

M O N T S E R R A T

NO. 7 OF 2008

PUBLIC FINANCE (MANAGEMENT AND ACCOUNTABILITY) ACT 2008

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

SECTION

1. Short title and commencement
2. Interpretation

PART II

POLICY DEVELOPMENT

3. Development of economic policy and advice by the Minister
4. Reporting of economic and fiscal information, performance and projections to the Legislative Council

PART III

CONTROL AND MANAGEMENT OF PUBLIC FINANCE

5. Supervision, control and management of public finances
6. Instructions and directives
7. Powers of the Financial Secretary
8. Designation, powers and duties of the Accountant-General
9. Designation and duties of accounting officers
10. Internal Audit

PART IV

PUBLIC FUNDS

11. Consolidated Fund
12. Payments made in or out of Consolidated Fund
13. Development Fund
14. Special Fund and Trust Fund

15. Contingencies
16. Investment of and advances from the Consolidated Fund
17. Withdrawal from the Consolidated Fund and Development Fund
18. Virement.

PART V

AUTHORISATION OF EXPENDITURE

19. Estimates of revenue and expenditure
20. Supplementary estimates
21. Excess expenditure
22. Provision if Appropriation Act not in force
23. Duration of appropriations and warrants

PART VI

PAYMENTS

24. Authority for payment
25. General Warrant
26. Advance Warrant
27. Imprest Warrants
28. Departmental Warrant
29. Warrant to lapse

PART VII

LOANS, GUARANTEES AND GRANTS

30. Authority to raise loans
31. Moneys borrowed to be paid into the Consolidated Fund or Development Fund
32. Raising of loans
33. Repayment, conversion and consolidation of loans
34. Expenses of loans
35. Authority to guarantee loans
36. Beneficiary to reimburse all costs
37. Receipt of grants
38. Amounts due on loans or guarantees to be charged on Consolidated Fund
39. Minister to specify particulars in annual estimates
40. Delegation by Minister

PART VIII

PREPARATION OF ACCOUNTS AND REPORTS

41. Annual accounts
42. Annual and other reports

PART IX

CONTROL OF THE FINANCES OF STATUTORY BODIES

- 43. Interpretation
- 44. Estimates of expenditures by statutory bodies
- 45. Control of accounts of public organizations

PART X

SURCHARGE

- 46. Power to surcharge
- 47. Circumstances of action
- 48. Notification of surcharge
- 49. Appeal against surcharge
- 50. Withdrawal of surcharge
- 51. Recovery of surcharge
- 52. Penalties and surcharge

PART XI

MISCELLANEOUS

- 53. Bank accounts
 - 54. Abandonment of claims etc. and write off of public money and stores
 - 55. Gift of stores and other property
 - 56. Annulment by the Legislative Council of regulations
 - 57. Amendment of Schedule
 - 58. Regulations
 - 59. Repeals and savings
 - 60. Transitional provisions
 - 61. Precedence of this Act
- Schedule – Provisions for submission of accounts

I ASSENT

Peter Waterworth
Governor

DATE: 25.11.08

M O N T S E R R A T

NO. 7 OF 2008

AN ACT TO PROVIDE FOR THE DEVELOPMENT OF AN ECONOMIC AND FISCAL POLICY FRAMEWORK FOR MONTSERRAT; THE FINANCIAL MANAGEMENT OF THE GOVERNMENT; THE RESPONSIBILITIES OF PERSONS ENTRUSTED WITH FINANCIAL MANAGEMENT IN THE GOVERNMENT; THE TRANSPARENT AND EFFICIENT MANAGEMENT OF THE FINANCES OF MONTSERRAT; THE CONTROL OF FINANCES OF STATUTORY BODIES AND OTHER AUTHORITIES AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

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:—

PART I

PRELIMINARY

Short title and Commencement

1. (1) This Act may be cited as the Public Finance (Management and Accountability) Act, 2008.

(2) This Act shall come into operation on a date appointed by the Governor in Council by Order published in the *Gazette*.

(3) Different days may be appointed under subsection (2) in respect of different provisions of this Act.

Interpretation

2. (1) In this Act, unless the context otherwise requires—

“**Accountant-General**” means the person designated under section 8;

“**accounting officer**” means a person designated under section 9 as accounting officer;

“**Appropriation Act**” means any Act applying a sum of money out of the Consolidated Fund and Development Fund for the service and development programme for a financial year;

- “**Auditor-General**” means the person appointed or deemed to have been appointed Auditor-General under section 3 of the Audit Act;
- “**bill**” means a Treasury bill issued under Treasury Bills Act;
- “**bond**” means a bond issued under the Development Bonds Act;
- “**chief executive**” means the person who has responsibility for managing the affairs of a public organisation;
- “**commitment**” means a contract or other legal commitment that results in expenditure;
- “**Consolidated Fund**” means the Consolidated Fund of Montserrat;
- “**Development Fund**” means the Development Fund established under section 13;
- “**expenditure vote**” means a group of estimates for which an appropriation is made by an Appropriation Act or Supplementary Appropriation Act;
- “**financial year**” means a period of twelve months ending on 31st March;
- “**generally accepted accounting practice**” means accounting practices and procedures recognised by the accounting profession in Montserrat and approved by the Accountant General as appropriate for reporting financial information relating to Government, a Ministry or department, a fund, an agency or other reporting unit, and which are consistent with this Act and any relevant Appropriation Act;
- “**Government**” means the Government of Montserrat;
- “**indicators**” means measures such as numerical ceilings and proportions to gross domestic product for the purpose of evaluation of the state of the economy of Montserrat or the fiscal position of government;
- “**information**” includes accounts;
- “**internal audit**” means a process to measure, evaluate and report to the management of an entity on the efficacy of the system of internal control used to ensure the validity of financial and other information;
- “**internal control**” means a set of systems to ensure that financial and other records are reliable and complete and which ensure adherence to the entity's management policies, the orderly and efficient conduct of the entity, and the proper recording and safeguarding of assets and resources;
- “**loan**” means any loan raised by the Government;
- “**Minister**” means the Minister responsible for finance;
- “**outputs**” means goods produced or services provided;
- “**programme**” means a collection of activities funded by an appropriation with the aim of creating the impact or impacts set forth in the programmes stated in the economic and fiscal management plan;
- “**propriety**” means the requirement that expenditure and receipts must be dealt with in accordance with the intentions of the Legislative Council and, in particular, those expressed through an appropriate Public Accounts Committee of the Legislative Council;
- “**Public Accounts Committee**” means a Standing Committee appointed by the Speaker pursuant to the provisions of the Legislative Council Standing Orders;
- “**public moneys**” and “**public funds**” means money that is—
- (a) received or receivable by an agency;

- (b) raised by an instrument that is issued from an agency from which it can be reasonably inferred that the Government accepts liability in the case of default;
- (c) spent by an agency;
- (d) distributed by an agency to a person for a public purpose.

In this definition “agency” includes ministries, departments, statutory bodies, public organisation and government companies.

“**public officer**” means a person holding or acting in an office in the public service;

“**public organisation**” means an enterprise, authority, body or entity to which subsection (7) of section 45 applies;

“**public property**” means resources owned by the Government or in the custody or care of the Government;

“**regularity**” means the requirement for all items of expenditure and receipts to be dealt with in accordance with the legislation authorising them, including this Act and any applicable delegated authority, regulations, directives and instructions issued under this Act;

“**resources**” includes moneys, stores, property, assets, loans and investments;

“**Statutory body**” means any corporation, company, board, commission, fund or other entity which is established by an Act of the Legislature, fully or substantially funded by public funds and accountable to the Legislative Council;

“**statutory expenditure**” means expenditure charged on the Consolidated Fund by the Constitution or an Act of the Legislative Council, including this Act, but does not include the expenditure of moneys appropriated or granted by an Appropriation Act or Supplementary Appropriation Act; and

“**Supplementary Appropriation Act**” means any Act, the purpose of which is to supplement the appropriation already granted by an Appropriation Act.

