constable, police junior cadet or prison officer;
 - (b) member of Royal Montserrat Defence Force;
 - (c) a member of the Cadet Corps;
 - (d) member of Her Majesty's armed forces; or
 - (e) member of the Customs and Excise Unit, of a prohibited weapon issued to him for the execution of his duty or dealt with by him in the execution of his duty.”.

5. Sections 143A and 143B inserted

The principal Act is amended by inserting the following as sections 143A and 143B—

“143A. Indecent photograph of a child

- (1)** A person who—
- (a)* takes, or permits to be taken, or makes an indecent photograph of a child;
 - (b)* distributes or shows an indecent photograph of a child; or
 - (c)* has in his possession an indecent photograph of a child.
- commits an offence.
- (2)** A person who commits an offence under subsection (1) is liable on—
- (a)* summary conviction, to a fine of \$5,000 or to two years’ imprisonment or to both;
 - (b)* conviction on indictment, to a fine of \$100,000 or to ten years’ imprisonment or to both.
- (3)** If a person is charged with an offence under subsection (1), it is a defence for him to prove either—
- (a)* that he had a legitimate reason for the act or acts, including the following reasons—
 - (i)* for the purpose of education, counselling, promotion of reproductive health;
 - (ii)* as part of a criminal investigation or prosecution or civil proceedings; or
 - (iii)* in the lawful performance of a person’s profession, duties or functions;
 - (b)* in respect of paragraph (1), that—
 - (i)* he had not himself seen the photograph and did not know, nor

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had any cause to suspect, it to be indecent; or

(ii) the photograph was sent to him without any prior request made by him or on his behalf and that he did not keep it for an unreasonable time; or

(c) in respect of paragraph (1), that—

(i) the photograph was of a child aged 16 or over;

(ii) at the time of the offence charged the child and he were married;

(iii) he reasonably believed that the child consented to the photograph being made, taken or being in his possession and consent has not been withdrawn; and

(iv) the photograph shows the child alone or with him and does not show any other person,

but it is no defence if it depicts any other person or was distributed or shown to any other person.

(4) For the purposes of this section, “**indecent photograph of a child**” includes an image—

(a) of a child engaged in sexual activity or conduct;

(b) of a child in a sexually explicit pose;

(c) that depicts or presents for sexual purposes, parts of a child’s body pasted to visual representations of parts of an adult’s body, or vice versa, but only where the predominant impression

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conveyed is that the person shown is a child;

(d) that depicts or presents for sexual purposes, parts of a child's body which have been rendered complete by any method of visual representation, but only where the predominant impression conveyed is that the person shown is a child; or

(e) of a realistic visual representation, made by computer generation or otherwise, where the impression conveyed is of a child engaged in sexual activity or conduct or a sexually explicit pose.

(5) For the purposes of this section, “**image**” means—

(a) a moving or still image, produced by any means; or

(b) data stored by any means, which is capable of conversion into an image within paragraph (a).

(6) For the purposes of this section, “**child**” means a person under the age of eighteen years.

143B. Sexual communication with a child

(1) A person (“Person A”) commits an offence if—

(a) for the purpose of obtaining sexual gratification, Person A intentionally communicates with another person (“Person B”);

(b) the communication is sexual or is intended to encourage Person B to make,

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- whether to Person A or to another, a communication that is sexual; and
- (c) Person B is under 16 years of age and Person A does not reasonably believe that Person B is aged 16 or over.
- (2) For the purposes of this section, a communication is sexual if—
- (a) any part of it relates to sexual activity; or
- (b) a reasonable person would, in all the circumstances, regardless of any person's purpose, consider any part of the communication to be sexual.
- (3) A person who commits an offence under this section is liable—
- (a) on summary conviction, to a fine of \$5,000 or to one year imprisonment or to both;
- (b) on conviction on indictment, to a fine of \$50,000 or to five years' imprisonment or to both.
- (4) If Person A is charged with an offence under subsection (1), it is a defence for him to prove that—
- (a) he is under twenty four years of age and has not previously been convicted of a similar offence; and
- (b) he believes Person B to be sixteen years of age or over and has reasonable cause for the belief.
- (5) For the purposes of this section, “**sexual activity**” means an activity that a reasonable person would, in all the circumstances, regardless of any person's purpose, consider to be sexual.

