



MONTSERRAT

CHAPTER 6.20

COMPLAINTS COMMISSION ACT¹

Revised Edition
showing the law as at 1 January 2013

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

COMPLAINTS COMMISSION ACT

Act 19 of 2011 .. in force 4 February 2013 (S.R.O. 11/2013)

Amended by Act 19 of 2012 .. in force 8 November 2012

Page
3

¹ *This Act was enacted in 2012 but came into force on 4 February 2013. It is however incorporated into this revised edition.*



MONTSERRAT

CHAPTER 6.20

COMPLAINTS COMMISSION ACT¹

Revised Edition

showing the law as at 1 January 2013

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

COMPLAINTS COMMISSION ACT

Act 19 of 2011 .. in force 4 February 2013 (S.R.O. 11/2013)

Amended by Act 19 of 2012 .. in force 8 November 2012

Page
3

¹ *This Act was enacted in 2012 but came into force on 4 February 2013. It is however incorporated into this revised edition.*

CHAPTER 6.20

COMPLAINTS COMMISSION ACT

ARRANGEMENT OF SECTIONS

PART 1

PRELIMINARY

Section

1. Short title
2. Interpretation
3. Non-application of Act

PART 2

THE COMPLAINTS COMMISSION

4. The Commission
5. The Commission not subject to control
6. Disqualification from membership
7. Resignation of members
8. Vacancy in membership
9. Publication in the *Gazette*
10. Proceedings and meetings
11. Secretary to the Commission

PART 3

**PRINCIPAL FUNCTION AND
JURISDICTION OF THE COMMISSION**

12. Principal function of the Commission
13. Restrictions on matters for investigation
14. Discretion of Commission
15. Power to investigate in the public interest
16. Preliminary inquiries
17. Dealing with complaints by mediation
18. Proceedings of Commission
19. Power to obtain evidence
20. Report on investigation

21. Complainant to be informed of result of investigation
22. Special report where no appropriate action taken
23. Appeals restricted

PART 4

FINANCIAL AND ADMINISTRATIVE PROVISIONS

24. Funds of the Commission
25. Accounts and audit
26. Fees prohibited
27. Appointment of staff, mediators etc.
28. Premises and supplies
29. Shared staff and services

PART 5

MISCELLANEOUS

30. Laying of annual reports
31. Oath of office and secrecy
32. Commission and staff to maintain secrecy
33. Protection of witnesses
34. Protection of Commission and officers
35. Protection of complainants etc.
36. Victimisation
37. Complaints by persons in custody
38. Offences
39. Rules

SCHEDULE

CHAPTER 6.20

COMPLAINTS COMMISSION ACT

(Acts 19 of 2011 and 19 of 2012)

Commencement

[4 February 2013]

AN ACT TO PROVIDE FOR THE COMPOSITION, FUNCTIONS, OPERATION AND PROCEDURE OF THE COMPLAINTS COMMISSION AND CONNECTED MATTERS.

PART 1

PRELIMINARY

Short title

1. This Act may be cited as the Complaints Commission Act.

Interpretation

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

“**action**” includes omission, recommendation, advice or decision and a reference in this Act to action taken by a department of Government or a public authority includes a reference to any omission made, recommendation or advice given or decision taken, by that department or authority;

“**Commission**” means the Complaints Commission established by section 105 of the Constitution;

“**Commissioner**” or “**member**” means a Complaints Commissioner appointed under section 4;

“**complainant**” means—

- (a) a person who makes a complaint referred to in section 12(2)(a); or
- (b) a person or body of persons referred to in section 12(2)(b) or (c);

“complaint” means—

- (a) a complaint referred to in section 12(2)(a); or
- (b) a circumstance referred to in section 12(2)(b);
(Amended by Act 19 of 2012)

“Constitution” means the Montserrat Constitution Order 2010;

“department of Government” means a department or agency of the Government;

“human rights complaint” means a complaint of breach or infringement of a right or freedom referred to in Part I of the Constitution;

“investigation” means an investigation by the Commission under this Act;

“maladministration” means inefficient, bad or improper administration and, without prejudice to the generality of the foregoing, includes—