(2) In this Act a reference to any provision of the Constitution of Montserrat includes a reference to a re-enactment of that provision.

PART II

POLICY DEVELOPMENT

Development of economic policy and advice by the Minister

3. (1) The Minister shall develop and implement a national macro-economic and fiscal policy framework for Montserrat for a period of not less than 3 years and for this purpose shall—

- (a) advise Government on the total of resources to be allocated to the public sector and the appropriate level of resources to be allocated to individual programmes within that sector;
- (b) advise on the state of the economy for current and projected period;
- (c) supervise and monitor the public finances of Montserrat; and
- (d) co-ordinate the international and inter-governmental economic and fiscal relations of Montserrat.

(2) In pursuing his policy objectives the Minister shall adhere to the principles of prudent fiscal management and seek to manage financial risks accordingly having regard to economic circumstances including the maintaining of public debt at prudent levels.

(3) As soon as possible after the commencement of this Act, the Minister shall lay before the Legislative Council a statement setting out the key principles of prudent financial management he will adhere to and shall keep the Legislative Council fully informed of any significant changes thereto through the submission of further statements.

Reporting of economic and fiscal information, performance and projections to the Legislative Council

4. (1) The Minister shall on or before the 31st January prepare and lay before the Legislative Council an economic and fiscal management plan.

(2) An economic and fiscal management plan prepared under sub-section (1) must identify—

- (a) the period considered by the Minister to be appropriate for both the short term and the long term planning;
- (b) the macro-economic, fiscal policies and broad programmes to be pursued under sub-section 3(1) above for the periods identified in paragraph (a) of this sub-section;
- (c) indicators which the Minister considers will enable an accurate overall assessment to be made of the state of the economy of Montserrat;
- (d) indicators which the Minister considers will enable an accurate overall assessment to be made of the state of the finances of government including indicators in respect of—
 - (i) revenues;
 - (ii) current and capital expenditures;
 - (iii) borrowing and debt servicing;
 - (iv) contingent liabilities; and
 - (v) such other assets and liabilities that may be considered appropriate by the Minister;
- (e) any significant policy changes made since the previous economic and fiscal management plan.

(3) The Minister in the economic and fiscal management plan prepared under sub-section (1), shall—

- (a) assess the current and projected finances of the Government;
- (b) assess the current and projected state of the economy of Montserrat;
- (c) identify the total of resources to be allocated to the public sector and the appropriate level of resources to be allocated to individual programmes within that sector for the periods identified in sub-section (2)(a) of this section;
- (d) set targets for the indicators in sub-section (2) (c) and sub-section (2)(d)(i) to (v) of this section, for the current year and the periods determined by the Minister under sub-section (2)(a) of this section;

- (e) compare the projected outcome of the indicators for the current year with the targets set in previous years and indicate the reasons for any significant differences.

(4) The Auditor General shall, in respect of the plan of macro-economic and fiscal policies and programmes prepared under sub-section (1), examine and report to the Legislative Council whether in his opinion—

- (a) the conventions and assumptions underlying its preparation comply with the principles of prudent financial management established by the Minister under section 3(3);
- (b) the information supplied in sub-section (3)(e) above is sufficiently accurate and that any reasons given are fair and reasonable having regard to the circumstances;
- (c) the objects and activities are consistent with the approved overall macro-economic and fiscal policy.

(5) A report by the Auditor General under sub-section (4) above must be made at the same time as, or as soon as reasonably practicable after, the laying before the Legislative Council of the economic and fiscal management plan.

(6) The Minister shall provide the Legislative Council with such additional reports and information as may be reasonable during the financial year that ensure the Legislative Council is kept fully informed of the state of the economy of Montserrat and the finances of the government.

PART III

CONTROL AND MANAGEMENT OF PUBLIC FINANCE

Supervision, control and management of public finances

5. (1) The Minister shall—

- (a) ensure that systems are established throughout Government for planning, allocating, and budgeting for the use of resources in order to improve the economy, efficiency and effectiveness of Government;
- (b) consider all requests for the issue of moneys from the Consolidated Fund and, where the Minister considers it appropriate, approve their inclusion in estimates of expenditure for submission to the Legislative Council in accordance with section 19; and
- (c) enhance the control of the Legislative Council over public resources and public moneys by maintaining transparent systems which—
 - (i) provide a full account to the Legislative Council of the use of resources and public moneys;
 - (ii) ensure the exercise of regularity and propriety in the handling and expenditure of resources and public money and, in particular, that goods or services are procured in a transparent, fair, equitable, competitive and cost-effective manner; and
 - (iii) ensure the efficient and cost effective cash management of the Consolidated Fund, any other fund established under this Act and other public moneys;

(d) be responsible for any statutory body for which he is responsible by virtue of being a Minister of Finance responsible for that statutory body.

(2) For the purpose of sub-section (1), the Minister shall, subject to this Act, be responsible for the management of the Consolidated Fund and Development Fund and the supervision and control of all matters relating to the financial affairs of the Government.

Instructions and directives

6. (1) The Minister may give instructions or directives that may appear to the Minister necessary and expedient for the proper carrying out of the intent and purposes of the Legislative Council, and for the safety, economy and advantage of the public revenue and public property.

(2) The Minister shall take all proper steps to ensure that any directives or instructions given under this section are brought to the notice of persons directly affected by them, but it shall not be necessary to publish the directives and instructions in the *Gazette*.

(3) An accounting officer and a public officer to whom this section applies shall comply with any regulations issued under this Act, any directives or instructions given under them and all instructions that may from time to time be given by the Financial Secretary under section 7(5) or by the Accountant General under section 8(2).

(4) Nothing in this Act or any regulations issued under it or any instruction or directive issued by the Minister, the Financial Secretary or Accountant-General shall be construed as requiring any person to do anything in respect of any moneys held on trust, which contravenes or is inconsistent with the terms of that trust.

Powers of the Financial Secretary

7. (1) The Financial Secretary may, from time to time, require an accounting officer, or the chief executive of any public organisation or any entity that manages an asset or liability of the Government, to supply any information that the Financial Secretary considers necessary for the purpose of section 3.

(2) Any requirement under sub-section (1)—

(a) shall be in writing; and

(b) may specify the date by which and the manner in which the information required is to be provided, but where a date is specified, that date shall be reasonable, having regard to the information required.

(3) The Financial Secretary is responsible to the Minister for the effective application of this Act and any regulations, directives or instructions issued under this Act.

(4) The Financial Secretary shall bring to the immediate attention of the Minister any defect in the application of this Act and any regulations, directives or instructions issued under this Act that may result in a diminution of control over the resources and finances of the Government.

(5) Subject to this Act and any regulations, directives or instructions issued by the Minister under section 6, the Financial Secretary may give directives and instructions he considers necessary for the effective and efficient discharge of the intents and purposes of this Act.

(6) The Financial Secretary and any public officer authorised by him, may inspect all offices affected by this Act, and shall be—

(a) given access at all times to those offices; and

- (b) given all available information he may require with regard to the moneys and records regulated by this Act for the purpose of compliance with section 4 and sub-section (3) of this section.

