



# Montserrat

## Cybercrime legislation

Domestic equivalent to the provisions of the Budapest Convention

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[reference to the provisions of the Budapest Convention]

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*This profile has been prepared by the Cybercrime Programme Office (C-PROC) of the Council of Europe in view of sharing information on cybercrime legislation and assessing the current state of implementation of the Budapest Convention on Cybercrime under national legislation. It does not necessarily reflect official positions of the State covered or of the Council of Europe.*

<b>State:</b>	
<b>Signature of the Budapest Convention:</b>	N/A
<b>Ratification/accession:</b>	N/A

BUDAPEST CONVENTION	DOMESTIC LEGISLATION
<b>Chapter I – Use of terms</b>	
<p><b>Article 1 – “Computer system”, “computer data”, “service provider”, “traffic data”:</b></p> <p>For the purposes of this Convention:</p> <p>a “computer system” means any device or a group of interconnected or related devices, one or more of which, pursuant to a program, performs automatic processing of data;</p> <p>b “computer data” means any representation of facts, information or concepts in a form suitable for processing in a computer system, including a program suitable to cause a computer system to perform a function;</p> <p>c “service provider” means:</p> <p>i any public or private entity that provides to users of its service the ability to communicate by means of a computer system, and</p> <p>ii any other entity that processes or stores computer data on behalf of such communication service or users of such service;</p> <p>d “traffic data” means any computer data relating to a communication by means of a computer system, generated by a computer system that formed a part in the chain of communication, indicating the communication’s origin, destination, route, time, date, size, duration, or type of underlying service</p>	<p><a href="#"><u>Penal Code (Draft Amendment) Bill (2020)</u></a><sup>1</sup></p> <p><b>Part 20A. Cybercrime</b></p> <p><b>Section 289A (Interpretation)</b></p> <p>“computer system” means a device or a group of inter-connected or related devices which follows a program or external instruction to perform automatic processing of information or electronic data;</p> <p>“computer data” means any representation of—</p> <p>(a) facts;</p> <p>(b) concepts;</p> <p>(c) information including text, sound, image or video; or</p> <p>(d) machine-readable code or instructions, that is in a form suitable for processing in a computer system and is capable of being sent, received or stored, and includes a program that can cause a computer system to perform a function;</p> <p>“internet service provider” includes a person who provides the services mentioned in sections 38 to 43;</p> <p>“traffic data” means computer data that—</p> <p>(a) relates to a communication by means of a computer system;</p> <p>(b) is generated by a computer system that is part of the chain of communication; and</p> <p>(c) shows the communication’s origin, destination, route, time, date, size, duration, or type of underlying service.</p> <p>“computer data storage medium” means anything in which information is capable of being stored, or anything from which information is capable of being retrieved or reproduced, with or without the aid of any other article or device;</p>

<sup>1</sup> Montserrat is currently in the process to update its legislation, therefore the following “Penal Code (Amendment) Bill 2020” refers to the available public drafts. This document will be updated alongside Montserrat’s revisions of the Bill.

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	<p>"computer program" or "program" means data which represents instructions or statements that, when executed in a computer system, can cause the computer system to perform a function;</p> <p>"Data Controller" means any person who either alone or jointly or in common with other persons processes any personal data or has control over or authorizes the processing of any personal data, but does not include a data processor;</p> <p>"device" includes—</p> <ul style="list-style-type: none"> <li>(a) a component of a computer system such as a graphic card or memory chip;</li> <li>(b) a storage component such as a hard drive, memory card, compact disc or tape;</li> <li>(c) input equipment such as a keyboard, mouse, track pad, scanner or digital camera; or</li> <li>(d) output equipment such as a printer or screen;</li> </ul> <p>"electronic" means relating to technology, having electrical, digital, magnetic, optical, biometric, electrochemical, wireless, electromagnetic or similar capabilities;</p> <p>"function" in relation to a computer system includes logic, control, arithmetic, deletion, storage or retrieval and communication or telecommunication to, from or within a computer;</p> <p>"hinder" in relation to a computer system includes—</p> <ul style="list-style-type: none"> <li>(a) disconnecting the electricity supply to a computer system;</li> <li>(b) causing electromagnetic interference to a computer system;</li> <li>(c) corrupting a computer system; and</li> <li>(d) inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data;</li> </ul> <p>"information society services" means any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service;</p> <p>"intercept" in relation to computer data communication includes listening to, monitoring, viewing, reading or recording, by any means, such communication during transmission without the knowledge of the person making or receiving the communication;</p> <p>"multiple electronic mail messages" means any unsolicited electronic message, including electronic mail and instant message, that is sent to multiple recipients at a time;</p>