- (a) unreasonable conduct, including delay, discourtesy and lack of consideration for a person affected by any action;
- (b) abuse of any power, including any discretionary power, or authority including any action which—
 - (i) is unreasonable, unjust, oppressive or improperly discriminatory or which is in accordance with a practice which is or may be unreasonable, unjust, oppressive or improperly discriminatory; or
 - (ii) was based wholly or partly on a mistake of law or fact;
- (c) unreasonable, unjust, oppressive or improperly discriminatory procedures;

“Minister” means the Minister to whom responsibility for finance is assigned;

“public authority” means an authority or body—

- (a) the majority of whose members are appointed by the Governor, the Governor acting on the advice of Cabinet, the Cabinet or a Minister;
- (b) whose funds consist wholly or mainly of monies provided out of public funds;
- (c) established to recommend or determine the persons with whom any contract shall be entered into by or on behalf of the Government; or
- (d) that is declared by the Cabinet, by Order, to be a public authority for the purposes of this Act.

(2) A reference in this Act to a department of Government or a public authority includes a reference to the officers of that department or authority.

Non-application of Act

3. This Act does not apply to—
- (a) Judges, magistrates or the functionaries of any court;
 - (b) deliberations and proceedings of the Cabinet, Legislative Assembly or any of its committees;
 - (c) the Attorney General in the exercise of any power conferred upon him by the Constitution;
 - (d) the Director of Public Prosecutions in the exercise of any power conferred upon him by the Constitution; or
 - (e) the Auditor-General in the exercise of any power conferred upon him by the Constitution.

PART 2

THE COMPLAINTS COMMISSION

The Commission

4. (1) There shall be a Complaints Commission for Montserrat established by section 105 of the Constitution.

(2) The Complaints Commission shall consist of a Chairman and two other members, who shall be appointed by the Governor acting on the advice of Cabinet for a period of two to four years.

(3) At least one member of the Commission shall be an attorney-at-law who possesses at least fifteen years' standing at the bar.

(4) No one shall be appointed under this section unless the Governor is satisfied that he or she is a person of high public standing and has a reputation for personal integrity.

(5) The Chairman and other members of the Commission shall receive such remuneration as shall be determined by the Legislative Assembly in accordance with section 97 of the Constitution.

The Commission not subject to control

5. Subject to section 105(4) of the Constitution, the Commission shall not be subject to the direction or control of any other person or authority in the exercise of its functions.

Disqualification from membership

6. A person shall not be qualified to be appointed as a member of the Commission if that person—

- (a) is a public officer;

- (b) would be disqualified to be a member of the Legislative Assembly under section 52 of the Constitution; (*Substituted by Act 19 of 2012*)
- (c) has, at any time during three years immediately preceding the date of appointment, been a public officer; or
- (d) has, at any time during three years immediately preceding the date of appointment, held office in a political party.

Resignation of members

7. (1) A member other than the Chairman may at any time resign his office by instrument in writing addressed to the Governor and transmitted through the Chairman and, from the date of receipt of the instrument by the Governor, that person ceases to be a member.

(2) The Chairman may at any time resign his or her office by instrument in writing addressed to the Governor and, from the date of receipt of the instrument by the Governor, that person ceases to be Chairman and a member of the Commission.

Vacancy in membership

8. (1) A member's office becomes vacant—

- (a) on the absence of the member from three consecutive meetings of the Commission, unless the absence is approved by the Governor;
- (b) at the expiration of three years from the date of the appointment of the member;
- (c) if the member with his or her consent is nominated for election as a member of the Legislative Assembly;
- (d) if the member is appointed to any office of emolument in the service of the Government of Montserrat; or
- (e) on the death, resignation or removal from office, of the member.

(2) A member may be removed from office by the Governor if—

- (a) the member has become incapacitated from the due execution of his or her office by reason of infirmity or mental illness;
- (b) the member is guilty of misconduct;
- (c) the member has failed to perform in the due execution of his or her office;
- (d) the member has been placed, by conduct or otherwise, in a position that is incompatible with the due execution of his or her office.

(3) A member shall be removed from office by the Governor if the question of his or her removal from office has been referred to a tribunal appointed under subsection (4) and the tribunal has recommended to the Governor that the member ought to be removed for inability to discharge the function of his or her office or for misbehaviour.

