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LAWS AND REGULATIONS

PROMULGATED TO GIVE EFFECT TO THE PROVISIONS OF
THE INTERNATIONAL TREATIES ON NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

*In accordance with the relevant articles of the international treaties on narcotic drugs and psychotropic substances,
the Secretary-General has the honour to communicate the following legislative texts.*

MONTSERRAT

Communicated by the Government of the United Kingdom

NOTE BY THE SECRETARIAT

- (a) Some editing of texts may be done by the Secretariat in the interest of clarity. In this connection, words in square brackets [] have been added or changed by the Secretariat.
- (b) Only passages directly relevant to the control of narcotic drugs or psychotropic substances have been reproduced in this document. Non-relevant parts of laws and regulations have been deleted by the Secretariat; such deletions are indicated by [...].

CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION)
ORDINANCE, 1991 AS AMENDED BY THE CRIMINAL JUSTICE
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**CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION)
ORDINANCE, 1991 AS AMENDED BY THE CRIMINAL JUSTICE
(INTERNATIONAL CO-OPERATION) (AMENDMENT) ORDINANCE, 1992**

AN ORDINANCE TO ENABLE MONTSERRAT TO CO-OPERATE WITH OTHER COUNTRIES IN CRIMINAL PROCEEDINGS AND INVESTIGATIONS; TO ENABLE MONTSERRAT TO JOIN WITH OTHER COUNTRIES IN IMPLEMENTING THE VIENNA CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES; AND TO PROVIDE FOR THE SEIZURE, DETENTION AND FORFEITURE OF DRUG TRAFFICKING MONEY IMPORTED OR EXPORTED IN CASH.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council of Montserrat and by the authority of the same, as follows:-

1. This Ordinance may be cited as the Criminal Justice (International Co-operation) Ordinance 1991^{1/} and shall come into force on such day as the Governor may appoint by proclamation.

Short Title and
Commencement

PART I

CRIMINAL PROCEEDINGS AND INVESTIGATIONS

Mutual service of process

2. (1) This section has effect where the Governor receives from the government of, or other authority in, a country or territory outside Montserrat -

Service of overseas
process in
Montserrat

- (a) a summons or other process requiring a person to appear as defendant or attend as a witness in criminal proceedings in that country or territory; or
- (b) a document issued by a court exercising criminal jurisdiction in that country or territory and recording a decision of the court made in the exercise of the jurisdiction,

^{1/} as amended by the Criminal Justice (International Co-operation) (Amendment) Ordinance 1992 (N° 8 of 1992)

together with a request for it to be served on a person in Montserrat.

(2) The Governor may cause the process or document to be served by post or, if the request is for personal service, direct the Commissioner of Police to cause it to be personally served on him.

(3) Service by virtue of this section of any such process as is mentioned in subsection (1) (a) above shall not impose any obligation under the law of Montserrat to comply with it.

(4) Any such process served by virtue of this section shall be accompanied by a notice -

- (a) stating the effect of subsection (3) above;
- (b) indicating that the person on whom it is served may wish to seek advice as to the possible consequences of his failing to comply with the process under the law of the country or territory where it was issued; and
- (c) indicating that under the law he may not, as a witness, be accorded the same rights and privileges as would be accorded to him in criminal proceedings in Montserrat.

(5) Where the Commissioner of Police is directed under this section to cause any process or document to be served he shall after it has been served forthwith inform the Governor when and how it was served and (if possible) furnish him with a receipt signed by the person on whom it was served; and if the Commissioner of Police has been unable to cause the process or document to be served he shall forthwith inform the Governor of that fact and of the reason.

3. (1) Process of the following descriptions, that is to say

- (a) a summons requiring a person charged with an offence to appear before a court in Montserrat; and
- (b) a summons or order requiring a person to attend before a court in Montserrat for the purpose of giving evidence in criminal proceedings, may be issued or made notwithstanding that the person in question is outside Montserrat and may be served outside Montserrat in accordance with arrangements made by the Governor.

(2) Service of any process outside Montserrat by virtue

of this section shall not impose any obligation under the law of Montserrat to comply with it and accordingly failure to do so shall not constitute contempt of any court or be a ground for issuing a warrant to secure the attendance of the person in question for imposing any penalty.

(3) Subsection (2) above is without prejudice to the service of any process (with the usual consequences for non-compliance) on the person in question if subsequently effected in Montserrat.

Mutual provision of evidence

4. (1) Where on an application made in accordance with subsection (2) below it appears to a judge -

**Overseas evidence
for use in Montserrat**

- (a) that an offence has been committed or that there are reasonable grounds for suspecting that an offence has been committed; and
- (b) that proceedings in respect of the offence have been instituted or that the offence is being investigated,

he may issue a letter ("a letter of request") requesting assistance in obtaining outside Montserrat such evidence as is specified in the letter for use in the proceedings or investigation.

(2) An application under subsection (1) above may be made by a prosecuting authority or, if proceedings have been instituted, by the person charged in those proceedings.

(3) A prosecuting authority which is for the time being designated for the purposes of this section by an order made by the Governor by Statutory Rules and Orders may itself issue a letter of request if -

- (a) it is satisfied as to the matters mentioned in subsection (1) (a) above; and
- (b) the offence in question is being investigated or the authority has instituted proceedings in respect of it.

