

EXPLANATORY MEMORANDUM

LEGAL PROFESSION BILL 2014

The purpose of the Bill is to provide for the regulation of the legal profession, for the qualification, enrolment and discipline of its members and for related matters.

1 Part 1- Preliminary

Clause 1 contains standard provisions for the short title of the Bill, and clause 2 provides for the interpretation of terms used throughout the Bill.

2 Part 2- Bar Association

Part 2 provides for the establishment and functions of the Bar Association and Council. Clauses 3 to 12 of the Bill set out the constitution of the Bar Association and the governing body, the Council, and make provisions for the requirements for membership. In particular, clause 5 of the Bill sets out the purposes of the Bar Association, namely, to maintain and improve the standards of conduct in Montserrat; to represent and protect the interests of the legal profession in Montserrat; to protect and assist the public in Montserrat in all matters relating to law; to promote, maintain and support the administration of justice and the rule of law; to provide independently or with government a legal aid programme to qualifying members of the public and to provide an ongoing public education programme on basic issues of law and current legislation.

3 Part 3 – Membership of the Legal Profession

Part 3 provides for the enrolment and admission of an attorney-at-law to the Bar and the status of an attorney-at-law so admitted.

4 Part 4 – Professional Practice and Conduct

Part 4 provides for the keeping by attorneys-at-law of client accounts and incidental matters and for disciplinary matters. Clauses 33 to 36 provide for matters including the making of rules governing account keeping, relief to financial institutions and improper conduct with respect to dealing with clients' accounts. Clauses 37 to 44 provide for rules governing professional practice, the establishment of a disciplinary committee, disciplinary proceedings, powers of the disciplinary committee, appeals from decisions of the disciplinary committee and disciplinary proceedings by the High Court. Clauses 45 to 50 provide for other disciplinary offences and general offences.

5 Part 5 – Remuneration and Costs

Part 5 contains provisions relating to remuneration and costs. Clause 51 provides for the

interpretation of terms used in Part 5 and clauses 52 to 55 provide for matters including payments in advance and accountability, rules as to costs for non-contentious business and agreement for remuneration for non-contentious business.

6 Part 6 – Miscellaneous

Part 6 sets out miscellaneous provisions including the power to make rules of court, insurance or other provision for professional negligence, pending applications for admission, pending disciplinary proceedings, references to barristers and solicitors, the period of qualification as an attorney-at-law and the saving of enactments restricting non-Montserratians from entering, leaving, residing or working in Montserrat.(clauses 56 to 62) Clause 63 provides for the Council, after consultation with the Chief Justice, to make regulations to give effect to the Act and clause 64 provides for the repeal of certain sections of and definitions in the Supreme Court Act (Cap. 2.01). Clause 64 also repeals the Schedule to the Supreme Court Act.

7 Schedules

The Bill contains six schedules. Schedules 1- 2 set out forms to be used under the Bill. The Code of Ethics for the legal profession which regulates the professional practice, etiquette, conduct and discipline of attorneys-at-law is set out in Schedule 3. The procedures of the Disciplinary Committee, the Bar Association and the Council of the Bar Association and forms used in connection with these procedures are set out in Schedules 4, 5 and 6.