(7) (a) The Financial Secretary may by notice in writing direct any bank or financial institution to furnish any information that he may require for the purposes of this Act or any regulations made thereunder and the Manager of such bank or financial institution shall comply with such direction.

(b) A disclosure to which paragraph (a) applies does not constitute a breach of any duty of confidentiality owed by the person making the disclosure to any other person;

(c) No civil claim or action of any kind shall lie, in respect of a disclosure to which paragraph (a) applies against the—

- (i) person making that disclosure; or
- (ii) persons' principal or employer;

by reason only of that disclosure.

Designation, powers and duties of the Accountant-General

8. (1) There shall be an Accountant-General who shall be subject to the terms and conditions governing the Public Service.

(2) Subject to this Act, the Accountant-General shall be responsible for the—

- (a) compilation and management of the accounts of Government;
- (b) custody and safety of public money; and
- (c) resources of the Government, and

for that purpose, the Accountant-General may give general instructions to accounting officers which are consistent with this Act, or any regulations, directives or instructions issued under it.

(3) Without prejudice to the generality of sub-section (2), the Accountant-General shall—

- (a) specify for every Government Ministry, department, fund, agency or other reporting unit required to produce accounts under section 41—
 - (i) the basis of the accounting to be adopted; and
 - (ii) the classification system to be used;
- (b) ensure that an appropriate system of account is established in each Government Ministry, department, fund, agency, or reporting unit which is compatible with the requirements of section 41 and which ensures that all money received and paid by the Government is brought promptly and properly to account;
- (c) ensure that the system of internal control in every Government Ministry, department, fund, agency, or other reporting unit required to produce accounts under section 41 is appropriate to the needs of the organisations concerned and conforms to internationally recognised standards;
- (d) ensure that the internal audit function in each Government Ministry, department, fund, agency, or other reporting unit required to produce accounts under section 41 is appropriate to the needs of the organisation concerned and conforms to internationally recognised standards in respect of its status and procedures;

- (e) refuse payment on any voucher which is wrong or deficient in content, or that contravenes the provisions of the Constitution or this Act or any regulations, directives or instructions properly made or given under this or any other law for the management of public money, or that is in any way unacceptable in support of a charge on public funds;
- (f) report to the Financial Secretary in writing any apparent defect in departmental control of revenue, expenditure, cash, stores and other property of the Government and any breach or non-observance of any regulations, directives or instructions which may come or be brought to his notice;
- (g) ensure, as far as practicable, that adequate provisions exist for the safe custody of public money, property, securities and accountable documents; and
- (h) take precautions, by the maintenance of efficient checks, including surprise inspections, against the occurrence of fraud, embezzlement or mismanagement.

(4) Notwithstanding any authorisation by the Financial Secretary under sub-section (6) of section 7, the Accountant General may inspect all offices of Government and shall be given—

- (a) access at all times to those offices; and
- (b) given all available information he may require or consider necessary for the purpose of enforcing compliance with paragraphs (a), (b), (c), (d), (g) and (h) of sub-section 3.

(5) The Accountant General shall report annually to the Financial Secretary on the discharge of his duties under this Act, and in the reports required under section 41 shall identify—

- (a) the basis of the standards required by paragraphs (b) and (c) of sub-section (3); and
- (b) any defect, shortcoming or other factor which in his opinion has affected materially the Minister's responsibility under paragraph (c) of sub-section (1) of section 5.

(6) A copy of any report issued under sub-section (5) shall be sent to the Auditor General.

Designation and duties of accounting officers

9. (1) The Financial Secretary shall, with the prior approval of the Minister, designate an accounting officer by name and in writing.

(2) An accounting officer shall control and be personally accountable to the Legislative Council through the Public Accounts Committee or such other Committee as may be established by the Legislative Council for the regularity and propriety of the expenditure of money applied by an expenditure vote or any other provision to any Ministry, department, fund, agency or other entity funded wholly through the Consolidated Fund or Development Fund, and for all resources received, held or disposed of, by or on account of that Ministry, department, fund, agency or other entity.

(3) An Accounting Officer shall—

- (a) whenever the necessity arises, consult the Financial Secretary on the applicability of this Act, any regulations, directives or instructions issued under this Act; and

- (b) bring to the immediate attention of the Financial Secretary any defect in the application of this Act and any regulations, directives or instructions made under this Act that may result in a diminution of control over the resources and finances of Government.
- (4) In the exercise of his duties under sub-section (2), an accounting officer shall ensure in particular—
 - (a) that adequate control is exercised over the incurring of commitments;
 - (b) that effective systems of internal control and internal audit are in place in respect of all transactions and resources under his control; and
 - (c) in respect of paragraphs (a) and (b), that he complies with any instructions issued under this Act.
- (5) An accounting officer shall submit to the Minister—
 - (a) report on programmes for which he is responsible as an accounting officer and that would be identified in the economic and fiscal management plan to be laid before the Legislative Council;
 - (b) within 6 months of the end of the financial year, an annual performance report on the programmes under each head or part of a head of expenditure charged on the Consolidated Fund or Development Fund by law and identified in the main or Supplementary Appropriation that will be laid before the Legislative Council by the Minister,in such form as the Minister may direct.
- (6) An accounting officer shall, if so required by any regulations, directives or instructions issued under this Act, state in writing the extent to which the powers conferred and duties imposed on him, may be exercised or performed on his behalf by any public officer under his control, and shall give such directives as may be necessary to ensure the proper exercise or performance of those powers and duties.
- (7) Any delegation of the powers and duties of the Accounting Officer under sub-section (6) shall not affect the personal accountability of the accounting officer.
- (8) An accounting officer shall, if so required by the Minister, establish and maintain an audit committee which shall have such constitution, powers and duties as may be determined by the Minister.

Internal Audit

10. (1) The Financial Secretary shall establish an internal audit to review the financial management systems operated by Ministries, Departments, statutory bodies and public organisations.

- (2) The internal audit unit shall have the right—
 - (a) of access to all information held by any Ministry, Department, statutory body or public organisation;
 - (b) to take copies of any information referred to in paragraph (a);
 - (c) to require explanations from officers and employees of entities subject to review; and
 - (d) of access to all premises occupied by any Ministry, Department, statutory body or public organisation.

PART IV

PUBLIC FUNDS

Consolidated Fund

11. There shall be a Consolidated Fund in and for Montserrat.

Payments made in or out of Consolidated Fund

12. (1) Subject to the Constitution, and except as otherwise provided in this Act or any other enactment, public funds other than moneys that are payable by or under any law into some other fund established for a specific purpose, shall be paid into and form part of the Consolidated Fund.

(2) No moneys shall be paid out of the Consolidated Fund except in the manner prescribed by this Act.

Development Fund

13. There shall be a Development Fund into which shall be paid—

- (a) money appropriated for the purpose of the Development Fund by the Legislature;
- (b) the proceeds of a loan raised for the purpose of the Development Fund by the Government;
- (c) any grant made for a development purpose by a government or an agency of a government or by a regional or international organization.

(2) For the avoidance of doubt, any reference to moneys raised or received by the Government, does not include moneys received on deposit or moneys held on trust by or under the control of any court, officer of a court, the Public Trustee, the Attorney General or any sums of money held on trust by any other officer for purposes other than the purposes of the Government.

Special Fund and Trust Fund

14. (1) The Governor in Council may, by regulations, establish special funds or trust funds which shall not form part of the Consolidated Fund, and the receipts, earnings and accruals of those funds at the end of the financial year, shall not be repaid to the Consolidated Fund but, shall be retained by the funds for the purposes for which they were established.

(2) The Governor in Council may make regulations and issue directives for the management and control of any fund established under sub-section (1).