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	<p><b>Section 289U (Access provider)</b>  (2) “access provider” means a person who provides a service to facilitate the transmission of computer data between two or more computer systems by transmitting information provided by or to a user of the service in a communication network or provides access to a communication network;</p> <p><b>Section 289V (Hosting provider)</b>  (4) “hosting provider” means a person who provides a service to facilitate the transmission of computer data between two or more computer systems by storing information provided by a user of their service.</p> <p><b>Section 289W (Caching provider)</b>  (2) “caching provider” means a person who provides a service to facilitate the transmission of computer data between two or more computer systems by the automatic, intermediate and temporary storage of information, where such storage is for the sole purpose of making the onward transmission of the information to other users of the service more efficient.</p>
<b>Chapter II – Measures to be taken at the national level</b>	
<b>Section 1 – Substantive criminal law</b>	
<b>Title 1 – Offences against the confidentiality, integrity and availability of computer data and systems</b>	
<p><b>Article 2 – Illegal access</b>  Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.</p>	<p><b><u>Penal Code (Draft Amendment) Bill (2020)</u></b></p> <p><b>Part 20A. Cybercrime</b>  <b>Section 289B (Illegal access to computer system)</b>  A person who, intentionally and without lawful excuse or justification, accesses a computer system or any part of a computer system commits an offence and is liable on—  (a) summary conviction, to a fine of [\$150,000] or to [three] years’ imprisonment or to both;  (b) conviction on indictment, to a fine of [\$500,000] or to [seven] years’ imprisonment or to both.</p> <p><b>Section 289C (Illegal remaining in computer system)</b>  A person who, intentionally and without lawful excuse or justification, remains</p>

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	<p>logged into a computer system or part of a computer system or continues to use a computer system, commits an offence and is liable on—</p> <p>(a) summary conviction, to a fine of [\$150,000] or to [three] years' imprisonment or to both;</p> <p>(b) conviction on indictment, to a fine of [\$500,000] or to [seven] years' imprisonment or to both.</p>
<p><b>Article 3 – Illegal interception</b></p> <p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.</p>	<p><a href="#"><u>Penal Code (Draft Amendment) Bill (2020)</u></a></p> <p><b>Part 20A. Cybercrime</b></p> <p><b>Section 289D (Illegal interception)</b></p> <p>(1) A person who, intentionally and without lawful excuse or justification, intercepts—</p> <p>(a) any subscriber information or traffic data or any communication to, from or within a computer system; or</p> <p>(b) any electromagnetic emission from a computer system, commits an offence.</p> <p>(2) A person who commits an offence under subsection (1) is liable on—</p> <p>(a) summary conviction, to a fine of [\$150,000] or to [three] years' imprisonment or to both;</p> <p>(b) conviction on indictment, to a fine of [\$500,000] or to [seven] years' imprisonment or to both</p>
<p><b>Article 4 – Data interference</b></p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.</p> <p>2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.</p>	<p><a href="#"><u>Penal Code (Draft Amendment) Bill (2020)</u></a></p> <p><b>Part 20A. Cybercrime</b></p> <p><b>Section 289E (Illegal data interference)</b></p> <p>(1) A person who, intentionally and without lawful excuse or justification—</p> <p>(a) damages computer data or causes computer data to deteriorate;</p> <p>(b) deletes computer data;</p> <p>(c) alters computer data;</p> <p>(d) renders computer data meaningless, useless or ineffective;</p> <p>(e) obstructs, interrupts or interferes with the lawful use of computer data;</p>