(4) Subject to subsection (5) below, a letter of request shall be sent to the Governor for transmission either -

- (a) to a court or tribunal specified in the letter and exercising jurisdiction in the place where the evidence is to be obtained; or

(b) to any authority recognized by the government of the country or territory in question as the appropriate authority for receiving requests for assistance of the kind to which this section applies.

(5) In cases of urgency a letter or request may be sent direct to such a court or tribunal as is mentioned in subsection (4) (a) above.

(6) In this section "evidence" includes documents and other articles.

(7) Evidence obtained by virtue of a letter of request shall not without the consent of such an authority as is mentioned in subsection (4) (b) above be used for any purpose other than that specified in the letter; and when any document or other article obtained pursuant to a letter of request is no longer required for that purpose (or for any other purpose for which such consent has been obtained), it shall be returned to such an authority unless that authority indicates that the document or article need not be returned.

Montserrat evidence
for use overseas

5. (1) This section has effect where the Governor receives

(a) from a court or tribunal exercising criminal jurisdiction in a country or territory outside Montserrat or a prosecuting authority in such a country or territory; or

(b) from any other authority in such a country or territory which appears to him to have the function of making requests of the kind to which this section applies,

a request for assistance in obtaining evidence in Montserrat in connection with criminal proceedings that have been instituted, or a criminal investigation that is being carried on, in that country or territory.

(2) If the Governor is satisfied -

(a) that an offence under the law of the country or territory in question has been committed or that there are reasonable grounds for suspecting that such an offence has been committed; and

(b) that proceedings in respect of that offence have been instituted in that country or territory or that an investigation into that offence is being carried on there,

he may, if he thinks fit, by a notice in writing nominate, with the approval of the Chief Justice, the Magistrate Court to receive such of the evidence to which the request relates as may appear to the court to be appropriate for the purpose of giving effect to the request.

(3) Where it appears to the Governor that the request relates to a fiscal offence in respect of which proceedings have not yet been instituted he shall not exercise his powers under subsection (2) above unless -

- (a) the request is from a country or territory which is a member of the Commonwealth or is made pursuant to a treaty to which Montserrat is a party; or
- (b) he is satisfied that the conduct constituting the offence would constitute an offence of the same or a similar nature if it had occurred in Montserrat.

(4) For the purpose of satisfying himself as to the matters mentioned in subsection (2) (a) and (b) above the Governor shall regard as conclusive a certificate issued by such authority in the country or territory in question as appears to him to be appropriate.

(5) In this section "evidence" includes documents and other articles.

(6) Schedule 1 to this Ordinance shall have effect with respect to the proceedings before the Magistrates court in pursuance of a notice under subsection (2) above.

6. (1) The Governor may, if he thinks fit, issue a warrant providing for any person ("a prisoner") serving a sentence in a prison or other institution to which the Prison Ordinance Chapter 194 applies to be transferred to a country or territory outside Montserrat for the purpose -

- (a) of giving evidence in criminal proceedings there; or
- (b) of being identified in, or otherwise by his presence assisting, such proceedings or the investigation of an offence.

(2) No warrant shall be issued under this section in respect of any prisoner unless he has consented to being transferred as mentioned in subsection (1) above and that consent may be given either -

Transfer of
Montserrat prisoner
to give evidence or
assist investigation
overseas

- (a) by the prisoner himself; or
- (b) in circumstances in which it appears to the Governor inappropriate, by reason of the prisoner's physical or mental condition or his youth, for him to act for himself, by a person appearing to the Governor to be an appropriate person to act on his behalf,

but a consent once given shall not be capable of being withdrawn after the issue of the warrant.

(3) The effect of a warrant under this section shall be to authorise -

(a) the taking of the prisoner to a place in Montserrat and his delivery at a place of departure from Montserrat into the custody of a person representing the appropriate authority of the country or territory to which the prisoner is to be transferred; and

(b) the bringing of the prisoner back to Montserrat and his transfer in custody to the place where he is liable to be detained under the sentence to which he is subject.

(4) Where a warrant has been issued in respect of a prisoner under this section he shall be deemed to be in legal custody at any time when, being in Montserrat or on board a ship, aircraft or hovercraft, he is being taken under the warrant to or from any place or being kept in custody under the warrant.

(5) A person authorised by or for the purposes of the warrant to take the prisoner to or from any place or to keep him in custody shall have all the powers, authority, protection and privileges -

(a) of a Police Officer of Montserrat where that person is for the time being in Montserrat; or

(b) if he is outside Montserrat, of a Police Officer of Montserrat from where the prisoner is to be taken under the warrant.

(6) If the prisoner escapes or is unlawfully at large, he may be arrested without warrant by a Police Officer and taken to any place to which he may be taken under the warrant issued under this section.

(7) This section applies to a person in custody awaiting trial or sentence and a person committed to prison for default in paying a fine as it applies to a prisoner and the reference in

subsection (3) (b) above to a sentence shall be construed accordingly.

7. (1) This section has effect where -

- (a) a witness order has been made or a witness summons or citation issued in criminal proceedings in Montserrat in respect of a person ("a prisoner") who is detained in custody in a country or territory outside Montserrat by virtue of a sentence or order of a court or tribunal exercising criminal jurisdiction in that country or territory; or
- (b) it appears to the Governor that it is desirable for a prisoner to be identified in, or otherwise by his presence to assist, such proceedings or the investigation in Montserrat of an offence.