(3) Any regulation made under sub-section (1) shall—

- (a) state the purposes for which the special funds and trust funds is being established; and
- (b) identify the accounting officer responsible for its operations.

(4) No expenditure shall be incurred by a special fund or trust fund except under the authority of a warrant signed by the Minister and addressed to the responsible accounting officer.

(5) A warrant mentioned in sub-section (4) shall not be issued in respect of any financial year unless estimates of the income and expenditure of the special fund or trust fund for that financial year, prepared in accordance with instructions issued by the Financial Secretary and approved by the Minister, have been laid before the Legislative Council.

(6) Where the Legislative Council is dissolved under the provisions of Article 42 of Schedule II to the Constitution less than three months before the commencement of any financial year, the estimates for that year may be laid before the Legislative Council as soon as practicable after the commencement of that year and section 22 shall apply, with the necessary modifications, to the authorisation of withdrawals from the fund.

(7) Where the Minister is satisfied that either—

- (a) the moneys forming part of any special fund or trust fund are exhausted and no legal provision exists for any further moneys to be paid into the fund; or
- (b) that it is in the public interest to wind up a special fund or trust fund,

the Governor in Council on the recommendation of the Minister may, by regulation, dissolve the fund and any moneys or other resources standing to the credit of the fund at the time of winding up, shall be paid into the Consolidated Fund.

(8) Where the accounting officer for the fund being wound up under sub-section (7) is not the Financial Secretary, the Minister shall not wind up the fund unless the Minister responsible for the operations of the special fund or trust fund has been consulted.

Contingencies

15. (1) The Minister, if he is satisfied that due to exceptional circumstances which could not have been foreseen an urgent need for expenditure has arisen—

- (a) for which no moneys have been appropriated or for which the sum appropriated is insufficient; and
- (b) which cannot be deferred without detriment to the public interest,

may by warrant under his hand, addressed to the Accountant-General, authorise advances not exceeding two million dollars from the Consolidated Fund to meet that need in anticipation of the grant of an Appropriation by the Legislative Council.

(2) Where an advance is made from the Consolidated Fund under sub-section (1), a Supplementary Appropriation including the amount advanced shall be submitted to the Legislative Council for approval at its next sitting.

(3) Upon the grant of an appropriation to meet the expenditure in respect of which an advance was made under the provisions of this section, the Contingency Warrant authorizing such advance shall lapse and shall cease to have effect and the advance shall be deemed to have been made for the purpose of the grant and shall be accounted for accordingly.

(4) Notwithstanding the provision of this section the Government of Montserrat can make other arrangements for meeting emergency such as a fund and a reserve.

Investment of and advances from the Consolidated Fund

16. (1) Any sums standing to the credit of the Consolidated Fund may be invested—

- (a) with a bank at call; or
- (b) subject to notice not exceeding twelve months; or

(c) in an investment authorised by law for the investment of trust funds and approved by the Minister.

(2) The Minister may, by warrant signed by him and addressed to the Accountant-General, authorise temporary advances from the Consolidated Fund—

(a) to special fund or trust fund; and

(b) to public officers, for the purpose of funding expenditure approved under an Appropriation Act or a Supplementary Appropriation Act;

(c) on behalf of and recoverable from other Governments and administrations,

and those advances issued under paragraph (a) and (b) shall be repaid before the end of the financial year.

(3) For the avoidance of doubt, any investment or advance made under this section, shall not constitute a withdrawal of funds from the Consolidated Fund.

Withdrawal from the Consolidated Fund and Development Fund

17. (1) No money shall be withdrawn from the Consolidated Fund or Development Fund except upon the authority of a warrant signed by the Minister and addressed to the Accountant-General.

(2) A warrant shall not be issued by the Minister for the purpose of meeting any expenditure unless the Accountant-General certifies that there is sufficient sum available and the expenditure—

(a) has been authorised for the financial year during which the withdrawal is to take place by—

(i) an Appropriation Act; or

(ii) a Supplementary Appropriation Act; or

(iii) a warrant issued under sections 15, 16 and 22;

(b) is a statutory expenditure;

(c) is for the purpose of repaying any moneys that are received in error by the Consolidated Fund or Development Fund; or

(d) is for the purpose of paying sums required for any advance, refund, rebate or drawback where the payment of the advance, refund, rebate or drawback is provided for in this or any other Act.

(3) The Minister may suspend, withdraw, limit or place conditions on any warrant or other authority issued by him if the Minister is satisfied that such action is required by reason of a financial exigency or is in the public interest.

Virement

18. (1) The Financial Secretary shall by virement signed by him, authorise an accounting officer to incur expenditure up to the limits specified in the virement and for the purpose and subject to the conditions contained in the virement.

(2) A virement shall not be issued by the Financial Secretary unless the sum and purpose for which it is issued have been included in a warrant issued by the Minister under sub-section (1) of section 17.

(3) A virement issued by the Financial Secretary shall be subject to the limits and conditions determined by the Minister under the powers conferred on the Minister by sub-section (3) of section 17.

(4) The Accountant-General shall not make any payment or accept any charge in his accounts, nor shall accounting officers make any payment unless authorised by virement to do so.

PART V

AUTHORISATION OF EXPENDITURE

Estimates of revenue and expenditure

19. (1) The Minister shall cause to be prepared and laid before the Legislative Council as soon as is practicable, and in any case not later than the commencement of each financial year—

- (a) estimates of the revenues and financing requirements of the Government for that year and the allocation of these between the Consolidated Fund and Development Fund;
- (b) estimates of the expenditure of the Government to be met through the Consolidated Fund or Development Fund for that year allocated between those expenditure votes or projects the Minister may consider appropriate and shall include for each expenditure vote or projects —
 - (i) a statement of the purposes for which the vote or project is to be used and which shall be consistent with the policy objective outlined in the macro economic and fiscal management plan;
 - (ii) the identity of the accounting officer appointed under section 9 responsible for the vote or project; and
 - (iii) in respect of each vote a statement of the classes of outputs expected to be provided from that vote during the year and the performance criteria to be met in providing those outputs; and
- (c) an estimate of the amount required for guarantees to be issued for the following financial year under section 35;

(2) Where the Legislative Council is dissolved under the provisions of Article 42 of Schedule II to the Constitution less than three months before the commencement of any financial year, the estimates for that year may be laid before the Legislative Council as soon as practicable after the commencement of that year.

(3) The Minister shall at the time of submission of the estimates under sub-section (1) submit for the approval of the Legislative Council such resolutions as are required by sub-section (3) of section 30, sub-section (2) of section 35 and sub-sections (1) and (2) of section 54 in respect of the financial year to which estimates relate.

(4) The Minister shall at the time of submission of the estimates under sub-section (1) submit for the approval of the Legislative Council a budget statement which—

- (a) sets out the main policies and programmes of government for the ensuing financial year in respect of taxation, other revenues, expenditure, borrowings and such other activities which have potential budgetary implications; and
- (b) identifies any changes to the indicators submitted under sub-sections (2)(c) and (d) of section 4 and gives reasons therefor.

(5) The Minister shall prepare estimates of expenditure for three financial years and the Minister shall lay such estimates before the Legislative Council.

(6) The **expenditure** votes and the amount to be issued as advances contained in the estimates, other than statutory expenditure, shall be included in an Appropriation Bill which shall be introduced into the Legislative Council to provide for the issue from the Consolidated Fund and Development Fund the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified in the Bill.