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	<p>(f) obstructs, interrupts or interferes with a person in the lawful use of computer data; or</p> <p>(g) denies access to computer data to a person authorized to access it, commits an offence.</p> <p>(2) A person who commits an offence under subsection (1) is liable on—</p> <p>(a) summary conviction, to a fine of [\$150,000] or to [three] years' imprisonment or to both;</p> <p>(b) conviction on indictment, to a fine of [\$500,000] or to [seven] years' imprisonment or to both.</p> <p><b>Section 289F (Illegal acquisition of data)</b>  A person who, intentionally and without lawful excuse or justification, obtains for himself or for another person, computer data which is not meant for him or the other person and which is protected against unauthorised access, commits an offence and is liable on—</p> <p>(a) summary conviction, to a fine of [\$150,000] or to [three] years' imprisonment or to both;</p> <p>(b) conviction on indictment, to a fine of [\$500,000] or to [seven] years' imprisonment or to both.</p>
<p><b>Article 5 – System interference</b>  Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data</p>	<p><b><u>Penal Code (Draft Amendment) Bill (2020)</u></b></p> <p><b>Part 20A. Cybercrime</b>  <b>Section 289G (Illegal system interference)</b>  (1) A person who, intentionally and without lawful excuse or justification</p> <p>(a) hinders or interferes with the functioning of a computer system; or</p> <p>(b) hinders or interferes with a person who is lawfully using or operating a computer system, commits an offence.</p> <p>(2) A person who commits an offence under subsection (1) is liable on—</p> <p>(a) summary conviction, to a fine of [\$150,000] or to [three] years' imprisonment or to both;</p> <p>(b) conviction on indictment, to a fine of [\$500,000] or to [seven] years' imprisonment or to both.</p> <p><b>Section 289H (Offences affecting critical infrastructure)</b>  (1) Despite the penalties set out in sections 289B to 289G, where a person</p>

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	<p>commits an offence under any of those sections and the offence results in hindering or interference with a computer system that—</p> <ul style="list-style-type: none"> <li>(a) is exclusively for the use of critical infrastructure; or</li> <li>(b) affects the use, or impacts the operation, of critical infrastructure,</li> </ul> <p>the person is liable on conviction on indictment to a fine of [\$1,000,000] or to [fifteen] years' imprisonment.</p> <p>(2) For the purposes of this section, "critical infrastructure" means any computer system, device, network, computer program, computer data, so vital to Montserrat that the incapacity or destruction of, or interference with, such system, device, network, computer program or computer data would have a debilitating impact on—</p> <ul style="list-style-type: none"> <li>(a) security, defence or international relations of Montserrat; or</li> <li>(b) provision of services directly related to national or economic security, banking and financial services, public utilities, the energy sector, communications infrastructure, public transportation, public health and safety, or public key infrastructure.</li> </ul>
<p><b>Article 6 – Misuse of devices</b></p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right:</p> <ul style="list-style-type: none"> <li>a the production, sale, procurement for use, import, distribution or otherwise making available of: <ul style="list-style-type: none"> <li>i a device, including a computer program, designed or adapted primarily for the purpose of committing any of the offences established in accordance with the above Articles 2 through 5;</li> <li>ii a computer password, access code, or similar data by which the whole or any part of a computer system is capable of being accessed,</li> </ul> </li> </ul> <p>with intent that it be used for the purpose of committing any of the offences established in Articles 2 through 5; and</p> <ul style="list-style-type: none"> <li>b the possession of an item referred to in paragraphs a.i or ii above, with intent that it be used for the purpose of committing any of the offences established in Articles 2 through 5. A Party may require by law that a number of such items be possessed before criminal liability attaches.</li> </ul>	<p><b><u>Penal Code (Draft Amendment) Bill (2020)</u></b></p> <p><b>Part 20A. Cybercrime</b></p> <p><b>Section 289I (Illegal devices)</b></p> <p>(1) A person who produces, sells, procures for use, imports, exports, distributes or otherwise makes available or has in his possession—</p> <ul style="list-style-type: none"> <li>(a) a device, including a computer program, that is designed or adapted for the purpose of committing an offence under this Act; or</li> <li>(b) a computer password, access code or similar data by which the whole or any part of a computer system, computer data storage medium or computer data is capable of being accessed,</li> </ul> <p>with the intent that it be used for the purpose of committing an offence under this Act commits an offence.</p> <p>(2) A person who commits an offence under subsection (1) is liable on—</p> <ul style="list-style-type: none"> <li>(a) summary conviction, to a fine of [\$150,000] or to [three] years' imprisonment or to both;</li> <li>(b) conviction on indictment, to a fine of [\$500,000] or to [seven] years' imprisonment or to both.</li> </ul>