6. Sections 151A to 151C inserted

The principal Act is amended by inserting the following as sections 151A to 151C—

“151A. Disclosing private sexual photographs and films with intent to cause distress

- (1) A person commits an offence if he discloses a private sexual photograph or film, if the disclosure is made—
- (a) without the consent of an individual who appears in the photograph or film; and
 - (b) with the intention of causing that individual distress.
- (2) It is not an offence under this section for the person to disclose the photograph or film to the individual mentioned in subsection (1)(a) and (b).
- (3) It is a defence for a person charged with an offence under this section to prove that he reasonably believed that the disclosure was necessary for the purposes of preventing, detecting or investigating crime.
- (4) It is a defence for a person charged with an offence under this section to show that—
- (a) the disclosure was made in the course of, or with a view to, the publication of journalistic material; and
 - (b) he reasonably believed that, in the particular circumstances, the publication of the journalistic material was, or would be, in the public interest.
- (5) It is a defence for a person charged with an offence under this section to show that—
- (a) he reasonably believed that the photograph or film had previously been

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- disclosed for reward, whether by the individual mentioned in subsection (1)(a) and (b) or another person; and
- (b) he or she had no reason to believe that the previous disclosure for reward was made without the consent of the individual mentioned in subsection (1)(a) and (b).
- (6)** A person is taken to have shown the matters mentioned in subsection (4) or (5) if—
- (a) sufficient evidence of the matters is adduced to raise an issue with respect to it; and
- (b) the contrary is not proved beyond a reasonable doubt.
- (7)** For the purposes of subsections (1) to (5)—
- (a) consent to a disclosure includes general consent covering the disclosure, as well as consent to the particular disclosure; and
- (b) publication of journalistic material means disclosure to the public at large or to a section of the public.
- (8)** For the purposes of this section, a person under 16 years of age cannot give consent to the disclosure of a private sexual photograph or film in which he appears.
- (9)** A person charged with an offence under this section is not to be taken to have disclosed a photograph or film with the intention of causing distress merely because that was a natural and probable consequence of the disclosure.
- (10)** A person who commits an offence under this section is liable—

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- (a)* on summary conviction, to a fine of \$5,000 or one year imprisonment or to both; and
 - (b)* on conviction on indictment, to a fine of \$100,000 or five years' imprisonment or to both.
- (11)** Schedule III makes special provision in connection with the operation of this section in relation to persons providing information society services.

151B. Interpretation of “private” and “sexual”

- (1)** The following subsections apply for the purposes of section 151A.
- (2)** A photograph or film is “private” if it shows something that is not of a kind ordinarily seen in public.
- (3)** A photograph or film is “sexual” if—
- (a)* it shows all or part of an individual’s exposed genitals or pubic area;
 - (b)* it shows something that a reasonable person would consider to be sexual because of its nature; or
 - (c)* its content, taken as a whole, is such that a reasonable person would consider it to be sexual.
- (4)** Subsection (5) applies in the case of—
- (a)* a photograph or film that consists of or includes a photographed or filmed image that has been altered in any way;
 - (b)* a photograph or film that combines two or more photographed or filmed images; and

- (c) a photograph or film that combines a photographed or filmed image with any other thing.
- (5) The photograph or film is not private and sexual if—
 - (a) it does not consist of or include a photographed or filmed image that is itself private and sexual;
 - (b) it is only private or sexual by virtue of the alteration or combination mentioned in subsection (4); or
 - (c) it is only by virtue of the alteration or combination mentioned in subsection (4) that the person mentioned in section 151A(1)(a) and (b) is shown as part of, or with, whatever makes the photograph or film private and sexual.

151C. Interpretation of “disclose” and “photograph or film”

- (1) The following subsections apply for the purposes of section 151A and 151B.
- (2) A person “discloses” something to a person if, by any means, he gives or shows it to the person or makes it available to the person.
- (3) Something that is given, shown or made available to a person is disclosed—
 - (a) whether or not it is given, shown or made available for reward; and
 - (b) whether or not it has previously been given, shown or made available to the person.
- (4) “**Photograph or film**” means a still or moving image in any form that—

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- (a) appears to consist of or include one or more photographed or filmed images, and
 - (b) consists of or includes one or more photographed or filmed images.
- (5) The reference in subsection (4)(b) to photographed or filmed images includes photographed or filmed images that have been altered in any way.
- (6) **“Photographed or filmed image”** means a still or moving image that—
 - (a) was originally captured by photography or filming; or
 - (b) is part of an image originally captured by photography or filming.
- (7) **“Filming”** means making a recording, on any medium, from which a moving image may be produced by any means.
- (8) References to a photograph or film include—
 - (a) a negative version of an image described in subsection (4); and
 - (b) data stored by any means which is capable of conversion into an image described in subsection (4).”.