Supplementary estimates

20. (1) Where in respect of any financial year, it is found that the amount appropriated by an Appropriation Act is insufficient, or that a need has arisen for expenditure for a purpose for which no amount has been appropriated by that Act, a supplementary estimate, showing the amount required shall be laid before the Legislative Council, and the expenditure votes shall be included in a Supplementary Appropriation Bill to be introduced in the Legislative Council to provide for their appropriation.

(2) A supplementary estimate prepared under sub-section (1) shall indicate any effect on the financing requirements of Government submitted under paragraph (a) of sub-section (1) of section 19 and any expected changes to the statement provided under sub-paragraph (iii) of paragraph (b) of sub-section (1) of section 19.

Excess expenditure

21. (1) Where at the close of accounts for any financial year, it is found that moneys have been expended—

- (a) on any expenditure vote in excess including outstanding commitments of the amount appropriated for it by an Appropriation Act;
- (b) for a purpose for which no moneys have been voted and appropriated; or
- (c) in excess of the sum assigned to an estimate forming part of an expenditure vote in the estimates of expenditure approved by the Legislative Council for the financial year, and to which no further sum has been applied under this Act or any regulations issued under it;
- (d) in excess of the sum appropriated for the issue of advances under paragraphs (a) and (c) of sub-section (2) of section 16.

the amount of the excess expended, or not appropriated, as the case may be, shall be included in a statement of expenditure in excess which shall be laid before the Legislative Council and referred to the Public Accounts Committee of the Legislative Council.

(2) The Public Accounts Committee shall report to the Legislative Council on a statement of expenditure in excess referred to it under sub-section (1) of this section within 3 months after it is referred to it.

(3) Where on receiving any report of the Public Accounts Committee issued under sub-section (1), the Legislative Council, by means of a motion, allows the excess or the amount expended but not appropriated, to stand charged to public funds, the sum required to meet that excess or that amount as shall be allowed shall be included in a Supplementary Appropriation Bill for appropriation.

(4) Any excess or any amount expended but not appropriated and which is not allowed in terms of sub-section (2), shall be treated as a loss of public moneys and dealt with in accordance with sub-section (2) of section 49.

Provision if Appropriation Act not in force

22. (1) Where the Minister is satisfied that the Appropriation Act in respect of any financial year, will not or has not come into operation by the beginning of any financial

year, the Minister may, by Provisional General Warrant under his hand, addressed to the Accountant General, authorise the issue of moneys from the Consolidated Fund or Development Fund Account for purposes of meeting expenditure necessary to carry on the services of the Government until the expiration of four months from the beginning of that financial year, or from the coming into operation of the Appropriation Act, whichever is the earlier.

(2) A sum authorised under sub-section (1) shall not exceed one third of the amount in respect of that service approved in the appropriation and supplementary appropriation Acts passed by the Legislative Council in the previous financial year.

Duration of appropriations and warrants

23. Every appropriation by the Legislative Council of public moneys for the service of a financial year, and every warrant or other authority issued under this Act in respect of a financial year, shall lapse and cease to have any effect at the close of that year and the unexpended balance of any moneys withdrawn from the Consolidated Fund shall be repaid to the Consolidated Fund.

PART VI

PAYMENTS

Authority for payment

24. Subject to the provisions of section 17, any payment made from the Consolidated Fund shall be authorized by warrant under the hand of the Minister.

General Warrant

25. (1) Subject to section 17 and on the coming into operation of an Appropriation Act and any Supplementary Appropriation Act, the Minister shall authorize the Accountant General by General Warrant under his hand to pay out of the Consolidated Fund such sums as may be required to pay for the services approved by the Legislative Council.

(2) Notwithstanding the issue of a General Warrant it shall be within the discretion of the Minister to limit or suspend at any time any expenditure excluding statutory expenditure, with or without cancellation of the General Warrant if, in his opinion, financial exigencies of the public interest so require.

Advance Warrant

26. (1) Subject to the provision of this section, the Minister may, by Advance Warrant under his hand, authorize the Accountant General to make disbursements of moneys forming part of the Consolidated Fund or of other public moneys for the purposes of making advances—

- (a) on behalf of, and recoverable from, other Governments and administrations;
- (b) to, or on account of, the Development Fund or any Special Fund where such advances are recoverable before the close of the financial year in which such advances are made;
- (c) to meet expenditure authorized by a Loan Act in anticipation of the receipt of any instalment of the loan authorized by such Act;
- (d) to public or police officers for any purposes and on terms as may be prescribed from time to time.

(2) The total of the sums issued and disbursed for the purpose of making advances under paragraphs (c) and (d) of subsection (1) shall not exceed in the aggregate at any time, after deducting repayments, an amount of \$5,000,000 of the recurrent revenue for the previous financial year.

Imprest Warrants

27. (1) The Minister may, by Imprest Warrant under his hand, authorize the Accountant General to issue imprest from the Consolidated Fund to officers for any purpose for which moneys have been appropriated.

(2) Any officer to whom an imprest has been issued pursuant to subsection (1) shall retire that imprest before the end of the financial year in which the imprest was issued or, if some earlier date is specified in the Imprest Warrant, on or before that earlier date.

(3) Notwithstanding subsection (2) where any officer fails to retire an imprest in accordance with the provisions of that subsection, the Accountant General shall forthwith recover the amount of the imprest by deduction from the salary or other emoluments of that officer in any manner as the Financial Secretary directs.

(4) Notwithstanding the provisions of section 2 of this Act and of any other Act, a Minister of the Government shall, for the purpose of this section, be deemed to be a public officer.

Departmental Warrant

28. An accounting officer may, by Departmental Warrant under his hand, authorize any officer named in that warrant to incur expenditure against any vote under his control.

Warrant to lapse

29. A warrant issued under this Part shall lapse and cease to have effect on the date specified in the warrant or at the end of the financial year in which it is issued, whichever is earlier.

PART VII

LOANS, GUARANTEES AND GRANTS

Authority to raise loans

30. (1) Subject to the provisions of the Constitution, the authority to raise money by loan, to issue guarantees and to accept grants for and on behalf of the Government shall vest solely in the Minister and no other person, or public organisation shall, without the prior approval of the Minister, raise any loan or issue any guarantee, or take any other action which may in any way either directly or indirectly result in a liability being incurred by the Government.

(2) Loans may be raised upon such terms and conditions as to interest, repayment or otherwise as may be negotiated by the Minister but, only for the purpose of—

- (a) financing budget deficits;
- (b) refinancing maturing debts;
- (c) obtaining foreign currency;
- (d) furthering a prudent economic and fiscal management program;

- (e) on-lending to an approved institution; or
- (f) otherwise defraying expenditure which may lawfully be defrayed.

(3) The net amount that the Minister may borrow under this section in any financial year shall not exceed the amount, if any, approved by the Legislative Council by resolution for that financial year.

Moneys borrowed to be paid into the Consolidated Fund or Development Fund

31. (1) All moneys raised under section 30 shall be paid into the Consolidated Fund and shall form part of it and be available in the manner in which that fund is available.

(2) Where a loan has been raised for the purposes of the Development Fund or for a purpose for which a special fund has been established under sub-section (3) of section 14, the Minister may, by order signed by him, direct that the whole or a part of the amount of the loan shall be paid into and form part of the Development Fund or special fund.

Raising of loans

32. (1) Subject to section 30 loans may be raised by—

- (a) the issue by the Minister, of Government bills, bonds or stock; or
- (b) any other method the Minister may deem expedient, including a fluctuating overdraft.

(2) A loan raised under paragraph (a) of sub-section (1), shall be subject to the conditions contained in the Treasury Bills Act and Development Bonds Act.

(3) The terms and conditions of any loan raised under this section shall be laid before the Legislative Council and the loan shall not come into operation unless the terms and conditions of the loan have been approved by the Legislative Council by resolution.