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<p>2 This article shall not be interpreted as imposing criminal liability where the production, sale, procurement for use, import, distribution or otherwise making available or possession referred to in paragraph 1 of this article is not for the purpose of committing an offence established in accordance with Articles 2 through 5 of this Convention, such as for the authorised testing or protection of a computer system.</p> <p>3 Each Party may reserve the right not to apply paragraph 1 of this article, provided that the reservation does not concern the sale, distribution or otherwise making available of the items referred to in paragraph 1 a.ii of this article.</p>	
Title 2 – Computer-related offences	
<p><b>Article 7 – Computer-related forgery</b></p> <p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.</p>	<p><a href="#"><u>Penal Code (Draft Amendment) Bill (2020)</u></a></p> <p><b>Part 20A. Cybercrime</b>  <b>Section 289K (Computer-related forgery)</b></p> <p>(1) A person who, intentionally and without lawful excuse or justification inputs, alters, deletes, or suppresses computer data, resulting in inauthentic data, with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless of whether or not the computer data is directly readable and intelligible, commits an offence.</p> <p>(2) A person who commits an offence under subsection (1) is liable on—</p> <ul style="list-style-type: none"> <li>(a) summary conviction, to a fine of [\$200,000] or to [three] years' imprisonment or to both;</li> <li>(b) conviction on indictment, to a fine of [\$500,000] or to [seven] years' imprisonment or to both.</li> </ul> <p>(3) A person who commits an offence under subsection (1) by sending out multiple electronic mail messages from or through a computer system is liable on conviction to a fine of [\$25,000] and [three] years' imprisonment in addition to the penalty set out in subsection (2).</p>
<p><b>Article 8 – Computer-related fraud</b></p> <p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when</p>	<p><a href="#"><u>Penal Code (Draft Amendment) Bill (2020)</u></a></p> <p><b>Part 20A. Cybercrime</b>  <b>Section 289L (Computer-related fraud)</b></p>