(4) Where the Governor, acting after consultation with the Cabinet, considers that the question of removing a member ought to be investigated the Governor shall appoint a tribunal, which shall consist of one person being a former Judge of the High Court, or an attorney-at-law of fifteen years' standing at the bar to inquire into the matter and report on the facts to the Governor and recommend to him or her whether the member ought to be removed under this section.

(5) The tribunal, appointed under subsection (4), shall give the member an opportunity to show cause why he or she should not be removed from office.

(6) Where the question of removing a member has been referred to a tribunal under this section, the Governor, acting after consultation with the Cabinet, may suspend the member from the exercise of the functions of his or her office and the suspension may at any time be revoked by the Governor, acting in accordance with this section and shall in any case cease to have effect if the tribunal recommends to the Governor that the member should not be removed.

Publication in the *Gazette*

9. The appointment, resignation, removal from office, suspension, revocation of suspension or death of a member shall be published in the *Gazette*, by the Secretary of the Commission.

Proceedings and meetings

10. (1) The Commission shall meet at such times as may be expedient for the Commission to carry out its functions.

(2) A quorum of the Commission shall be two members.

(3) The proceedings of the Commission shall not be affected by any vacancy amongst the members or by any defect in the appointment of any member.

Secretary to the Commission

11. (1) There shall be a Secretary to the Commission who shall be a public officer.

(2) The duties of the Secretary shall be—

(a) to attend meetings of the Commission;

(b) to record the minutes of each meeting in proper form; and

- (c) to generally perform duties connected with the work of the Commission.

PART 3

PRINCIPAL FUNCTION AND JURISDICTION OF THE COMMISSION

Principal function of the Commission

12. (1) Subject to subsection (2) and sections 13 and 14, the principal function of the Commission shall be to investigate and resolve—

- (a) any human rights complaint;
- (b) any maladministration complaint in the Government of Montserrat; and
- (c) any other complaint prescribed by law.

(2) The Commission may investigate a matter referred to in subsection (1) in the following circumstances—

- (a) where a complaint is made, in writing, to the Commission by a person alleging that he or she has sustained an injustice as a result of a breach or infringement of a human right, or of maladministration;
- (b) in any other circumstance in which the Commission considers that it ought to investigate the matter on the ground that a person or body of persons has or may have sustained an injustice as a result of a breach or infringement of a human right, or of maladministration; or
- (c) as prescribed by any other law.

Restrictions on matters for investigation

13. (1) In investigating any matter leading to, resulting from or connected with a decision of a Minister, the Commission shall not inquire into or question the policy of the Minister in accordance with which the decision was made.

(2) Where in the course of an investigation it appears to the Commission that there is evidence of any corrupt act by any individual, it shall report the matter to the Governor with its recommendations as to any further investigation it may consider appropriate.

(3) The Commission shall not investigate—

- (a) any matter in respect of which the complainant has or had—
- (i) a remedy by way of proceedings in a court, other than by way of judicial review; or

(ii) a right of appeal, objection, reference or review to or before any person, tribunal, board or other authority appointed or constituted by or under an enactment; or

(b) any action, or action taken with respect to any matter, as is described in the Schedule.

(4) Despite subsection (3), the Commission may investigate a matter even if the complainant has or had a remedy by way of proceedings in a court, if the Commission is satisfied that in the particular circumstances it is not reasonable to expect the complainant to take or to have taken such proceedings.

(5) The Commission shall not conduct an investigation into any action taken by a person acting as legal adviser or as counsel.

Discretion of Commission

14. (1) In determining whether to initiate, continue or discontinue an investigation, the Commission shall, subject to sections 12 and 13, act in its discretion and, in particular and without prejudice to the generality of this discretion, the Commission may refuse to initiate or may discontinue an investigation where it appears to it that—

(a) a complaint relates to action of which the complainant has had knowledge for more than twelve months before the complaint was received by the Commission;

(b) the complaint is made anonymously or the complainant cannot be identified or traced;

(c) the complaint is not made by—

(i) the individual aggrieved himself or herself; or

(ii) his or her personal representative or by a member of his or her family or other individual suitable to represent him or her, where the individual by whom the complaint might have been made has died or is for any reason unable to act for himself;

(d) where the complaint is made on behalf of a body corporate, the body corporate has not authorised the making of the complaint;

(e) the complainant does not have a sufficient interest in the subject matter of the complaint;

(f) the subject matter of the complaint is trivial;

(g) the complaint is frivolous or vexatious or is not made in good faith;

(h) the complaint, or a complaint of a substantially similar nature, has previously been the subject of an investigation as a result of which the Commission was of the opinion that

there had been no breach or infringement of a human right, or no maladministration; or

- (i) any investigation or further investigation is for any other reason unnecessary.