7. Section 185 amended

Section 185 of the principal Act is deleted and the following is substituted—

“185. Inflicting grievous bodily harm

A person who unlawfully and maliciously by any means whatsoever wounds or causes any grievous bodily harm to any person commits an offence and is liable—

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(a) on summary conviction, to one year imprisonment; or

(b) on conviction on indictment before the High Court, to five years' imprisonment.

8. Section 186 deleted

Section 186 of the principal Act is deleted.

9. Section 199 deleted

Section 199 of the principal Act is deleted.

10. Section 206 amended

The principal Act is amended by deleting section 206 and inserting the following—

“206. Common assault and battery

A person who—

(a) unlawfully assaults; or

(b) unlawfully assaults by beating (battery)

another person commits an offence and is liable on summary conviction to a fine of \$500 or to six months' imprisonment or to both such fine and imprisonment.”

11. Section 207 amended

The principal Act is amended by deleting section 207 and inserting the following—

“207. Assault occasioning actual bodily harm

A person who commits an assault occasioning actual bodily harm commits an offence and is liable—

(a) on summary conviction, to a fine of \$1,000 or to one year imprisonment

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or to both such fine and imprisonment; or

(b) on conviction on indictment before the High Court, to a fine of \$3,000 or to five years' imprisonment or to both such fine and imprisonment.”.

12. Sections 211A to 211G inserted

The principal Act is amended by inserting the following as sections 211A to 211G—

“211A. Prohibition of harassment

(1) A person shall not pursue a course of conduct—

(a) which amounts to harassment of another person; and

(b) which he knows or ought to know amounts to harassment of the other person.

(2) A person shall not pursue a course of conduct—

(a) which involves harassment of two or more persons;

(b) which he knows or ought to know involves harassment of the other person; and

(c) by which he intends to persuade any person, whether or not one of those mentioned above mentioned in paragraph *(a)* or *(b)*,—

(i) not to do something that he is entitled or required to do; or

(ii) to do something that he is not under any obligation to do.

(3) For the purposes of this section or section 211C(2)(*c*), the person whose course of conduct is in question ought to know that it

amounts to or involves harassment of another person, if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other person.

- (4) Subsection (1) or (2) does not apply to a course of conduct if the person who pursued it shows—
- (a) that it was pursued for the purpose of preventing or detecting crime;
 - (b) that it was pursued under an enactment or to comply with a condition or requirement imposed by a person under an enactment; or
 - (c) that in the particular circumstances, the pursuit of the course of conduct was reasonable.

211B. Offence of harassment

- (1) A person who pursues a course of conduct in breach of section 211A(1) or (2) commits an offence.
- (2) A person who commits an offence under this section is liable on summary conviction to a fine of \$5,000 or to six months' imprisonment or to both.

211C. Offence of stalking

- (1) A person commits an offence if—
- (a) the person pursues a course of conduct in breach of section 211A(1); and
 - (b) the course of conduct amounts to stalking.
- (2) For the purposes of subsection (1)(b) and section 211F(1)(a), a person's course of

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conduct amounts to stalking of another person if—

- (a) it amounts to harassment of that person;
- (b) the acts or omissions involved are ones associated with stalking; and
- (c) the person whose course of conduct it is knows or ought to know that the course of conduct amounts to harassment of the other person.

(3) Acts or omissions which, in particular circumstances, are associated with stalking include—

- (a) following a person;
- (b) monitoring the movement of a person;
- (c) contacting, or attempting to contact, a person by any means;
- (d) publishing any statement or other material—
 - (i) relating or purporting to relate to a person; or
 - (ii) purporting to originate from a person;
- (e) monitoring the use by a person of the internet, email or any other form of electronic communication;
- (f) loitering in any place, whether public or private;
- (g) interfering with any property in the possession of a person; or
- (h) watching or spying on a person.

(4) A person who commits an offence under this section is liable on summary conviction to a fine of \$5,000 or to six months' imprisonment or to both.

(5) This section is without prejudice to the generality of section 211B.

211D. Power of entry in relation to offence of stalking

(1) Without prejudice to the Criminal Procedure Code, the Magistrate may, on an application by a police officer, issue a warrant authorising a police officer to enter and search premises if the Magistrate is satisfied that there are reasonable grounds for believing that—

(a) an offence under section 211C has been, or is being, committed;

(b) there is material on the premises which is likely to be of substantial value, whether by itself or together with other material, to the investigation of the offence;

(c) the material—

(i) is likely to be admissible in evidence at a trial for the offence; and

(ii) does not consist of, or include, items subject to legal privilege or excluded material; and

(d) either—

(i) entry to the premises will not be granted unless a warrant is produced; or

(ii) the purpose of a search may be frustrated or seriously prejudiced unless a police officer arriving at the

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premises can secure immediate entry to them.