**Transfer of overseas
prisoner to give
evidence or assist in
investigation in
Montserrat**

(2) If the Governor is satisfied that the appropriate authority in the country or territory where the prisoner is detained will make arrangements for him to come to Montserrat to give evidence pursuant to the witness order, witness summons or citation or, as the case may be, for the purpose mentioned in subsection (1) (b) above, he may issue a warrant under this section.

(3) No warrant shall be issued under this section in respect of any prisoner unless he has consented to being brought to Montserrat to give evidence as aforesaid or, as the case may be, for the purpose mentioned in subsection (1) (b) above but a consent once given shall not be capable of being withdrawn after the issue of the warrant.

(4) The effect of the warrant shall be to authorise -

- (a) the bringing of the prisoner to Montserrat;
- (b) the taking of the prisoner to, and his detention in custody at, such place or places in Montserrat as are specified in the warrant; and
- (c) the returning of the prisoner to the country or territory from which he has come.

(5) Subsections (4) to (6) of section 6 above shall have effect in relation to a warrant issued under this section as they have effect in relation to a warrant issued under that section.

(6) A person shall not be subject to the Immigration and

Passport Act (Chapter 137) in respect of his entry into or presence in Montserrat in pursuance of a warrant under this section but if the warrant ceases to have effect, while he is still in Montserrat

- (a) he shall be treated for the purpose of that Act as if he has then illegally entered Montserrat; and
- (b) the provisions of that Act shall have effect for the removal of such person and no liability shall attach to any carrier by which he was brought to Montserrat.

(7) This section applies to a person detained in custody in a country or territory outside Montserrat in consequence of having been transferred there -

- (a) from Montserrat under the Repatriation of Prisoners Act 1984 UK as modified and extended to Montserrat by the (Overseas Territories Order S1 1986 No 2226); or
- (b) under any similar provision or arrangement from any other country or territory,
as it applies to a person detained as mentioned in subsection (1) above.

Additional co-operation powers

8. (1) The provisions of the Criminal Procedure Code Ordinance 1982 (powers of entry, search and seizure) shall have effect as if references to serious arrestable offences included any conduct which is an offence under the law of a country or territory outside Montserrat and would constitute a serious arrestable offence if it had occurred in Montserrat.

(2) If, on an application made by a Police Officer, a Magistrate is satisfied -

- (a) that criminal proceedings have been instituted against a person in a country or territory outside Montserrat or that a person has been arrested in the course of a criminal investigation carried on there;
- (b) that the conduct constituting the offence which is the subject of the proceedings or investigation would constitute an arrestable offence within the meaning of the Penal Code 1983 if it had occurred in Montserrat; and
- (c) that there are reasonable grounds for suspecting that

Search etc. for
material relevant to
overseas
investigation

there is on premises in Montserrat occupied or controlled by that person evidence relating to the offence other than items subject to legal privilege within the meaning of that Code,

he may issue a warrant authorizing a Police Officer to enter and search those premises and to seize any such evidence found there.

(3) The power to search conferred by subsection (2) above is only a power to search to the extent that is reasonably required for the purpose of discovering such evidence as is there mentioned.

(4) No application for a warrant or order shall be made by virtue of subsection (1) or (2) above except in pursuance of a direction given by the Governor in response to a request received

- (a) from a court or tribunal exercising criminal jurisdiction in the overseas country or territory in question or a prosecuting authority in that country or territory; or
- (b) from any other authority in that country or territory which appears to him to have the function of making requests for the purposes of this section;

and any evidence seized by a police officer by virtue of this section shall be furnished by him to the Governor for transmission to that court, tribunal or authority.

(5) If in order to comply with the request it is necessary for any such evidence to be accompanied by any certificate, affidavit or other verifying document the police officer shall also furnish for transmission such document of that nature as may be specified in the direction given by the Governor.

(6) Where the evidence consists of a document the original or a copy shall be transmitted, and where it consists of any other article the article itself or a description, photograph or other representation of it shall be transmitted, as may be necessary in order to comply with the request.

(7) The Governor may by order direct that any powers which by virtue of this section are exercisable by a police officer shall also be exercisable by, or by any person acting under the direction of, the Comptroller of Customs and Excise and the

Governor may by order direct that any of those powers shall also be exercisable by a person of any other description specified in the order.

(8) An order under subsection (7) above shall be made by Statutory Rules and Orders subject to annulment by a Secretary of State on a resolution made by the Legislative Council.

Enforcement of
overseas forfeiture
orders

9. (1) The Governor-in-Council may by order provide for the enforcement in Montserrat of any order which -

- (a) is made by a court in a country or territory outside Montserrat designated for the purposes of this section by the order; and
- (b) is for the forfeiture and destruction, or the forfeiture and other disposal, of anything in respect of which an offence to which this section applies has been committed or which was used in connection with the commission of such an offence.

(2) Without prejudice to the generality of subsection (1) above an order under this section may provide for the registration by a court in Montserrat of any order as a condition of its enforcement and prescribe requirements to be satisfied before an order can be registered.