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<p>committed intentionally and without right, the causing of a loss of property to another person by:</p> <ul style="list-style-type: none"> <li>a any input, alteration, deletion or suppression of computer data;</li> <li>b any interference with the functioning of a computer system,</li> </ul> <p>with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.</p>	<p>(1) A person who, intentionally and without lawful excuse or justification—</p> <ul style="list-style-type: none"> <li>(a) inputs, alters, deletes or suppresses computer data; or</li> <li>(b) interferes with the functioning of a computer system,</li> </ul> <p>with the fraudulent or dishonest intent of procuring an economic benefit for himself or another person and thereby causes a loss of, or damage to, property commits an offence.</p> <p>(2) A person who commits an offence under subsection (1) is liable on—</p> <ul style="list-style-type: none"> <li>(a) summary conviction, to a fine of [\$200,000] or to [three] years' imprisonment or to both;</li> <li>(b) conviction on indictment, to a fine of [\$500,000] or to [seven] years' imprisonment or to both.</li> </ul>
Title 3 – Content-related offences	
<p><b>Article 9 – Offences related to child pornography</b></p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the following conduct:</p> <ul style="list-style-type: none"> <li>a producing child pornography for the purpose of its distribution through a computer system;</li> <li>b offering or making available child pornography through a computer system;</li> <li>c distributing or transmitting child pornography through a computer system;</li> <li>d procuring child pornography through a computer system for oneself or for another person;</li> <li>e possessing child pornography in a computer system or on a computer-data storage medium.</li> </ul> <p>2 For the purpose of paragraph 1 above, the term “child pornography” shall include pornographic material that visually depicts:</p> <ul style="list-style-type: none"> <li>a a minor engaged in sexually explicit conduct;</li> <li>b a person appearing to be a minor engaged in sexually explicit conduct;</li> <li>c realistic images representing a minor engaged in sexually explicit conduct</li> </ul>	<p><b><u>Penal Code (Draft Amendment) Bill (2020)</u></b></p> <p><b>Part 20A. Cybercrime</b>  <b>Section 289A (Interpretation)</b></p> <p>“child” means a person under the age of eighteen years;</p> <p>“child pornography” means material that—</p> <ul style="list-style-type: none"> <li>(a) depicts or presents a child engaged in sexual activity or conduct;</li> <li>(b) depicts or presents a child in a sexually explicit pose;</li> <li>(c) depicts or presents, for sexual purposes, parts of a child’s body pasted to visual representations of parts of an adult’s body or vice versa;</li> <li>(d) depicts or presents, for sexual purposes, parts of a child’s body which have been rendered complete by computer generated images or by other methods of visual representation;</li> <li>(e) depicts or presents a person appearing to be a child engaged in sexual conduct; or</li> <li>(f) realistically represents a person appearing to be a child engaged in sexual conduct,</li> </ul> <p>and includes, but is not limited to, any visual material including images, animations or videos, or audio or text material, but does not include any visual representation produced or reproduced for the purpose of education, counselling, promotion of reproductive health or as part of a criminal investigation or</p>

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<p>3 For the purpose of paragraph 2 above, the term “minor” shall include all persons under 18 years of age. A Party may, however, require a lower age-limit, which shall be not less than 16 years.</p> <p>4 Each Party may reserve the right not to apply, in whole or in part, paragraphs 1, sub-paragraphs d. and e, and 2, sub-paragraphs b. and c.</p>	<p>prosecution or civil proceedings or in the lawful performance of a person’s profession, duties and functions;</p> <p><b>Section 289N (Child pornography)</b></p> <p>(1) A person who, intentionally—</p> <ul style="list-style-type: none"> <li>(a) produces child pornography for the purpose of its distribution through a computer system;</li> <li>(b) offers to make available child pornography through a computer system;</li> <li>(c) distributes or transmits child pornography through a computer system;</li> <li>(d) procures or obtains child pornography through a computer system for himself or another person;</li> <li>(e) possesses child pornography in a computer system or on a computer data storage medium; or (f) obtains access to child pornography through information and communication technologies, commits an offence.</li> </ul> <p>(2) A person who commits an offence under subsection (1) is liable on—</p> <ul style="list-style-type: none"> <li>(a) summary conviction, to a fine of [\$300,000] or to [five] years’ imprisonment or to both;</li> <li>(b) conviction on indictment, to a fine of [\$750,000] or to [twenty] years’ imprisonment or to both.</li> </ul> <p><b>Section 289O (Conditions applicable to child's consent in relation to information society services)</b></p> <p>(1) If consent is provided, in relation to the offer of information society services directly to a child, the processing of the personal data of a child shall be lawful if the child is at least [sixteen] years of age.</p> <p>(2) If the child is below the age of [sixteen] years, the processing of the personal data of the child shall be lawful only if and to the extent that consent is given or authorised by the holder of parental responsibility over the child.</p> <p>(3) The Data Controller shall make reasonable efforts to verify in respect of a child under subsection (2) that consent is given or authorised by the holder of parental responsibility over the child, taking into consideration available technology.</p> <p>(4) Subsection (1) shall not affect the general contract law of Montserrat in relation to minors and children.</p>