- (2) A police officer may seize and retain anything for which a search has been authorised under subsection (1).
- (3) A police officer may use reasonable force, if necessary, in the exercise of any power conferred by virtue of this section.
- (4) For the purposes of this section, “**items subject to legal privilege**” means—
- (a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;
 - (b) communications between a professional legal adviser and his client or any person representing his client or between the professional legal adviser or his client or such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of legal proceedings; and
 - (c) items enclosed with or referred to in communications under paragraph (a) and (b) and made—
 - (i) in connection with the giving of legal advice; or
 - (ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,

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when they are in the possession of a person who is entitled to possession of them.

(5) “Items subject to legal privilege” does not include items held with the intention of furthering a criminal purpose.

(6) For the purposes of this section, “**excluded material**” means—

(a) personal records which a person has acquired or created in the course of any trade, business, profession or other occupation or for the purposes of any paid or unpaid office and which he holds in confidence;

(b) human tissue or tissue fluid which has been taken for the purposes of diagnosis or medical treatment and which a person holds in confidence;

(c) journalistic material which a person holds in confidence and which consists of—
(i) documents; or
(ii) records other than documents.

211E. Putting people in fear of violence

(1) A person whose course of conduct causes another person to fear, on at least two occasions, that violence will be used against him commits an offence, if he knows or ought to know that his course of conduct will cause the other person to fear violence against himself on each occasion.

(2) For the purposes of this section, the person whose course of conduct is in question should know that it will cause another to fear that

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violence will be used against him on an occasion, if a reasonable person in possession of the same information would think the course of conduct would cause the other person to fear violence against himself on that occasion.

(3) It is a defence for a person charged with an offence under this section to show that—

(a) his course of conduct was pursued for the purpose of preventing or detecting crime;

(b) his course of conduct was pursued under an enactment or rule of law or to comply with any condition or requirement imposed by any person under an enactment; or

(c) the pursuit of his course of conduct was reasonable for the protection of himself or another or for the protection of his or another's property.

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

(a) on summary conviction, to a fine of \$ 5,000 or to one year imprisonment or to both; or

(b) on conviction on indictment, to a fine of \$20,000 or to ten years' imprisonment or to both.

211F. Stalking involving fear of violence or serious alarm or distress

(1) A person ("Person A") whose course of conduct—

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(a) amounts to stalking; and
(b) either—

- (i) causes another (“Person B”) to fear, on at least two occasions, that violence will be used against Person B; or
- (ii) causes Person B serious alarm or distress which has a substantial adverse effect on Person B's usual day-to-day activities,

commits an offence if Person A knows or should know that Person A's course of conduct will cause Person B to fear that violence will be used against him on each of those occasions or will cause such alarm or distress.

- (2) For the purposes of this section, Person A should know that Person A's course of conduct will cause Person B to fear that violence will be used against Person B on any occasion if a reasonable person in possession of the same information would think the course of conduct would cause Person B to fear that violence will be used against him on that occasion.
- (3) For the purposes of this section, Person A should know that Person A's course of conduct will cause Person B serious alarm or distress which has a substantial adverse effect on Person B's usual day-to-day activities, if a reasonable person in possession of the same information would think the course of conduct would cause Person B such alarm or distress.

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- (4) It is a defence for Person A to show that—
- (a) Person A's course of conduct was pursued for the purpose of preventing or detecting crime;
 - (b) Person A's course of conduct was pursued under an enactment or rule of law or to comply with any condition or requirement imposed by any person under an enactment; or
 - (c) the pursuit of Person A's course of conduct was reasonable for the protection of Person A or another or for the protection of Person A's or another's property.
- (5) A person who commits an offence under this section is liable—
- (a) on summary conviction, to a fine of \$5,000 or to one year imprisonment or to both; or
 - (b) on conviction on indictment, to a fine of \$20,000 or to ten years' imprisonment or to both.
- (6) This section is without prejudice to the generality of section 211E.

211G. Interpretation of sections 211A to 211F

- (1) This section applies for the interpretation of sections 211A to 211F.
- (2) References to harassing a person include alarming the person or causing the person distress.

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- (3) A course of conduct involves—
- (a) in the case of conduct in relation to a single person, conduct on at least two occasions in relation to that person; or
 - (b) in the case of conduct in relation to two or more persons under section 211A(2), conduct on at least one occasion in relation to each of those persons.
- (4) A person’s conduct on any occasion shall be taken, if aided, abetted, counselled or procured by another—
- (a) to be conduct on that occasion of the other, as well as conduct of the person whose conduct it is; and
 - (b) to be conduct in relation to which the other’s knowledge and purpose, and what he should have known, are the same as they were in relation to what was contemplated or reasonably foreseeable at the time of the aiding, abetting, counselling or procuring.
- (5) “**Conduct**” includes speech.
- (6) References to a person, in the context of the harassment of a person, are references to a person who is an individual.”