(3) An order under this section may include such supplementary and incidental provisions as appear to the Governor-in-Council to be necessary or expedient and may apply for the purposes of the order (with such modifications as appear to the Governor-in-Council to be appropriate) any provisions relating to confiscation or forfeiture orders under any other enactment.

(4) An order under this section may make different provision for different cases.

(5) No order shall be made under this section unless a draft of it has been laid before and approved by a resolution of the Legislative Council.

(6) This section applies to any offence which corresponds to or is similar to an offence under the Drugs (Prevention of Misuse) Ordinance 1989 and a drug trafficking offence as defined in section 2 of the Drug Trafficking Offences Ordinance

Supplementary

10. (1) Provision may be made by rules of court for any purpose for which it appears to the authority having power to make the rules that it is necessary or expedient that provision should be made in connection with any of the provisions of this Part of this Ordinance.

Rules of Court

(2) Rules made for the purposes of Schedule 1 to this Ordinance may, in particular, make provision with respect to the persons entitled to appear or take part in the proceedings to which that Schedule applies and for excluding the public from any such proceedings.

(3) An order under section 9 above may authorise the making of rules of court for any purpose specified in the order.

(4) This section is without prejudice to the generality of any existing power to make rules

PART II

The Vienna Convention

Substances useful for manufacture of controlled drugs

11. (1) It is an offence for a person -

(a) to manufacture a scheduled substance; or

(b) to supply such a substance to another person,

knowing or suspecting that the substance is to be used in or for the unlawful production of a controlled drug.

Manufacture and supply of scheduled substances

(2) A person guilty of an offence under subsection (1) above is liable -

(a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term

not exceeding fourteen years or a fine or both.

(3) In this section "a controlled drug" has the same meaning as in the Drugs (Prevention of Misuse) Ordinance 1989 and "unlawful production of a controlled drug" means the production of such a drug which is unlawful by virtue of section 6 (1) (a) of that Ordinance.

(4) In this section and elsewhere in this Part of this Ordinance "a scheduled substance" means a substance for the time being specified in Schedule 2 to this Ordinance.

(5) The Governor-in-Council may by order amend that Schedule (whether by addition, deletion or transfer from one Table to the other) but -

- (a) no such order shall add any substance to the Schedule unless -
 - (i) it appears to the Governor-in-Council to be frequently used in or for the ~~unlawful~~ production of a controlled drug; or
 - (ii) it has been added to the Annex to the Vienna Convention under Article 12 of that Convention; and
- (b) no such order shall be made unless a draft of it has been laid before and approved by a resolution of the Legislative Council.

12. (1) The Governor-in-Council may by regulation make provision -

- (a) imposing requirements as to the documentation of transactions involving scheduled substances;
- (b) requiring the keeping of records and the furnishing of information with respect to such substances;
- (c) for the inspection of records kept pursuant to the regulations;
- (d) for the labelling of consignments of scheduled substances.

(2) Regulations made by virtue of subsection (1)(b) may, in particular, require -

- (a) the notification of the proposed exportation of substances specified in Table I in Schedule 2 to this Ordinance to such countries as may be specified in the

regulations; and

- (b) the production, in such circumstances as may be so specified, of evidence that the required notification has been given,

and for the purposes of section 25 of the Tariff Collection Ordinance (Chapter 239) any such substance shall be deemed to be exported contrary to a restriction for the time being in force with respect to it under this Ordinance if it is exported without a warrant for the exportation thereof.

(3) Regulations under this section may make different provision in relation to the substances specified in Table I and Table II in Schedule 2 to this Ordinance respectively and in relation to different cases or circumstances.

(4) The power to make regulations under this section shall be exercisable by Statutory Rules and Orders subject to annulment in pursuance of a resolution of the Legislative Council.

(5) Any person who fails to comply with any requirement imposed by the regulations or, in purported compliance with any such requirement, furnishes information which he knows to be false in a material particular or recklessly furnishes information which is false in a material particular is guilty of an offence and liable -

- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.

(6) No information obtained pursuant to the regulations shall be disclosed except for the purposes or criminal proceedings or of proceedings under the provisions of the Drug Trafficking Offences Ordinance relating to the confiscation of the proceeds of drug trafficking.

Proceeds of drug trafficking

13. (1) A person is guilty of an offence if he -

- (a) conceals or disguises any property which is, or in whole

Concealing or
transferring
proceeds of drug
trafficking

or in part directly or indirectly represents, his proceeds of drug trafficking; or

- (b) converts or transfers that property or removes it from the jurisdiction,

for the purpose of avoiding prosecution for a drug trafficking offence or the making or enforcement in his case of a confiscation order.

(2) A person is guilty of an offence if, knowing or having reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of drug trafficking, he -

- (a) conceals or disguises that property; or

- (b) converts or transfers that property or removes it from the jurisdiction,

for the purpose of assisting any person to avoid prosecution for a drug trafficking offence or the making or enforcement of a confiscation order.

(3) A person is guilty of an offence if, knowing or having reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of drug trafficking, he acquires that property for no, or for inadequate, consideration.

(4) In subsections (1) (a) and (2) (a) above the references to concealing or disguising any property include references to concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.