(2) Where the Commission decides not to undertake or continue an investigation into a complaint, it shall inform the complainant, in writing, of its decision and of its reasons.

Power to investigate in the public interest

15. Where the Commission is of the opinion that it is in the public interest to do so, it may undertake or continue an investigation into a complaint even though the complainant has withdrawn the complaint and, in any such case, the provisions of this Act apply to the complaint and the complainant as if the complaint had not been withdrawn.

Preliminary inquiries

16. For the purposes of determining whether to undertake an investigation, the Commission may conduct preliminary inquiries as it considers appropriate.

Dealing with complaints by mediation

17. (1) The Commission may decide to deal with a complaint by mediation under this section if it is of the opinion, having regard to all the circumstances of the case, that the subject matter of the complaint involves no, or a minor breach or infringement of a human right, or maladministration.

(2) The Commission shall assign a person, appointed mediator under section 27, to be the mediator in any complaint.

(3) The Commission shall not participate in any mediation.

(4) Participation in the mediation by the complainant and the relevant department of Government, public authority or person is voluntary, and any party may withdraw at any time.

(5) The mediator may terminate the mediation at any time.

(6) Where an attempt to deal with a complaint by mediation under this section is unsuccessful—

- (a) the complaint is to be treated as if the mediation had not taken place; and
- (b) the mediator is excluded from participating as an investigating officer in any subsequent investigation of the complaint.

(7) Anything said or admitted during the mediation and any document prepared for the purposes of a mediation shall not be admissible in evidence—

- (a) in any subsequent investigation of the complaint concerned unless the person who said or admitted the thing, or to whom the document relates, consents to its admission;
- (b) against any person in any court or at any inquiry or in any other proceeding and no evidence in respect of the mediation may be given against any person.

(8) Nothing in this section prevents a complaint from being dealt with otherwise than in accordance with this section.

Proceedings of Commission

18. (1) Before investigating any action, the Commission shall, subject to subsection (2), inform the head of the relevant department of Government or public authority of its intention to conduct an investigation and may seek his or her comments.

(2) Subsection (1) shall not apply where the Commission is of the opinion that compliance with that subsection is inappropriate in the particular circumstances of the case and, instead of complying with that subsection, informs the Governor of its intention to conduct an investigation.

(3) Subject to the provisions of this Act and any rules made under section 39, the Commission may—

- (a) obtain any information, document or thing from any person, and make inquiries, as it thinks fit; and
- (b) regulate its procedure in the manner it thinks fit.

(4) Every investigation shall be conducted in private and, subject to subsection (6), legal practitioners shall not have any right of audience before the Commission, but a legal practitioner may appear before the Commission if the Commission thinks fit.

(5) It is not necessary for the Commission to hold any hearing, and, subject to subsection (6), no person is entitled to be heard by the Commission.

(6) If at any time during the course of an investigation it appears to the Commission that there may be sufficient grounds for it to make a report or recommendation that may criticise or adversely affect an officer, department of Government, public authority or person, it shall give the officer, the head of the department or authority or the person an opportunity to be heard, either personally or by his or her legal practitioner.

Power to obtain evidence

19. (1) Subject to subsections (2) and (3), the Commission shall have the powers of the High Court to summon witnesses to appear before it and to compel them to give evidence on oath and to produce documents relevant to the proceedings before it and all persons giving evidence at those proceedings shall have the same duties and liabilities and enjoy the same privileges as they would have in civil proceedings in the High Court.

(2) The Commission shall not have power to summon the Governor or a Minister to appear before it or compel the Governor or a Minister to answer any questions relating to any matter under investigation by the Commission, but the Commission—

- (a)* may, in its discretion, consult the Governor or a Minister on the matter; and
- (b)* shall, on the request of the Governor or a Minister, consult the Governor or the Minister on the matter.

(3) The Commission shall not have power to summon any witness—

- (a)* to furnish any information or answer any question relating to proceedings of Cabinet or of any committee of Cabinet; or
- (b)* to produce or inspect so much of any document as relates to any such proceedings.