13. Part 20A inserted

The principal Act is amended by inserting immediately after Part 20, the following as Part 20A—

“PART 20A

CYBERCRIME

289A. Interpretation

In this Part—

“computer data” means any representation of—

- (a) facts;
- (b) concepts;
- (c) information; or
- (d) computer programs,

that is in a form suitable for processing in a computer system and includes a program that can cause a computer system to perform a function;

“computer data storage medium” anything in which information is capable of being stored or anything from which information is capable of being retrieved or reproduced, with or without the aid of any other article or device;

“computer program” or **“program”** means data which represents instructions or statements that, when executed in a computer system, can cause the computer system to perform a function;

“computer system” means a device or a group of inter-connected or related devices which follows a program to perform automatic processing of computer data;

“data” includes—

- (a) material in whatever form stored electronically;
- (b) the whole or part of a computer program; or
- (c) any representation of information or of concepts in a form suitable for use in a computer, including a program suitable

to cause a computer to perform a function;

“**device**” includes—

- (a) a component of a computer system;
- (b) a storage component;
- (c) input equipment; or
- (d) output equipment;

“**hinder**” in relation to a computer system includes—

- (a) causing electromagnetic interference to a computer system; and
- (b) corrupting computer data.

289B. Interpretation of “access” and “unauthorised”

(1) For the purposes of this Part, a person secures access to any program or data held in a computer if by causing a computer to perform any function he—

- (a) alters or erases the program or data;
- (b) copies or moves it to any storage medium other than that in which it is held or to a different location in the storage medium in which it is held;
- (c) uses it; or
- (d) has it output from the computer in which it is held, whether by having it displayed or in any other manner;

and references to access to a program or data and to an intent to secure such access or to enable such access to be secured shall be read accordingly.

(2) For the purposes of subsection (1)(c) above a person uses a program if the function he causes the computer to perform—

- (a) causes the program to be executed; or
- (b) is itself a function of the program.

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- (3)** For the purposes of subsection (1)(d) above—
- (a) a program is output if the instructions of which it consists are output; and
 - (b) the form in which any such instructions or any other data is output, and in particular whether or not it represents a form in which, in the case of instructions, they are capable of being executed or, in the case of data, it is capable of being processed by a computer, is immaterial.
- (4)** Subject to section 289M or the purposes of this Act, access of any kind by any person to any program or data held in a computer is unauthorised if—
- (a) he is not himself entitled to control access of the kind in question to the program or data; and
 - (b) he does not have consent to access by him of the kind in question to the program or data from any person who is so entitled.
- (5)** References to any program or data held in a computer include references to any program or data held in any removable storage medium which is for the time being in the computer; and a computer is to be regarded as containing any program or data held in any such medium.
- (6)** For the purposes of this Part, an act done in relation to a computer is unauthorised if the person doing the act or causing it to be done—
- (a) is not himself a person who has responsibility for the computer and is entitled to determine whether the act may be done; and
 - (b) does not have consent to the act from any such person.
- (7)** References to a program include references to part of a program.

289C. Unauthorised access to computer system, program or data

- (1) A person commits an offence if—
- (a) he causes a computer system or program to perform any function with intent to secure access to any program or data held in any computer or to enable any such access to be secured;
 - (b) the access he intends to secure or to enable to be secured is unauthorised; and
 - (c) he knows at the time when he causes the computer system or program to perform the function that that is the case.
- (2) The intent a person has to have to commit an offence under this section need not be directed at—
- (a) any particular program or data;
 - (b) a program or data of any particular kind; or
 - (c) a program or data held in any particular computer system.
- (3) A person who commits an offence under subsection (1) is liable on—
- (a) summary conviction, to a fine of \$150,000 or to three years' imprisonment or to both;
 - (b) conviction on indictment, to a fine of \$500,000 or to seven years' imprisonment or to both.

289D. Unauthorised acts with intent to impair operation of computer, etc.

- (1) A person commits an offence if—
- (a) he does any unauthorised act in relation to a computer system, program or data;
 - (b) at the time when he does the act he knows that it is unauthorised; and
 - (c) either subsection (2) or subsection (3) applies.