(5) For the purposes of subsection (3) above consideration given for any property is inadequate if its value is significantly less than the value of that property, and there shall not be treated as consideration the provision for any person or services or goods which are of assistance to him in drug trafficking.

(6) A person guilty of an offence under this section is liable -

- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both;

- (b) on conviction on indictment, to imprisonment for a term

not exceeding fourteen years or a fine or both.

14. (1) If any sum required to be paid by a person under a confiscation order is not paid when it is required to be paid (whether forthwith on the making of the order or at a time specified by the court which makes the order that person shall be liable to pay interest on that sum for the period for which it remains unpaid and the amount of the interest shall for the purposes of enforcement be treated as part of the amount to be recovered from him under the confiscation order.

interests on sums
unpaid under
confiscation orders

(2) The High Court may, on the application of the prosecutor, increase the term of imprisonment or detention fixed in respect of the confiscation order under section 8 of the Drug Trafficking Ordinance 1990.

(3) The rate of interest under subsection (1) above shall be that for the time being applying to a civil judgement debt.

15. (1) This section has effect where by virtue of section 6 (3) of the Drug Trafficking Offences Ordinance 1990 (insufficient realisable property) the amount which a person is ordered to pay by a confiscation order is less than the amount assessed to be the value of his proceeds of drug trafficking.

increase in
realisable property

(2) If, on an application made in accordance with subsection (3) below, the High Court is satisfied that the amount that might be realised in the case of the person in question is greater than the amount taken into account in making the confiscation order (whether it was greater than was thought when the order was made or has subsequently increased) the court shall issue a certificate to that effect, giving the court's reason.

(3) An application under the subsection (2) above may be made either by the prosecutor or by a receiver appointed under the said Ordinance of 1990 in relation to the realisable property of the person in question.

(4) Where a certificate has been issued under subsection (2) above the prosecutor may apply to the High Court for an increase in the amount to be recovered under the confiscation order; and on the application the court may -

- (a) substitute for that amount such amount (not exceeding the amount assessed as the value referred to in subsection (1) above) as appears to the court to be appropriate having regard to the amount now shown to be reali-

sable; and

- (b) increase the term of imprisonment or detention fixed in respect of the confiscation order under subsection 8 of the said Ordinance (imprisonment in default of payment) if the effect of the substitution is to increase the maximum period applicable in relation to the order under subsection (1)(b) of that section.

Offences at sea

**Offences on
Montserrat ships**

16. Anything which would constitute a drug trafficking offence if done on land in any part of Montserrat shall constitute that offence if done on a Montserrat ship.

**Ships used for illicit
traffic**

17. (1) This section applies to a Montserrat ship, a ship registered in a Dependent Territory of the United Kingdom, a ship registered in a State which is a Party to the Vienna Convention (a Convention State) and a ship not registered in any country or territory.

(2) A person is guilty of an offence if on a ship to which this section applies, where ever it may be, he -

- (a) has a controlled drug in his possession; or
- (b) is in any way knowingly concerned in the carrying or concealing of a controlled drug on the ship,

knowing or having reasonable grounds to suspect that the drug is intended to be imported or has been exported contrary to Section 5 (1) of the Drugs (Prevention of Misuse) Ordinance 1989 or the law of any state or a Dependent Territory of the United Kingdom other than Montserrat.

(3) A certificate purporting to be issued by or on behalf of the government of any state to the effect that the importation or export of a controlled drug is prohibited by the law of the state or a Dependent Territory of the United Kingdom other than Montserrat shall be evidence of the matters stated.

(4) A person guilty of an offence under this section is liable -

- (a) in a case where the controlled drug is a Class A drug -
 - (i) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both;
 - (ii) on conviction, on indictment, to imprisonment for

life or a fine or both;

- (b) in a case where the controlled drug is a Class B drug -
 - (i) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both;
 - (ii) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or a fine or both;
- (c) in a case where the controlled drug is a Class C drug -
 - (i) on summary conviction, to imprisonment for a term not exceeding three months or a fine not exceeding the statutory maximum or both;
 - (ii) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine or both.

(5) In this section "a controlled drug" and the references to controlled drugs of a specified Class have the same meaning as in the said Ordinance of 1989 and an offence under this section shall be included in the offences to which section 30 of that Ordinance (defences) applies.

18. (1) The powers conferred on an enforcement officer by Schedule 3 to this Ordinance shall be exercisable in relation to any ship to which section 16 or 17 above applies for the purpose of detecting and the taking of appropriate action in respect of the offences mentioned in those sections.

Enforcement power

(2) Those powers shall not be exercised outside the landward limits of the territorial sea of Montserrat in relation to a ship registered in a Convention state except with the authority of the Governor and he shall not give his authority unless that state has in relation to that ship -

- (a) requested the assistance of the United Kingdom or Montserrat for the purpose mentioned in subsection (1) above; or
- (b) authorised the United Kingdom or Montserrat to act for that purpose.

(3) In giving his authority pursuant to a request or authorization from a Convention State the Governor shall impose such conditions or limitations on the exercise of the powers as may be necessary to give effect to any conditions or limitations imposed by that state.

(4) The Governor may, either of his own motion or in

response to a request from a Convention state, authorise a Convention state to exercise, in relation to a Montserrat ship, powers corresponding to those conferred on enforcement officers by Schedule 3 to this ordinance but subject to such conditions or limitations, if any, as he may impose.