(4) For the purposes of subsection (3), a certificate issued by the Cabinet Secretary, with the approval of the Governor, certifying that any information or question, or any document or part of a document, relates to any such proceedings is conclusive of the fact so certified.

(5) The Commission shall have power to enter and inspect the premises of any department of Government or public authority, to call for, examine, make copies of and, where necessary, retain copies of any document kept on such premises and there carry out any investigation in pursuance of its functions.

Report on investigation

20. (1) Upon the completion of an investigation, the Commission shall provide the relevant department of Government or public authority with a report containing its findings of fact, its opinion and the reasons for its opinion.

(2) Where the Commission is of the opinion that any person has sustained an injustice as a result of, a breach or infringement of a human right, or of maladministration, it shall include in its report such recommendations as it thinks fit and a request that the relevant department of Government or public authority notify it, within a specified time, of the steps, if any, that it proposes to take to give effect to its recommendations.

(3) The Commission may in its report, or at any later stage if it thinks fit, specify the time within which an injustice should be remedied.

(4) The Commission shall send a copy of its report to the Governor and each member of the Cabinet.

Complainant to be informed of result of investigation

21. Where an investigation is undertaken as a result of a complaint, the Commission shall inform the complainant of the result of the investigation and may make such comments on the matter as it thinks fit.

Special report where no appropriate action taken

22. (1) If, within a reasonable time after the Commission issues its report or the time specified under section 20(3), no action is taken which seems to the Commission to be adequate and appropriate, the Commission, after considering the comments, if any, made by or on behalf of the relevant department, authority or person shall furnish a special report on the matter to the Governor.

(2) The Commission shall attach to every special report under subsection (1) a copy of any comments made by or on behalf of the relevant department of Government, public authority or person.

(3) The Governor shall cause the report to be laid before the Legislative Assembly within a period of three months after its receipt.

Appeals restricted

23. (1) No proceeding of the Commission may be held bad for want of form, except on the ground of lack of jurisdiction.

(2) Where, in the course of any proceedings under this Act, the question arises as to whether the Commission has jurisdiction to conduct the proceedings, the Commission, or the party the subject of the proceedings, may make an application to the High Court for a determination of that question, and the Court may make such order as it considers proper.

PART 4

FINANCIAL AND ADMINISTRATIVE PROVISIONS

Funds of the Commission

24. (1) The funds of the Commission shall consist of—

- (a) monies that are appropriated to it by the Legislative Assembly for the purposes of this Act;
- (b) monies received by the Commission from agencies, other than the Government, approved by the Minister for the performance of its functions; and

(c) donations, endowments and other gifts received by the Commission.

(2) The Commission shall cause to be prepared proper estimates of receipts and expenditure in respect of the performance of the functions of the Commission for each financial year and the estimates shall be submitted to the Minister not later than such date as the Minister may direct.

Accounts and audit

25. (1) The Commission shall cause proper accounts of all financial transactions of the Commission to be kept in a form as the Auditor-General may direct.

(2) The Commission shall, within three months after the end of each financial year, prepare a statement of the accounts of the Commission.

(3) The accounts required to be kept under subsection (1) and the statement of accounts required under subsection (2) shall be audited, as soon as practicable and in any case within four months after the end of each financial year, by the Auditor-General or an auditor appointed for the purpose by the Auditor-General.

Fees prohibited

26. No person is required to pay any fee in respect of a complaint or for any mediation or investigation under this Act.

Appointment of staff, mediators etc.

27. (1) The Commission shall be provided with such staff as the Deputy Governor, after consultation with the Commission, considers necessary for the efficient administration of this Act.

(2) The Deputy Governor may, from time to time, appoint—

(a) mediators for the purposes of section 17; or

(b) professional or technical advisers to assist the Commission in the performance of its functions.

(3) Persons appointed under subsection (2) may be paid such remuneration as the Deputy Governor may approve.

(4) Any remuneration payable under subsection (3) shall be paid out of the funds of the Commission.

Premises and supplies

28. Within the funds allocated under section 24(1)(a), the Commission may lease premises and acquire equipment and supplies as are necessary for the efficient operation of the Commission.