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- (2) This subsection applies if the person intends by doing the act—
- (a) to impair the operation of a computer system;
 - (b) to prevent or hinder access to a program or data held in a computer system; or
 - (c) to impair the operation of a program or the reliability of data; or
 - (d) to enable any of the actions mentioned in paragraphs (a) to (c) above to be done.
- (3) This subsection applies if the person is reckless as to whether the act will do any of the things mentioned in subsection (2)(a) to (d).
- (4) The intention referred to in subsection (2), or the recklessness referred to in subsection (3), need not relate to—
- (a) any particular computer system;
 - (b) any particular program or data; or
 - (c) a program or data of any particular kind.
- (5) In this section—
- (a) a reference to doing an act includes a reference to causing an act to be done;
 - (b) “act” includes a series of acts;
 - (c) a reference to impairing, preventing or hindering something includes a reference to doing so temporarily.
- (6) A person who commits an offence under this section is liable—
- (a) on summary conviction, to a fine of \$150,000 or to three years’ imprisonment or to both; or
 - (b) on conviction on indictment, to a fine of \$500,000 or to seven years’ imprisonment or to both.

289E. Offences affecting critical infrastructure

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- (1) Despite the penalties set out in sections 289C and 289D, where a person commits an offence under any of those sections and the offence results in a serious and material hindering of, or interference with, a computer system that—
- (a) is primarily for the use of critical infrastructure; or
 - (b) affects the use, or impacts the operation, of critical infrastructure,
- the person is liable on conviction on indictment to a fine of \$1,000,000 or to fifteen years' imprisonment.
- (2) For the purposes of this section, “**critical infrastructure**” means any computer system, device, network, computer program, computer data, so vital to Montserrat that the incapacity or destruction of, or interference with, such system, device, network, computer program or computer data would have a debilitating impact on—
- (a) security, defence or international relations of Montserrat; or
 - (b) provision of services directly related to national or economic security, banking and financial services, public utilities, the energy sector, communications infrastructure, public transportation, public health and safety, or public key infrastructure.

289F. Making, supplying or obtaining articles for use in offence(s) under this Part 20A

- (1) A person commits an offence if he makes, adapts, imports or exports, supplies or offers to supply any article intending it to be used to commit, or to assist in the commission of, an offence under this Part.
- (2) A person commits an offence if he imports, exports, supplies or offers to supply any article believing that it is likely to be used to commit, or to assist in the commission of, an offence under this Part.

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- (3) A person commits an offence if he obtains any article—
 - (a) intending to use it to commit, or to assist in the commission of, an offence under this Part; or
 - (b) with a view to its being supplied for use to commit, or to assist in the commission of, an offence under this Part.
- (4) In this section “**article**” includes any program or data held in electronic form.
- (5) A person who commits an offence under this section is liable on—
 - (a) summary conviction, to a fine of \$150,000 or to three years’ imprisonment or to both;
 - (b) conviction on indictment, to a fine of \$500,000 or to seven years’ imprisonment or to both.

289G. Computer-related forgery

- (1) A person commits an offence if he—
 - (a) inputs, alters, deletes, or suppresses computer data in any way, resulting in inauthentic data, with the intent that it be considered or acted upon as if it were authentic, regardless of whether or not the data is directly readable and intelligible; and
 - (b) dishonestly intends to make a gain for himself or another, or to cause loss to another or to expose another to a risk of loss.
- (2) A person who commits an offence under subsection (1) is liable on—
 - (a) summary conviction, to a fine of \$200,000 or to three years’ imprisonment or to both;
 - (b) conviction on indictment, to a fine of \$500,000 or to seven years’ imprisonment or to both.

289H. Computer-related fraud

- (1) A person commits an offence if he—
- (a) inputs, alters, deletes or suppresses computer data in any way; or
 - (b) interferes with the functioning of a computer system in any way;
and dishonestly intends to make a gain for himself or another, or to cause loss to another or to expose another to a risk of loss.
- (2) A person who commits an offence under subsection (1) is liable on—
- (a) summary conviction, to a fine of \$200,000 or to three years' imprisonment or to both; or
 - (b) conviction on indictment, to a fine of \$500,000 or to seven years' imprisonment or to both.

289I. Sending letter, electronic communication or article with intent to cause distress or anxiety

- (1) A person who sends to another person—
- (a) a letter, electronic communication or article of any description which conveys—
 - (i) a message which is indecent or grossly offensive;
 - (ii) a threat; or
 - (iii) information which is false and known or believed to be false by the sender; or
 - (b) any article or electronic communication which is, in whole or part, of an indecent or grossly offensive nature,
commits an offence if his purpose, or one of his purposes, in sending it is that it should, so far as falling within paragraph (a) or (b) above, cause distress or

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anxiety to the recipient or to any other person to whom he intends that it or its contents or nature should be communicated.