(5) Subsection (4) above is without prejudice to any agreement made, or which may be made, on behalf of Montserrat whereby Montserrat undertakes not to object to the exercise by any state or other Dependent Territory of the United Kingdom in relation to a Montserrat ship of powers corresponding to those conferred by that Schedule.

(6) The powers conferred by that Schedule shall not be exercised in that territorial sea of any state or any Dependent Territory of the United Kingdom other than Montserrat without the authority of the Governor and he shall not give his authority unless that state or the Dependent Territory of the United Kingdom has consented to the exercise of those powers.

**Jurisdiction and
Prosecutions**

19. (1) Proceedings under this Part of this Ordinance or Schedule 3 in respect of an offence on a ship may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in Montserrat.

(2) No such proceedings shall be instituted except by or with the consent of the Attorney General.

(3) Without prejudice to subsection (2) above no proceedings for an offence under section 17 above alleged to have been committed outside the landward limits of the territorial sea of Montserrat on a ship registered in a Convention state shall be instituted except in pursuance of the exercise with the authority of the Governor of the powers conferred by Schedule 3 to this ordinance.

Supplementary

Extradition

20. The offences to which an Order in Council under the Extradition Act 1989 of United Kingdom can apply shall include drug trafficking offences.

**Application of
ancillary Provisions**

21. The Drugs (Prevention of Misuse) Ordinance 1989 is hereby amended as follows: -

(a) in subsection (1) of section 14 by the deletion of the words "an offence under this Ordinance" and the substitution therefor of the following: -

“an offence under this Ordinance or an offence under section 11 or 12 of the Criminal Justice (International Co-operation) Ordinance 1991”;

- (b) in section 22 by the deletion of the words **“where any offence under this Ordinance”** and the substitution therefor of the following:-

“Where any offence under this Ordinance or Part II of the Criminal Justice (International Co-operation) Ordinance 1991”.

- (c) in section 24 by the insertion immediately after subsection (9) of the following subsection which shall have effect as subsection (10) of that section:-

“(10) The powers conferred by subsection (1) above shall be exercisable also for the purposes of the execution of Part II of the Criminal Justice (International Co-operation) Ordinance 1991 and subsection (6) above (excluding paragraph (a)) shall apply also to offences under section 11 or 12 of that Ordinance, taking references in those provisions to Controlled drugs as references to Scheduled Substances within the meaning of that Part”.

- 22. (1) In this Part of this Ordinance-**

“Montserrat ship” means a ship registered in Montserrat;

“Convention State” has the meaning given in section 17 (1) above;

“scheduled substance” has the meaning given in section 11 (4) above;

“ship” includes any vessel used in navigation;

“the Vienna Convention” means the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances which was signed in Vienna on 20th December 1988.

- (2) Any expression used in this Part of this Ordinance which is also used in the Drug Trafficking Offences Ordinance 1990 has the same meaning as in that Ordinance.**

Interpretation of Part
II

(3) If in any proceedings under this Part of this Ordinance any question arises whether any country or territory is a state or is a party to the Vienna Convention, a certificate issued by or under the authority of the Governor shall be conclusive evidence on that question.

PART III

DRUG TRAFFICKING MONEY IMPORTED OR EXPORTED IN CASH

**Seizure and
detention**

23. (1) A customs officer or police officer may seize and, in accordance with this section, detain any cash which is being imported into or exported from Montserrat if its amount is not less than the sum prescribed by Order and he has reasonable grounds for suspecting that it directly or indirectly represents any person's proceeds of, or is intended by any person for use in, drug trafficking.

(2) Cash seized by virtue of this section shall not be detained for more than forty-eight hours unless its continued detention is authorised by an order made by a Judge or Magistrate; and no such order shall be made unless the Judge or a Magistrate is satisfied -

- (a) that there are reasonable grounds for the suspicion mentioned in subsection (1) above, and
- (b) that continued detention of the cash is justified while its origin or derivation is further investigated or consideration is given to the institution (whether in Montserrat or elsewhere) of criminal proceedings against any person for an offence with which the cash is connected.

(3) Any order under subsection (2) above shall authorise the continued detention of the cash to which it relates for such period, not exceeding three months beginning with the date of the order, as may be specified in the order; and the magistrates' court, if satisfied as to the matters mentioned in that subsection, may thereafter from time to time by order authorise the further detention of the cash but so that -

- (a) no period of detention specified in such an order shall exceed three months beginning with the date of the order; and

(b) the total period of detention shall not exceed two years from the date of the order under subsection (2) above.

(4) Any application for an order under subsection (2) or (3) above shall be made by the Attorney General on behalf of the Customs Officer or the Police Officer, as the case may be.

(5) At any time while cash is detained by virtue of the foregoing provisions of this section.

(a) The magistrate court may direct its release if satisfied

(i) on an application made by the person from whom it was seized or a person by or on whose behalf it was being imported or exported, that there are no, or are no longer, any such grounds for its detention as are mentioned in subsection (2) above; or

(ii) on an application made by any other person, that detention of the cash is not for that or any other reason justified; and

(b) a customs officer or police officer, may release the cash if satisfied that its detention is no longer justified but shall first notify the Judge or Magistrates' under whose order it is being detained.