Repayment, conversion and consolidation of loans

33. The Minister may, on terms and conditions the Minister may determine and, where necessary, with the approval of the lender—

- (a) repay any loan prior to the redemption date of that loan;
- (b) convert the loan into any other loan; or
- (c) consolidate two or more loans into an existing or new loan:

Provided such terms and conditions have been approved by the Legislative Council by resolution.

Expenses of loans

34. All expenses incurred or incidental to the raising of loans raised under section 30 or section 32 must be charged to and accounted through the Consolidated Fund.

Authority to Guarantee loans

35. (1) Where the Minister is satisfied that it is in the public interest, he may, with the approval of the Legislative Council, and on behalf of the Government, guarantee the repayment of the principal money and the payment of the interest and other charges on any loan raised either within or outside Montserrat in the manner and on conditions he may think fit by—

- (a) a statutory body; or

(b) any other authority or body to which paragraph (b) or (c) of sub-section (7) of section 45 applies.

(2) The net amount that the Minister may guarantee under this section in any financial year shall not exceed the amount, if any, approved by the Legislative Council by resolution for that financial year.

(3) The Minister must at least annually report the circumstances relating to any payments under a guarantee issued under sub-section (1) to the Speaker for tabling in the Legislative Council.

Beneficiary to reimburse all costs

36. (1) Where a guarantee is given under section 35, the statutory body, or other authority or body, for whose benefit that guarantee is given, shall reimburse the Government in the manner the Minister may direct—

(a) all sums of moneys which the Government has paid to fulfil the guarantee; and

(b) all the expenses which the Government incurs in relation to the guarantee and, in addition, shall pay the Government the interest or service charge in relation to that sum or money paid by the Government or expense incurred by the Government, as the Minister may direct.

(2) All moneys received under sub-section (1) shall be paid into the Consolidated Fund.

Receipt of grants

37. (1) Grants made to the Government by a foreign government or any other person shall be received by the Minister on behalf of the Government.

(2) Section 31 shall apply to any sum of money received by the Government by way of a grant.

Amounts due on loans or guarantees to be charged on Consolidated Fund

38. Any sum of money due from the Government—

(a) in respect of any loan either by way of repayment or payment of interest; or

(b) by way of interest on or otherwise in respect of any bond or stock issued under section 32; or

(c) in respect of any guarantee given under section 35;

(d) in respect of any expenditure incurred under section 34;

shall be charged on and paid out of the Consolidated Fund without further appropriation.

Minister to specify particulars in annual estimates

39. The Minister shall, in the annual estimates of public revenue and expenditure submitted to the Legislative Council, specify the amount required to meet the cost of servicing all loans raised under this Act whether by repayment of capital or payment of interest or other charges incurred on the loan for the financial year to which these estimates relate, and the amount expected to be raised from loans and grants during that year.

Delegation by the Minister

- 40.** The Minister may, by order signed by him, delegate to a public officer—
- (a) his functions under this Act relating to the negotiation of a loan, guarantee or grant; and
 - (b) the authority to execute on behalf of the Government any agreement or other instrument relating to a loan or guarantee raised or given under this Act.

PART VIII

PREPARATION OF ACCOUNTS AND REPORTS

Annual accounts

- 41. (1)** After the end of each financial year—
- (a) the Accountant-General shall prepare and submit to the Auditor-General and the Minister the accounts set out in paragraph 1 of the Schedule to this Act, within a period of 4 months, or any longer period the Legislative Council may, by resolution appoint; and
 - (b) each accounting officer shall within three months prepare and submit to the Minister and the Auditor-General, with a copy to the Accountant-General, in respect of the financial year and in respect of the votes, revenues, resources and moneys for which the accounting officer is responsible, the accounts and information set out in paragraph 2 of the Schedule to this Act.
- (2)** The Governor in Council may, by regulation, and for the purpose of paragraph (c) of sub-section (1) of section 5, amend paragraph 2 of the Schedule to this Act.
- (3)** Any accounting officer administering a special fund, and any accounting officer or other public officer administering any agency, trust or other fund or account not provided for in this section, shall prepare, sign and submit to the Accountant General, with a copy to the Auditor General, an account of the agency, trust, fund, or account in the form the Accountant General may from time to time direct.
- (4)** All accounts submitted under this section shall—
- (a) where directed by the Accountant General, be prepared in accordance with the generally accepted accounting practice and in all cases in accordance with any instructions issued by the Accountant General;
 - (b) identify any significant departures from the generally accepted accounting practice as recognised by the accounting profession in Montserrat and approved by the Accountant General for use in Government and shall state the reasons for those departures; and
 - (c) state the basis of accounting used in their preparation, identify any significant departures from it and the reasons for the departure.

Annal and other reports

- 42. (1)** On receiving the accounts prescribed by section 41, the Auditor-General shall cause them to be examined and audited and shall, within 6 months, or such longer period as the Legislative Council may by resolution appoint, after the end of the financial

year to which the accounts relate, certify, in respect of each account, the result of the examination and audit.

(2) The Auditor-General shall within the period mentioned in sub-section (1), prepare a report upon the examination and audit of all the accounts received in sub-section (1) and submit the report to the Legislative Council.

(3) The Auditor-General may, at any time, if it appears to him desirable, submit to the Speaker of the Legislative Council and to the Minister a special report on any matter incidental to his powers and duties.

(4) The Legislative Council or the Minister may at any time request the Auditor General to make a special report on any matter.

PART IX

CONTROL OF THE FINANCES OF STATUTORY BODIES

Interpretation

43. In this Part, “appropriate Minister”, in relation to a statutory body, means the Minister under whose portfolio the statutory body falls.

Estimates of expenditures by statutory bodies

44. (1) A statutory body shall, as prescribed by regulation, submit to the appropriate Minister for his approval—

- (a) the estimates of its recurrent and capital expenditure and its estimates of revenue and other financing required for that year; and
- (b) a corporate plan covering the affairs of such body for that year;

in such form as the Minister may direct.

(2) The appropriate Minister shall, before the commencement of the financial year of the statutory body, submit to the Minister of Finance for his approval the estimates of recurrent and capital expenditure and its estimates of revenue and other financing required by the statutory body and corporate plan covering the affair of such body for that year.

(3) The statutory body shall, whenever the appropriate Minister or the Minister of Finance directs, furnish any further information in relation to its estimates of recurrent and capital expenditure and its estimates of revenue and other financing required or the corporate plan.

(4) The estimates of recurrent and capital expenditure of the statutory body and its estimates of revenue and other financing required and the corporate plan as approved by the appropriate Minister may not be altered without the approval of the appropriate Minister.

(5) The appropriate Minister shall, without delay after approval by the Minister of Finance, lay the estimates and corporate plans as approved by the appropriate Minister before the Legislative Council, if the Legislative Council is sitting, and, if it is not sitting, then without delay at its next sitting.

(6) The Minister may, where he has reason to believe that a statutory body has or may have failed to implement the corporate plan as submitted under sub-section (1), authorize the Financial Secretary to carry out an investigation into, or inspection of, the records of that statutory body.

Control of accounts of public organizations

45. (1) Notwithstanding anything to the contrary in any law in force, the accounts of any public organisation shall be audited by the Auditor-General.