Shared staff and services

29. Notwithstanding any provision of this Act but within the funds allocated under section 24(1)(a), the Commission may share staff, services, equipment and supplies with any other Government entity.

PART 5

MISCELLANEOUS

Laying of annual reports

30. (1) The Commission shall, as soon as possible practicable after 30 June in each year, furnish to the Governor—

(a) a full report on the performance of the functions of the Commission during that financial year, which shall include a general survey and statistics in relation to complaints received by the Commission, the results of mediations and investigations conducted under this Act, steps taken to implement its recommendations and any other matter or development it thinks fit;

(b) a copy of the statement of accounts required under section 25(2) and the auditor's report on that statement of accounts.

(2) The Governor shall cause the reports to be laid before the Legislative Assembly within a period of three months after their receipt.

Oath of office and secrecy

31. Before commencing the duties of his or her office, each Commissioner shall take an oath, to be administered by the Governor, that he or she will faithfully and impartially exercise the functions of his or her office and that he or she will not, except in accordance with section 32(3), disclose any information received by him or her as Commissioner.

Commission and staff to maintain secrecy

32. (1) Each Commissioner and every person appointed under section 27 shall, subject to subsections (2) and (3), maintain secrecy in respect of all matters that—

(a) arise from any investigation or complaint made to the Commission; and

(b) come to his or her actual knowledge in the exercise of his or her functions.

(2) Subsection (1) shall not apply so as to prevent a Commissioner or any person appointed under section 27 from—

(a) disclosing in the course of proceedings for an offence under this Act, any matter relevant to those proceedings;

- (b) reporting evidence of any crime to such authority as he or she considers appropriate;
- (c) disclosing to a person any matter referred to in subsection (1) which, in the opinion of the Commissioner or the person so appointed—
 - (i) may be grounds for a complaint by that person; or
 - (ii) is necessary to be disclosed to that person for the purposes of investigating a complaint or deciding whether an investigation should be undertaken, continued or discontinued.

(3) Subject to subsection (4), the Commission may disclose in any report made by it under this Act such matters as in its opinion ought to be disclosed in order to establish grounds for its conclusions and recommendations.

(4) The Commission shall not disclose in any report made by it under this Act—

- (a) the nature or substance of any consultation with the Governor or a Minister under section 19(2) or whether or not the consultation was requested or has taken place; or
- (b) any matter in respect of which the Governor certifies that its disclosure might prejudice security, defence or international relations, including relations with an international organisation, in respect of Montserrat or would otherwise be contrary to the public interest.

(5) A person who fails to comply with subsection (1) or (4) commits a summary offence and is liable to a fine of \$1,000 or to imprisonment for a term of six months, or both.

Protection of witnesses

33. Except on the trial of any person in respect of his or her sworn testimony, no statement made or answer given by that or any other person in the course of an inquiry by or any proceedings before the Commission is admissible in evidence against any person in any court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before the Commission shall be given against any person in any court.

Protection of Commission and officers

34. (1) Neither the Commission, a Commissioner, or any person appointed under section 27 is liable, whether on the ground of want of jurisdiction or on any other ground, to any civil or criminal proceedings to which he would have been liable apart from this section in respect of any act purporting to be done in pursuance of this Act, unless the act was done in bad faith.

(2) No civil or criminal proceedings shall be brought against the Commission, a Commissioner, or any person appointed under section 27 in respect of any such act as is referred to in subsection (1) without the leave of the High Court, and the High Court shall not give leave under this section unless it is satisfied that there is substantial ground for the contention that the person to be proceeded against has acted in bad faith.

(3) Despite this section, no prerogative writ shall be issued compelling the Commission to carry out any investigation, and no proceedings shall be entertained by any court against the Commission where the issue of such a writ is sought.

(4) Except as permitted under this Act, neither a Commissioner, nor any person appointed under section 27 shall be called to give evidence or produce any document in any court, or in any judicial proceedings, in respect of any matter coming to his or her knowledge in the exercise of his or her functions under this Act.

Protection of complainants etc.

35. (1) Subject to subsection (2), a person is not liable to any civil proceedings in respect of—

- (a) making a complaint under this Act; or
- (b) providing information in the course of, or for the purpose of, an investigation under this Act.

(2) Subsection (1) does not apply if the complaint was made, or the information was provided, in bad faith.