- (2) A person does not commit an offence by virtue of subsection (1)(a)(ii) above if he shows—
 - (a) that he was reinforcing a demand made by him on reasonable grounds; and
 - (b) that he believed, and had reasonable grounds for believing, that his action was a proper means of reinforcing the demand.
- (3) In this section “**electronic communication**” includes—
 - (a) any oral or other communication by means of an electronic communications network; and
 - (b) any communication, however sent, that is in electronic form.
- (4) In this section references to sending include references to delivering or transmitting and to causing to be sent, delivered or transmitted and “sender” shall be construed accordingly.
- (5) A person who commits an offence under this section is liable on—
 - (a) summary conviction, to a fine of \$100,000 or to two years’ imprisonment or to both; or
 - (b) conviction on indictment, to a fine of \$200,000 or to five years’ imprisonment or to both.

289J. Improper use of public electronic communications network

- (1) A person commits an offence if he—
 - (a) sends by means of a public electronic communications network a message or other

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matter that is grossly offensive or of an indecent,
obscene or menacing character; or

(b) causes any such message or matter to be so sent.

(2) A person commits an offence if, for the purpose of causing annoyance, inconvenience or needless anxiety to another, he—

(a) sends by means of a public electronic communications network, a message that he knows to be false;

(b) causes such a message to be sent; or

(c) persistently makes use of a public electronic communications network.

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

(a) summary conviction, to a fine of \$100,000 or to two years' imprisonment or to both; or

(b) conviction on indictment, to a fine of \$200,000 or to five years' imprisonment or to both.

(4) An information or complaint relating to an offence under this section may be tried by a Magistrates' court if it is laid or made—

(a) before the end of the period of three years beginning with the day on which the offence was committed; and

(b) before the end of the period of 6 months beginning with the day on which evidence comes to the knowledge of the prosecutor which the prosecutor considers sufficient to justify proceedings.

(5) A certificate of a prosecutor as to the date on which evidence described in subsection (4)*(b)* came to his knowledge is conclusive evidence of that fact.

289K. Offence by body corporate under this Part

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If a body corporate commits an offence under this Act and a court is satisfied that a director, manager, secretary or other similar officer of the body corporate or any person who purports to act in such capacity—

(a) connived in or consented to the commission of the offence; or

(b) failed to exercise due diligence to prevent the commission of the offence,

the director, manager, secretary or other similar officer or person purporting to act in that capacity also commits the offence and is liable to the punishment provided for the offence.

289L. Savings

Sections 289C and 289D have effect without prejudice to the operation of—

(a) any enactment relating to powers of inspection, search or seizure; or

(b) any other enactment by virtue of which the conduct in question is authorised or required,

and nothing designed to indicate a withholding of consent to access to any program or data from persons as police officers shall have effect to make access unauthorised for the purposes of sections 289C and 289D.

289M. Territorial scope of offences under this Part

- (1) Subject to subsection (2), this Part has effect in relation to any person, whatever his nationality or citizenship, outside or within Montserrat, and where an offence under this Part is committed by a person in a place outside of Montserrat, he may be dealt with as if the offence had been committed within Montserrat.

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- (2) For the purpose of subsection (1), this Part applies if, for the offence in question—
- (a) the accused was in Montserrat at the material time;
 - (b) the computer, device, computer system, computer program or computer data was in Montserrat at the material time; or
 - (c) the damage occurred within Montserrat, whether or not paragraph (a) or (b) applies.

289N. No monitoring obligation

- (1) Subject to subsection (2), a service provider who provides a conduit for the transmission of information, is not responsible for—
- (a) monitoring the information which it transmits or stores on behalf of another person in order to ascertain whether its processing would constitute or give rise to liability under this Part; or
 - (b) actively seeking facts or circumstances indicating illegal activity in order to avoid liability under this Part.
- (2) Subsection (1) does not relieve a service provider from complying with any court order, injunction, writ or other legal requirement, which obliges a service provider to terminate or prevent an infringement based on any written law.”.

14. Schedule III inserted

The principal Act is amended by inserting the following as Schedule III—

“SCHEDULE III
(section 151A)

Disclosing private sexual photographs or films: providers of information society services

1. Extension of liability

- (1) This paragraph applies where a service provider is established in Montserrat.
- (2) Section 151A applies to a service provider established in Montserrat, who discloses a photograph or film in Montserrat in the course of providing information society services.
- (3) Nothing in this paragraph affects the operation of paragraphs 3 to 5.

