

CONSERVATION AND ENVIRONMENTAL MANAGEMENT BILL, 2013

EXPLANATORY MEMORANDUM

The Conservation and Environmental Management Bill, 2013 seeks to provide for the administration, conservation and sustainable use of biological diversity, natural resources and the natural heritage of Montserrat, the designation and management of protected areas, pollution control, the regulation of activities, the incorporation of international obligations with respect to the environment into national law, the establishment of an environmental fund and related matters.

The Bill is divided into nineteen parts.

Part 1 sets out the preliminary provisions of the Bill, including the interpretation of words used within the Bill and the purposes and principles surrounding environmental management and conservation.

Part 2 deals with administrative matters. It sets out the powers and duties of the Minister with responsibility for the environment. It establishes National Conservation and Environmental Advisory Council (“the Council”) and allows for the creation of Standing Committees of the Council. The functions of the Council, the Standing Committees and the Director of Environment (“the Director”) are also set out under Part 2.

Part 3 deals with environmental management. This part provides for the preparation of a national environmental Management Strategy (NEMS) to include—

- (a) a description of the environment in Montserrat;
- (b) an analysis of environmental issues of national significance; and
- (c) the environmental management strategies, to be prescribed to address the issues set out in paragraph (b), and must be submitted to the Council for review.

This Part also requires the establishment and maintenance of a national environmental information system (NEIS) to serve as a database for recording all information held relating to the environment. Further, the Director of Environment is required to prepare of an annual stewardship report to include matters such as a description of the environmental management activities undertaken by the Department of Environment during a given period.

Part 4 provides for the issuance of a Certificate of Approval to a person proposing to carry out certain environmental activities. It also requires the Director to monitor the performance on activity to ensure compliance with the condition as set out in the certificate. The Director

is empowered to require a certificate holder to submit further information or data. The Planning and Development Authority is empowered to require that a certificate holder submit an environmental impact assessment. The Director may, based on the information or data received on the request for a further information or based on the environmental impact assessment, revoke, suspend or amend the certificate or require the certificate holder to submit an environmental management plan.

Part 5 focuses on conservation of Montserrat's biological diversity. It requires the Director to prepare and submit to the Council for review a national strategy for the conservation of biological diversity in accordance with the overall policy of the NEMS and the St. Georges Declaration. Further, it requires the Director to identify the components of biological diversity important for its conservation and sustainable use. Part 5, in the Second and Third Schedules, sets out an inventory of protected flora and fauna and partially protected flora and fauna. It criminalizes certain actions taken in respect of protected flora or fauna and partially protected flora and fauna, including the acts of harvesting or attempting to harvest protected flora or willfully hunting or attempting to hunt any protected flora. The Director may however, permit the taking of necessary action where protected flora or fauna and partially protected flora or fauna is alleged to be causing damage to crops or private property.

Part 6 of the Bill addresses the trade of specimens. It places a duty on a person to obtain a permit issued by the Director, to import, export or re-export any specimen of flora or fauna. Where the Director refuses to issue a permit or issues a permit with conditions, the applicant may appeal the decision of the Director to the Physical Planning and Environmental (Appeals) Tribunal. This Part also empowers the Director to grant permission to persons to conduct scientific research, to photograph or collect information for financial gain or to collect information for documentaries, tourism promotion or educational purposes in respect of the fauna, flora and associated ecosystems within Montserrat. A person applying for permission must submit to the Director a plan for the proposed research and any other information the Director may require. Where permission is granted for bio-prospecting, the Director may attach terms, conditions and limitations concerning the ownership of intellectual property and sharing of financial returns from the commercialization of products derived from the biological diversity of Montserrat.

Part 7 addresses the designation of protected areas within Montserrat, as set out in the Fourth Schedule. Before an area is designated as a protected area, the Director is required to publish a notice of the intention to designate the area as a protected area, for stakeholder comments. He must establish buffer zones adjacent to a protected area and demarcate the boundaries of the protected area within 2 years of designation. He is also empowered to designate an area as a temporary protected area. Further, Part 7 requires the Director to prepare a draft Protected

Area System Plan (PAS Plan) for the establishment of a system or protected areas, which must be consistent with the NEMS. The Director is responsible for overseeing the administration and monitoring of protected areas, while the Governor acting on the advice of Cabinet may designate a competent body to manage and control the protected area. Part 7 makes provisions for dealing with private land within a protected area, including the management of such land. It also provides for dealing with Crown land in protected areas and allows for such land to be vested in trustees and restricts its disposal or development of it, without permission. The Director, on the recommendation of the competent body responsible for managing and controlling a protected area, is empowered to permit the felling, extraction or removal of timber from protected areas

Part 8 deals with the management of forest and fires. It provides for management of forests by the Director, including the granting of permits to fell, extract or remove timber or other forest produce, subject to terms and conditions and the taking of measures to ensure that forested private lands are effectively managed. The Director, under this Part, is required to promote silviculture, agro-forestry and may plant trees in public places. This Part also requires the Director to take measures to prevent and suppress the occurrence of fires in forested areas and protected areas.

Part 9 deals with pollution control. It requires a person to register with the Director before that person releases any pollutant from any premises in a quantity or concentration or condition which exceeds the prescribed range. It criminalizes a failure to register with the Director. The Part also provides for the granting of pollution permits by the Director, authorizing the release of a pollutant from any premises. The Director is tasked with monitoring the performance of a person who has been issued with a certificate, to ensure compliance.