(2) In the exercise of his duties under this section, the Auditor-General—

- (a)* shall have the same discretion and powers in relation to the moneys, stamps, securities, stores and other property of a public organisation, as are conferred upon the Auditor-General by the Audit Act, as if the moneys, stamps, securities, stores or other property of the public organisation were public moneys and government property respectively, and, the officials of the public organisation were public officers in the employment of Government; and
- (b)* may authorise any person eligible to be appointed as an auditor of a company, or any public officer to inspect, examine or audit on behalf of the Auditor-General the books and accounts of any body which the Auditor-General may be required to audit by this section and that person or officer shall conduct the audit and report on it to the Auditor-General in a form to be determined by the Auditor-General.

(3) The Auditor-General shall prepare a report on the audit of the accounts referred to in this section and shall send them to the Minister and to the public organisation concerned.

(4) The public organisation shall within twenty-one days—

- (a)* submit to the Minister its observations on the report submitted in sub-section (3); and
- (b)* send a certified copy of such observations to the Auditor-General.

(5) The Minister shall, within two calendar months after receiving the report prepared by the Auditor-General under sub-section (2), cause the report, and any observations made on it by a public organisation under sub-section (2), and any observations by the Minister, to be laid before the Legislative Council.

(6) The Auditor-General shall raise a charge on any public organisation audited or reported on under this section, for the costs of conducting the audits and preparing the reports and such charges shall be paid by the respective public organisation on demand into the Consolidated Fund.

(7) This section applies to—

- (a)* any statutory bodies;
- (b)* any authority established by an Act which is in receipt of a contribution from, or the operations of which may, under the Act establishing it or any Act relating to it, impose or create a liability upon the public funds of Montserrat;
- (c)* any public body which has in any of its financial year received more than half its income from public funds; or
- (d)* any entity, which is audited by the Auditor General under any Act.

PART X

SURCHARGE

Power to surcharge

46. (1) If, at any time, the Financial Secretary brings to the attention of the Minister moneys or public stores have been lost or damaged, and if, within a period specified by the Minister an explanation satisfactory to him is not furnished by the responsible officer with regard to such loss or damage, the Minister in consultation with the Financial Secretary shall surcharge against that officer the amount which appears to him to be the loss suffered by the Government, or the value of the property lost or damaged as the case may be, or a lesser amount as the Minister may determine.

(2) Any officer who contravenes any provision of this Act or of any Regulations made hereunder shall be liable to a surcharge in such sum as may be determined by the Minister in consultation with the Financial Secretary after due inquiry.

(3) The amount of the surcharge made under subsection (2) shall not exceed one-tenth of the annual salary of the officer concerned.

Circumstances of action

47. The circumstances which may give rise to action under section 46 include—

- (a)* failure to collect any moneys owing to Government for the collection of which a person is or was at the time responsible;
- (b)* payment of public moneys in excess of amounts authorized under the Financial Regulations;
- (c)* making, allowing or directing any payment of public moneys without proper authority, or proper evidence that the amount was due;
- (d)* payment of public moneys without obtaining proper evidence of the identity of the payee;
- (e)* responsibility for any deficiency in, loss or destruction of or damage to any public moneys, stamps, securities, stores or other public property;
- (f)* failure to render accurate accounts by a person whose duties requires him to render such accounts;
- (g)* signing an incorrect or false certificate on a voucher;
- (h)* mixing public moneys with other moneys; or
- (i)* failure to observe Financial Regulations or Procurement and Stores Regulations or other directions or instructions given under proper authority.

Notification of surcharge

48. The Financial Secretary shall notify in writing the decision of the Minister to surcharge—

- (a)* the person surcharged;
- (b)* the accounting officer of the department concerned;
- (c)* the Accountant General; and

(d) the Auditor General.

Appeal against surcharge

49. (1) Any person who is aggrieved by any surcharge made against him under the provisions of section 46 may appeal to the Public Service Commission, within one month from the date on which he is notified of the surcharge.

(2) The Public Service Commission, after making or causing to be made such investigation as it deems to be necessary, may confirm the surcharge or direct that the person surcharged be released wholly or in part from the surcharge as may appear to be just and reasonable.

Withdrawal of surcharge

50. The Minister may at any time withdraw any surcharge in respect of which a satisfactory explanation is received or if it otherwise appears to him that no surcharge should have been made and in that event the Financial Secretary shall notify all the persons notified under section 48 of the decision of the Minister to withdraw the surcharge.

Recovery of surcharge

51. (1) The Accountant General, on being notified of a surcharge made under section 46, shall cause the amount of the surcharge to be recovered from the person surcharged in such a manner as the Financial Secretary directs.

(2) No recoveries shall be made under subsection (1) until after the expiration of the period allowed under section 49 for the lodging of any appeal, and where the person surcharged appeals under the provisions of that section, no recoveries shall be made until and unless the surcharge has been confirmed or otherwise determined.

(3) The amount of the surcharge made under the provisions of this Part shall be recovered as the Financial Secretary may direct and may be deducted from any salary, pension or other emoluments of the person surcharged:

Provided that—

- (a) no monthly installment payable in respect of a surcharge shall exceed one quarter of the gross monthly salary or pension of the person surcharged; and
- (b) where the person surcharged is due to be paid any moneys by the Government other than by way of salary or pension or other emolument, the Financial Secretary may require the amount of any surcharge imposed on that person to be deducted from such moneys in whole or in part as he considers just and reasonable.

(4) Nothing in this section shall prejudice the right of Government to sue for and recover the amount of any surcharge as a civil debt due to the Government.

Penalties and surcharge

52. (1) Where a public officer without reasonable excuse, fails to provide by the due date any information that the Financial Secretary may reasonably require under section 7 (1), such failure may be reported by the Financial Secretary to the Public Service Commission for appropriate action.

(2) Where—

- (a) a loss of or deficiency in public money or other money occurs that has been advanced to or was under the control of a public officer, or

(b) a loss or deficiency of or damage to public property or other property occurs while the property was in the care of a public officer, and the Minister is satisfied after due enquiry, that the negligence or misconduct of the public officer caused or contributed to the loss or deficiency—

(i) the amount of the loss or deficiency;

(ii) the value of the property lost or destroyed; or

(iii) the cost of replacing or repairing the damage to that property,

as the case may be, shall be a debt due to the Government, and may be recovered from the public officer either administratively or through a court of competent jurisdiction.

(3) Where the negligence or misconduct of a public officer is not the sole cause of any loss, deficiency or destruction resulting in an action under sub-section (1), the amount recoverable from the public officer may be restricted to only the cost of replacing or repairing the loss, deficiency, damage or destruction that the Minister in consultation with the Financial Secretary considers, after due enquiry, to be just and equitable, having regard to the contribution made by the public officer to that loss, deficiency, damage or destruction.

(4) In this section a reference to a public officer includes a person who has been a public officer.

PART XI

MISCELLANEOUS

Bank accounts

53. A public or official account shall not be opened in any bank without the prior authority of the Accountant-General in writing; and the continued operation of that account shall be subject to the terms and conditions the Accountant General may, from time to time, determine.

Abandonment of claims etc and write off of public money and stores

54. (1) The Minister may, if so authorised by a resolution of the Legislative Council, and to the extent specified in the resolution, abandon and remit any claims by or on behalf of the Government, or any service to government and write off losses of or deficiencies in public moneys or public resources.

(2) A resolution referred to in sub-section (1) may specify the maximum amount authorised for each write off or abandonment and the total sum authorised to be written off or abandoned in a financial year.

(3) The Minister may, in writing and signed by the Minister, delegate to any officer any powers which the Minister is authorised to exercise by a resolution of the Legislative Council under this section.

Gift of stores and other property

55. (1) The Financial Secretary may authorize the gift of any stores not required by Government purposes to institutions or organizations in Montserrat established solely or principally for educational, scientific, cultural or charitable purposes.