2. Service providers established outside of Montserrat: restriction on institution of proceedings

- (1) This paragraph applies where a service provider is established in a jurisdiction other than Montserrat.
- (2) Proceedings for an offence under section 151A may not be instituted against a service provider established in a jurisdiction other than Montserrat in respect of anything done in the course of the provision of information society services, unless the derogation condition under subparagraph (3) is satisfied.
- (3) The derogation condition is satisfied where the institution of proceedings—
 - (a) is necessary for the purposes of the public interest objective;
 - (b) relates to an information society service that prejudices the public interest objective or presents a serious and grave risk of prejudice to the public interest objective; and
 - (c) is proportionate to the public interest objective.
- (4) **“Public interest objective”** means the pursuit of public policy.

3. Exceptions for mere conduits

- (1) A service provider does not commit an offence under section 151A in respect of anything done in the course of providing an information society service consisting of—
 - (a) the provision of access to a communication network; or
 - (b) the transmission in a communication network of information provided by a recipient of the service,if the condition in subparagraph (2) is satisfied.
- (2) The condition to be satisfied is that the service provider does not—
 - (a) initiate the transmission;
 - (b) select the recipient of the transmission; or
 - (c) select or modify the information contained in the transmission.
- (3) For the purposes of subparagraph (1)—
 - (a) the provision of access to a communication network; and
 - (b) the transmission of information in a communication network,includes the automatic, intermediate and transient storage of the information transmitted so far as the storage is solely for the purpose of carrying out the transmission in the network.
- (4) Subparagraph (3) does not apply if the information is stored for longer than is reasonably necessary for the transmission.

4. Exception for caching

- (1) This paragraph applies where an information society service consists in the transmission in a communication network of information provided by a recipient of the service.
- (2) A service provider does not commit an offence under section 151A in respect of the automatic, intermediate and temporary storage of information provided, if—

- (a)* the storage of the information is solely for the purpose of making more efficient the onward transmission of the information to another recipient of the service at his request; and
 - (b)* the condition in subparagraph (3) is satisfied.
- (3) The condition is that the service provider—
 - (a)* does not modify the information;
 - (b)* complies with any condition attached to having access to the information; and
 - (c)* where subparagraph (4) applies, expeditiously removes the information or disables access to it.
- (4) This subparagraph applies if the service provider obtains actual knowledge that—
 - (a)* the information at the initial source of the transmission has been removed from the network;
 - (b)* access to it has been disabled; or
 - (c)* a court or administrative authority has ordered the removal from the network of, or the disablement of access to, the information.

5. Exception for hosting

- (1) A service provider does not commit an offence under section 151A in respect of anything done in the course of providing so much of an information society service as consists in the storage of information provided by a recipient of the service if sub-paragraph (2) or (3) is satisfied.
- (2) This sub-paragraph is satisfied if the service provider had no actual knowledge when the information was provided—
 - (a)* that it consisted of or included a private sexual photograph or film;
 - (b)* that it was provided without the consent of an individual who appears in the photograph or film; or
 - (c)* that the photograph or film was provided with the intention of causing distress to that individual.

- (3) This subparagraph is satisfied if, on obtaining such knowledge, the service provider expeditiously removed the information or disabled access to it.
- (4) Subparagraph (1) does not apply if the recipient of the service is acting under the authority or control of the service provider.

6. Interpretation

- (1) This paragraph applies for the purposes of this Schedule.
- (2) “**Disclose**” and “**photograph or film**” have the meanings given in section 151C.
- (3) “**Information society service**” means a service normally provided for remuneration, at a distance, by means of electronic equipment for the processing, including digital compression, and storage of data, and at the individual request of a recipient of a service.
- (4) “**Recipient**”, in relation to a service, means a person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible.
- (5) “**Service provider**” means a person providing an information society service.
- (6) For the purpose of interpreting references in this Schedule to a service provider who is established in Montserrat—
 - (a) a service provider is established in Montserrat if the service provider effectively pursues an economic activity using a fixed establishment in Montserrat for an indefinite period;
 - (b) the presence or use in a particular place of equipment or other technical means of providing an information

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- society service does not, of itself, constitute the establishment of a service provider; and
- (c) where it cannot be determined from which of a number of establishments a given information society service is provided, that service is to be regarded as provided from the establishment at the centre of the service provider's activities relating to that service.”.

Sgd. Charliena M. L. White (Miss.)

SPEAKER

Passed by the Legislative Assembly this 22nd day of November, 2022.

Sgd. Shivonne White (Mrs.)

CLERK OF THE LEGISLATIVE ASSEMBLY (Ag.)