(6) If at a time when any cash is being detained by virtue of the foregoing provisions of this section -

(a) an application for its forfeiture is made under section 24 below; or

(b) proceedings are instituted (whether in Montserrat or elsewhere) against any person for an offence with which the cash is connected,

the cash shall not be released until any proceedings pursuant to the application or, as the case may be, the proceedings for that offence have been concluded.

24. (1) The magistrate court may order the forfeiture of any cash which has been seized under section 23 above if satisfied, on any application made while the cash is detained under that section, that the cash directly or indirectly represents any person's proceeds of, or is intended by any person for use in, drug trafficking.

Forfeiture

(2) Any application under this section to the magistrate court shall be made by the Attorney General.

(3) The standard of proof in proceedings on an application under this section shall be that applicable to civil proceedings; and an order may be made under this section whether or not proceedings are brought against any person for an offence with which the cash in question is connected.

Interest

25. Cash seized under this Part of this Ordinance and detained for more than forty-eight hours shall, unless required as evidence of an offence, be held in an interest-bearing account and the interest accruing on any such cash shall be added to that cash on its forfeiture or release.

Procedure

26. (1) An order under section 23 (2) above shall provide for notice to be given to persons affected by the order.

(2) Provision may be made by rules of court with respect to applications to any court under this Part of this Ordinance, for the giving of notice of such applications to persons affected, for the founder; of such persons as parties and generally with respect to the procedure under this Part of this Ordinance before any court.

(3) Subsection (2) above is without prejudice to the generality of any existing power to make rules.

Interpretation Part III

27. (1) In this Part of this Ordinance -

“cash” includes coins and notes in any currency;

“customs officer” means an officer of the Customs and Excise Department;

“drug trafficking” has the same meaning as in the Drug Trafficking Offences Ordinance 1990;

“exported”, in relation to any cash, includes its being brought to any place in Montserrat for the purpose of being exported;

“the proceeds of drug trafficking” has the same meaning as in the Drug Trafficking Offences Ordinance 1990 and includes proceeds received by any person before as well as after the coming into force of this Part of this Ordinance.

(2) In section 23 above “the prescribed sum” means such

sum in East Caribbean Currency as may for the time being be prescribed for the purposes of that section by an order made by the Governor-in-Council subject to annulment in pursuance of a resolution of the Legislative Council; and in determining under that section whether an amount of currency other than sterling is not less than the prescribed sum that amount shall be converted at the prevailing rate of exchange.

PART IV

GENERAL

28 (1) Any expenses incurred by the Governor under this Ordinance shall be defrayed out of money provided by the Legislative Council.

Expenses and receipts

(2) Any money representing cash forfeited under Part III of this Ordinance or accrued interest thereon shall be paid into the Consolidated Fund.

29. The Drug Trafficking Offences Ordinance 1990 shall have effect with amendments set out in Schedule 4 being amendments consequential on or otherwise relating to the provisions of this Ordinance.

Consequential amendments to the Drug Traffic Offences Ordinance 1990

SCHEDULES

Schedule I

[Section 5 (6)]

Montserrat Evidence For Use Overseas: Proceedings of Court

Securing attendance of witnesses

1. The court shall have the like powers for securing the attendance of a witness for the purpose of the proceedings as it has for the purpose of other proceedings before the court.

Power to administer oaths

2. The court may in the proceedings take evidence on oath.

Privilege of witnesses

3. (1) A person shall not be compelled to give in the pro-

ceedings any evidence which he could not be compelled to give -

- (a) in criminal proceedings in Montserrat; or
- (b) subject to sub-paragraph (2) below, in criminal proceedings in the country or territory from which the request for the evidence has come.

(2) Sub-paragraph (1) (b) above shall not apply unless the claim of the person questioned to be exempt from giving the evidence is conceded by the court, tribunal or authority which made the request.

(3) Where such a claim made by any person is not conceded as aforesaid he may (subject to the other provisions of this paragraph) be required to give the evidence to which the claim relates but the evidence shall not be transmitted to the court, tribunal or authority which requested it if a court in the country or territory in question, on the matter being referred to it, upholds the claim.

(4) Without prejudice to sub-paragraph (i) above a person shall not be compelled under this Schedule to give any evidence if his doing so would be prejudicial to the security of the United Kingdom or Montserrat; and a certificate signed by or on behalf of the Governor to the effect that it would be so prejudicial for that person to do so shall be conclusive evidence of that fact.

(5) Without prejudice to sub-paragraph (1) above a person shall not be compelled under this Schedule to give any evidence in his capacity as an officer or servant of the Crown.

(6) In this paragraph references to giving evidence include references to answering any question and to producing any document or other article and the reference in sub-paragraph (3) above to the transmission of evidence given by a person shall be construed accordingly.

Transmission of evidence

4. (1) The evidence received by the court shall be furnished to the Governor for transmission to the court, tribunal or authority that made the request.

(2) If in order to comply with the request it is necessary for the evidence to be accompanied by any certificate, affidavit or other verifying document, the court shall also furnish for trans-

mission such document of that nature as may be specified in the notice nominating the court.

(3) Where the evidence consists of a document the original or a copy shall be transmitted, and where it consists of any other article the article itself or a description, photograph or other representation of it shall be transmitted, as may be necessary in order to comply with the request.