(3) No civil proceedings shall be brought against a person in respect of an act referred to in subsection (1)(a) or (b) without the leave of the High Court, and the High Court shall not grant leave unless it is satisfied that there is substantial ground for the contention that the person to be proceeded against has acted in bad faith.

Victimisation

36. (1) A person shall not—

- (a) prejudice, or threaten to prejudice, the safety or career of;
- (b) intimidate or harass, or threaten to intimidate or harass; or
- (c) do any act that is, or is likely to be, to the detriment of,

another person because the other person—

- (i) has made, will or may in the future make a complaint under this Act;
- (ii) has provided, is providing or will or may in the future provide information in the course of, or for the purpose of, an investigation under this Act; or

(iii) has exercised a power conferred by this Act or has performed a duty imposed by this Act on the other person or is exercising or performing, or will or may in the future exercise or perform, any such power or duty.

(2) A person who contravenes subsection (1) commits a summary offence and is liable to a fine of \$1,000 or to imprisonment for a term of six months, or both.

(3) A person who attempts to commit a summary offence under subsection (2) commits an offence and is liable to a fine of \$1,000 or to imprisonment for a term of six months, or both.

(4) A person who—

(a) intends that an offence under subsection (2) be committed; and

(b) incites another person to commit the offence,

commits a summary offence and is liable to a fine of \$1,000 or to imprisonment for a term of six months, or both.

Complaints by persons in custody

37. (1) Subject to subsection (5), a person who is detained in custody is entitled—

(a) upon making a request to the officer in whose custody he or she is detained or to any other officer performing duties in connection with his or her detention—

(i) to be provided with facilities for preparing a complaint in writing under this Act, for furnishing in writing to the Commission after the complaint has been made any other relevant information, and for enclosing the complaint or the other information, if any, in a sealed envelope; and

(ii) to have posted to the Commission, without undue delay, a sealed envelope delivered by him to any such officer and addressed to the Commission; and

(b) to have delivered to him or her, without undue delay, any sealed envelope addressed to him or her and sent by the Commission that comes into the possession or under the control of any such officer.

(2) Subject to subsection (5), where a sealed envelope addressed to the Commission is delivered by a person detained in custody to an officer referred to in subsection (1) for posting to the Commission, or a sealed envelope addressed to a person so detained and sent by the Commission comes into the possession or under the control of any such officer, the officer shall not open the envelope, or inspect any document enclosed in the envelope.

(3) The Commission may make arrangements with the relevant authorities for the identification and delivery of sealed envelopes sent by the Commission to persons detained in custody.

(4) In subsection (3) the “**relevant authorities**” means the Commissioner of Police, the Superintendent of Prisons, or the Chief Medical Officer.

(5) Subsections (1) and (2)—

(a) do not affect the operation of rule 21(1) of the Prisons Rules with regard to the prevention of crime; and

(b) subject to paragraph (a), have effect despite anything in any other Act.

(6) An officer referred to in subsection (1) who wilfully contravenes or fails to comply with this section commits a summary offence and is liable to a fine of \$1,000.

Offences

38. A person who—

(a) without lawful excuse, willfully obstructs, hinders or resists the Commission or any other person in the performance of his or her functions under this Act;

(b) without lawful excuse, refuses or willfully fails to comply with any lawful requirement of the Commission or any other person under this Act; or

(c) wilfully makes any false statement to or misleads or attempts to mislead the Commission or any other person in the exercise of his or her functions under this Act,

commits a summary offence and is liable to a fine of \$1,000 or to imprisonment for a term of six months, or both.

Rules

39. (1) The Governor may make rules for the guidance of the Commission in the exercise of its functions.

(2) The Governor acting on the advice of Cabinet may, by Order, amend the Schedule.

SCHEDULE

(Section 13(3)(b))

RESTRICTED MATTERS

1. Action taken under any law relating to extradition or fugitive offenders.
 2. Action taken for the purpose of investigating crime or of protecting the security of Montserrat.
 3. The commencement or conduct of civil or criminal proceedings before any court or before any international court or tribunal.
 4. Action taken in respect of appointments or removals, pay, discipline, pension or other personnel matters in relation to service in any office in the public service or a public authority.
 5. Any request for an appeal outside of the prescribed period under any enactment.
-