(2) Where the value of such gift exceeds \$5,000 the prior approval of the Minister shall be obtained.

Annulment by the Legislative Council of regulations

56. A regulation made under this Act shall—

- (a) be laid before the Legislative Council as soon as possible after its publication in the *Gazette*;
- (b) be subject to annulment by the Legislative Council by resolution after twenty one days after its being laid before the Legislative Council; and
- (c) cease to have effect after it is annulled by the Legislative Council but without prejudice to the making of a further instrument or to its previous operation.

Amendment of Schedule

57. The Governor in Council may by regulations amend the Schedule to this Act.

Regulations

58. The Governor in Council may make regulations for the better carrying out of this Act and, without limitation, may make regulations—

- (a) prescribing anything that by this Act may be prescribed by regulation;
- (b) exempting a statutory body from the definition of statutory body for the purpose of this Act or any provision of this Act;
- (c) respecting the collection, receipt, custody, banking, expenditure, due accounting for, care and management of, and forms of records relating to public money;
- (d) respecting the custody, handling and proper accounting for stamps, investments or securities, whether the property of the Government or on deposit with, or entrusted to, the Government or to any public officer in his official capacity, or any other person;
- (e) respecting the use of technology as it applies to the preparation and management of the financial and accounting system of Montserrat including—
 - (i) electronic authorisation;
 - (ii) electronic certification;
 - (iii) digital signature; and
 - (iv) techniques relating to the security, integrity and access to financial information;
- (f) respecting the procurement of goods and services including the designation of persons with authority to award contracts, or the establishment of a board charged with the award of contracts, or classes of contracts, or charged with advising on the award of contracts and the definition of the powers of such a board, or both the designation of persons and the establishment of a Tenders Board;
- (g) defining “government property” and “stores”;
- (h) respecting government property including such matters as the responsibility for making and maintaining up-to-date inventories, the form of and the information to be kept in such inventories and writing off government property and declaring government property surplus and disposing of it;

- (i) respecting stores including their classification and operation, the writing off of stores and declaring stores surplus and disposing of them;
- (j) prescribing fees for dishonoured cheques

Repeals and savings

59. (1) The Finance (Administration) Act (Cap. 17.07) is repealed.

(2) Any regulations made under any Act repealed by sub-section (1) and are in force at the commencement of this Act, shall continue in force as if made under this Act, and until otherwise repealed.

Transitional provisions

60. (1) Any loan raised by the Government under any Act and in respect of which any liability is subsisting immediately before the commencement, shall be deemed to be a loan raised under this Act notwithstanding that the amount of the loan or any obligation undertaken by the Government in respect of the loan exceeds any limitation imposed by this Act or any Act repealed by this Act.

(2) All bills, bonds and other securities issued under any Act and subsisting immediately before the commencement, shall continue in effect and be binding in the same manner and to the same extent as if they were issued under this Act.

(3) Notwithstanding section 2—

- (a) the first financial year commencing on 1 April shall be the financial year commencing from 1 April 2010;
- (b) the financial year immediately prior to that defined in paragraph (a) shall be a period of 15 months ending on 31st March 2010.

Precedence of this Act

61. This Act shall take precedence over all other existing Acts related to public finance and any Act in contradiction with this Act is modified to conform with the provisions of this Act.

SCHEDULE

(Section 41)

PROVISIONS FOR SUBMISSION OF ACCOUNTS**Accounts to be submitted by the Accountant General**

1. The following accounts shall be submitted to the Auditor General and the Minister by the Accountant General—

- (a) a balance sheet showing the consolidated assets and liabilities of all public funds and other entities wholly funded through the Consolidated Fund;
- (b) a consolidated statement of the cash flow for all public funds and other entities wholly funded through the Consolidated Fund showing the revenues, expenditures and financing for the year;

- (c) a balance sheet showing the assets and liabilities of the Consolidated Fund;
- (d) a balance sheet showing the assets and liabilities of the Development Fund;
- (e) a statement of the cash flow for the Consolidated Fund showing the revenues, expenditures and financing of the fund for the year;
- (f) a statement of cash flow for the Development Fund showing the revenues expenditures and financing of the fund for the year;
- (g) a summary statement of revenue and expenditure, being a summary of all the statements signed by accounting officers under subparagraphs (a) and (c) of paragraph 2 of this Schedule;
- (h) a statement of the amounts outstanding at the end of the year in respect of the Public Debt;
- (i) a statement of the amounts guaranteed by the Government at the end of the financial year in respect of bank overdrafts, loans, public loan issues and other contingent liabilities;
- (j) a summary statement of revenue and expenditure of the Consolidated Fund and Development Fund, being a summary of all the statements signed by accounting officers under subparagraphs (a) and (c) of paragraph 2 of this Schedule;
- (k) a statement of the amount outstanding at the end of the year in respect of loans issued by the Government;
- (l) a statement of investments held by the Government at the end of the year showing the original cost and current value;
- (m) a statement of the net worth of all statutory bodies as at the end of the financial year;
- (n) a statement of losses of public moneys and stores written off and claims abandoned during the financial year and the authority for such write off or abandonment;
- (o) a statement of losses of public moneys and stores reported during the year whether written off or not;
- (p) a summary statement of arrears of revenue for each revenue head, being a summary of the statements of arrears of revenue signed by accounting officers under sub-paragraph (d) of paragraph 2 of this Schedule;
- (q) a summary statement of commitments outstanding for the supply of goods and services for each vote at the end of the financial year being a summary of the amount included for such commitments in the statement signed by accounting officers under subparagraph (b) of paragraph 2 of this Schedule;
- (r) a summary statement of stores and other assets for each vote, being a summary of the statement of assets signed by accounting officers under subparagraph (e) of paragraph 2 of this Schedule; and
- (s) any other statement and in the form the Legislative Council may from time to time require.

Accounts to be submitted by accounting officers

2. The following accounts shall be submitted to the Accountant General by accounting officers—

- (a) an appropriation account signed by the accounting officer showing the services for which the moneys expended were voted, the sums actually expended on each service, and the state of each vote compared with the amount appropriated for that vote by the Legislative Council;
- (b) a statement signed by the accounting officer and in the form the Accountant General may direct containing the amount of commitments outstanding for the supply, goods and services at the end of the financial year and any other information the Minister may require;
- (c) a statement of revenues received signed by the accounting officer and in the form the Accountant General may direct showing the amount contained in the estimates of revenue for each source of revenue, the amount actually collected and containing an explanation for any variation between the revenues actually collected and the amount estimated;
- (d) a statement of arrears of revenue signed by the accounting officer showing the amount outstanding at the end of the financial year for each source of revenue and containing information in the form the Accountant-General may direct; a nil return should be submitted if appropriate;
- (e) a statement of assets signed by the accounting officer containing details and values of all unallocated stores under his control at the end of the financial year, together with the details and values of any other classes of assets under the control of the accounting officer as the Accountant-General may from time to time determine;
- (f) a statement of performance providing each class of outputs provided during the year signed by the accounting officer that—
 - (i) compares that performance with the forecast of the performance contained in the estimates laid before the Legislative Council under subparagraph (iii) of paragraph (b) of sub-section (1) of section 19; and
 - (ii) gives particulars of the extent to which the performance criteria specified in that estimate in relation to the provision of those outputs was satisfied;
- (g) a list of all outstanding commitments or bills remaining unpaid at the end of a financial year; and
- (h) any other statements and in the form the Accountant-General may from time to time require.

Joseph Meade
SPEAKER

Passed the Legislative Council this 21st day of October, 2008.

Judith Jeffers
CLERK OF COUNCILS.