Supplementary

5. For the avoidance of doubt it is hereby declared that the Bankers Books' Evidence Act (Chapter 8) applies to the proceedings as it applies to other proceedings before the court.

6. No orders for costs shall be made in the proceedings.

Schedule 2

[S11 (4)]

Substances useful for manufacturing controlled drugs

Table I

Ephedrine
Ergometrine
Ergotamine
Lysergic Acid
1-Phenyl-2-Propanone
Pseudoephedrine

The salts of the substances listed in this Table whenever the existence of such salts is possible.

Table II

Acetic Anhydride
Acetone

Anthranilic Acid

Ethyl Ether

Phenylacetic Acid

Piperidine

The salts of the substances listed in this Table whenever the existence of such salts is possible.

Schedule 3

[Section 18]

Enforcement powers in respect of ships

Preliminary

1. (1) In this Schedule "an enforcement officer means -
 - (a) a police officer;
 - (b) an officer of the Customs and Excise Department;
 - (c) a captain of the Royal Navy or any person acting under his command of such captain; and
 - (d) any other person of a description specified in an order made for the purposes of this schedule by the Governor.

(2) The power to make an order under sub-paragraph (1) (d) above shall be exercisable by Order subject to annulment by a Secretary of State in pursuance of a resolution of the Legislative Council.

(3) In this Schedule "the ship" means the ship in relation to which the powers conferred by this Schedule are exercised.

Power to stop, board, divert and detain

2. (1) An enforcement officer may stop the ship, board it and, if he thinks it necessary for the exercise of his functions, required it to be taken to a port in Montserrat and detain it there.

(2) Where an enforcement officer is exercising his powers with the authority of the Governor given under section 18 (2) of this Ordinance the officer may require the ship to be taken to a port in the Convention state in question or, if that state has so

requested, in any other country or territory willing to receive it.

(3) For any of those purposes he may require the master or any member of the crew to take such action as may be necessary.

(4) If an enforcement officer detains a vessel he shall serve on the master a notice in writing stating that it is to be detained until the notice is withdrawn by the service on him of a further notice in writing signed by an enforcement officer.

Power to search and obtain information

3. (1) An enforcement officer may search the ship, anyone on it and anything on it including its cargo.

(2) An enforcement officer may require any person on the ship to give information concerning himself or anything on the ship.

(3) Without prejudice to the generality of those powers an enforcement officer may;

- (a) open any containers;
- (b) make tests and take samples of anything on the ship;
- (c) require the production of documents, books or records relating to the ship or anything on it;
- (d) make photographs or copies of anything whose production he has power to require.

Powers in respect of suspected offence

(4) If an enforcement officer has reasonable grounds to suspect that an offence mentioned in section 16 or 17 of this Ordinance has been committed on a ship to which that section applies he may -

- (a) arrest without warrant anyone whom he has reasonable grounds for suspecting to be guilty of the offence; and
- (b) seize and detain anything found on the ship which appears to him to be evidence of the offence.

Assistants

5. (1) An enforcement officer may take with him, to assist him in exercising his powers -

- (a) any other persons; and

(b) any equipment or materials.

(2) A person whom an enforcement officer takes with him to assist him may perform any of the officer's functions but only under the officer's supervision.

Use of reasonable force

6. An enforcement officer may use reasonable, if necessary, in the performance of his functions.

Evidence of authority

7. An enforcement officer shall, if required, produce evidence of his authority.

Protection of officers

8. An enforcement officer shall not be liable in any civil or criminal proceedings for anything done in the purported performance of his functions under this Schedule if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

Offences

9. (1) a person is guilty of an offence if he -
- (a) intentionally obstructs an enforcement officer in the performance of any of his functions under this Schedule;
 - (b) fails without reasonable excuse to comply with a requirement made by an enforcement officer in the performance of those functions; or
 - (c) in purporting to give information required by an officer for the performance of those functions -
 - (i) make a statement which he knows to be false in a material particular or recklessly make a statement which is false in a material particular; or
 - (ii) intentionally fails to disclose any material particular.

(2) A person guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding five thousand dollars.

Schedule 4

[Section 29]

Consequential and other amendments

The Drug Trafficking Offences Ordinances 1990

(1) The Drug Trafficking Offences Ordinance 1990 is amended as follows:-

(2) In the definition of 'drug trafficking' in section 2 (1) after paragraph (c) there shall be inserted -

"(d) manufacturing or supplying a scheduled substance within the meaning of section 11 of the Criminal Justice (International Co-operation) Ordinance 1991 where the manufacture or supply is an offence under that section."

(3) In the definition of "Drug Trafficking Offence" in section 2 (1) after paragraph (d) there shall be inserted -

"(dd) an offence under section 11, 13 or 17 of the Criminal Justice (International Co-operation) Ordinance 1991 and in paragraph (e) for "(d)" there shall be substituted "(dd)".

(4) In section 4 (4) after the words "section 21 of this Ordinance" there shall be inserted the words "or section 13 of the Criminal Justice (International Co-operation) Ordinance 1991."

H. A. FERGUS
Speaker

Passed by the Legislative Council this 5th day of April, 1991.

K. E. RUSSELL
Clerk of the Council