Part 10 addresses the management of waste and hazardous substances. It empowers the Minister responsible for Health on the advice of the Council and the Principal Environmental Health Officer, to issue compulsory standards on the disposal of municipal waste. It places a duty on a person to inform the Principal Environmental Health Officer if that person proposes to handle any waste designated as non hazardous and the Principal Environmental Health Officer may issue a permit to the person to handle the waste. This part also prohibits the storing, handling, use or disposal of a hazardous substance without a permit granted by the Principal Environmental Health Officer. The Principal Environmental Health Officer is required to maintain a register of hazardous substances as part of the NEIS.

Part 11 deals with spills, accidental releases and environmental restoration. It requires a

person who owns or controls any premises on which pollutant or hazardous substance or hazard waste is handled to prepare a contingency plan to deal with spills, accidental releases of pollutant or hazardous substance or hazard waste. The plan may be approved by the Principal Environmental Health officer after consultation with the Director of the Environment, the Director of the Disaster Management Coordination Agency and any other persons as the Principal Environmental Health Officer thinks fit. The Director may issue to a person who has caused any damage or harm to the environment an environmental restoration order requiring the person to restore the environment as near as it or he can to the state in which it was before the taking of the action the subject of the order, prevent the person from taking any action which is reasonably likely to harm the environment or award compensation to a person who has been harmed by the action.

Part 12 deals with environmental audit and monitoring. It gives the Governor acting on the advice of Cabinet the authority make regulation addressing the conducting of environmental auditing. This Part empowers the Director to engage in environmental monitoring. It also gives an authorised officer the power to enter any premises at any reasonable time with the permission of the owner of or occupier of the premises to carry out environmental monitoring and seize equipment or take samples, as may be required by the authorised officer. Where a sample is taken by an authorised person, this Part provides for notification to the person in charge of the premises and for testing of the sample.

Part 13 deals with administrative proceedings. This part gives the Director the authority to serve a Notice of Violation on a person who is in violation of an environmental requirement and also empowers the Director to issue administrative orders where a person is in breach of a requirement to make representations to the Director under the Notice of Violation. Further, the Director or the Physical Planning and Environmental (Appeals) Tribunal is empowered to make administrative civil assessments of compensation for actual costs incurred by the Director, any government entity or any private person.

Part 14 allows for persons to initiate private civil actions and sets out the procedure to be followed in private civil actions.

Part 15 sets out the composition of the Physical Planning and Environmental (Appeals) Tribunal, the jurisdiction of the Tribunal, the powers of the Tribunal and the procedure to be followed by the Tribunal. This part also gives the Tribunal the authority to make rules governing its proceedings. The rules are subject to approval by the Governor acting on the advice of Cabinet.

Part 16 sets out the offences under the Bill. These include obstruction of an authorised officer, failure to obey a summons issued by an auditor and reckless endangerment. This Part penalizes the commission of an offence in respect of protected flora and fauna. It also sets out the penalty for breach of any regulations made under the Bill. Under this Part, the Governor acting on the advice of Cabinet is required to appoint a scientific laboratory for the purposes of the Bill.

Part 17 deals with the liability of public and private officials under the Bill, where there is a breach of an environmental requirement or commission of an offence.

Part 18 establishes an environmental trust fund and sets out the purposes of the fund. The fund is to be administered by a five member Board of Trustees, to be appointed by the Governor acting on the advice of Cabinet. This Part outlines the functions and powers of the Board of Trustees and empowers the Board of Trustees to employ staff or share staff and services with any other Government entity. Part 18 also details the resources of the fund, how the fund monies are to be used and addresses the financial management of the fund. The Board is empowered to invest fund monies and both the Board and the fund are exempt from taxes. The Board is required to keep proper accounts and records and is required to submit an annual report no later than 3 months after the end of each financial year to the Minister, who must lay a copy of the annual report in the Legislative Assembly.

Part 19 sets out the miscellaneous provisions of the Bill. It provides for the Governor acting on the advice of Cabinet to make regulations for giving effect to the provisions of the Bill. It also provides for the Governor acting on the advice of Cabinet to amend the Schedules, prescribe the fees payable under the Bill. It requires the Director to prescribe forms for use under the Bill and addresses how service of documents under the Bill is to be effected.

Additionally, this part gives the Attorney General the power to intervene in any proceedings before the Tribunal. It sets out the ethical standards to be observed by representatives of the Department, including the Director, a member of the Board of Trustees or employees of the Department or authorized officer and prohibits a representative of the Department from accepting a fee, perquisite, bribe, gratuity recompense or reward, whether pecuniary or otherwise from a person on account of anything done or to be done.

This Part also absolves a person from personal liability where that person, in good faith, does or omits to do an act in the exercise or discharge of his functions under the Bill. It reserves to the Crown or any other person the right to sue for and recover at common law or otherwise, compensation for damage or injury caused by an offence or breach of an environmental

requirement under the Bill.

Further, Part 19 addresses the application of the Customs (Control and Management) Act and provides for the Bill to bind the Crown. It also repeals the Forestry, Wildlife, National Parks and Protected Areas Act (Cap.12.03) and the Endangered Animals and Plants Act (Cap. 12.01) and provides for the saving of actions taken or proceedings pending under the repealed acts.

The First Schedule to the Bill sets out the activities requiring a Certificate of Environmental Approval.

The Second Schedule sets out the list of protected species of flora and fauna.

The Third Schedule to the Bill sets out the list of partially protected species of flora and fauna.

The Fourth Schedule to the Bill sets out the designated protected areas in Montserrat

The Fifth Schedule to the Bill sets the consequential amendments to existing legislation.

.....
Esco Henry
Honourable Attorney General