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<b>Title 4 – Offences related to infringements of copyright and related rights</b>	
<p><b>Article 10 – Offences related to infringements of copyright and related rights</b></p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the infringement of copyright, as defined under the law of that Party, pursuant to the obligations it has undertaken under the Paris Act of 24 July 1971 revising the Bern Convention for the Protection of Literary and Artistic Works, the Agreement on Trade-Related Aspects of Intellectual Property Rights and the WIPO Copyright Treaty, with the exception of any moral rights conferred by such conventions, where such acts are committed wilfully, on a commercial scale and by means of a computer system.</p> <p>2 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the infringement of related rights, as defined under the law of that Party, pursuant to the obligations it has undertaken under the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome Convention), the Agreement on Trade-Related Aspects of Intellectual Property Rights and the WIPO Performances and Phonograms Treaty, with the exception of any moral rights conferred by such conventions, where such acts are committed wilfully, on a commercial scale and by means of a computer system.</p> <p>3 A Party may reserve the right not to impose criminal liability under paragraphs 1 and 2 of this article in limited circumstances, provided that other effective remedies are available and that such reservation does not derogate from the Party's international obligations set forth in the international instruments referred to in paragraphs 1 and 2 of this article.</p>	
<b>Title 5 – Ancillary liability and sanctions</b>	
<p><b>Article 11 – Attempt and aiding or abetting</b></p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, aiding or abetting the commission of any of the offences established in accordance with Articles 2 through 10 of the present Convention with intent that such offence be committed.</p>	<p><b><u>Penal Code (2019)</u></b></p> <p><b>Part 2. General rules as to criminal liability</b></p> <p><b>Section 19 (Principal offenders)</b></p> <p>(1) Where an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say ---</p>

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<p>2 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, an attempt to commit any of the offences established in accordance with Articles 3 through 5, 7, 8, and 9.1.a and c. of this Convention.</p> <p>3 Each Party may reserve the right not to apply, in whole or in part, paragraph 2 of this article.</p>	<p>(a) every person who actually does the act or makes the omission which constitutes the offence;</p> <p>(b) every person who does or omits to do any act for the purpose of enabling or aiding any other person to commit the offence;</p> <p>(c) every person who aids or abets another person in committing the offence; and</p> <p>(d) any person who counsels or procures any person to commit the offence.</p> <p><b>Part 26. Supplementary</b>  <b>Section 356 (Attempts to commit offences)</b>  Where a person is convicted of an attempt to commit an offence, if no specific penalty is provided for the punishment of an attempt to commit that offence, either in this Code or in any other law, the sentence which may be imposed shall not exceed that provided for punishment of the offence attempted; and the common law power to impose punishment in such a case is abolished.</p>
<p><b>Article 12 – Corporate liability</b></p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to ensure that legal persons can be held liable for a criminal offence established in accordance with this Convention, committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within it, based on:</p> <ul style="list-style-type: none"> <li>a a power of representation of the legal person;</li> <li>b an authority to take decisions on behalf of the legal person;</li> <li>c an authority to exercise control within the legal person.</li> </ul> <p>2 In addition to the cases already provided for in paragraph 1 of this article, each Party shall take the measures necessary to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of a criminal offence established in accordance with this Convention for the benefit of that legal person by a natural person acting under its authority.</p> <p>3 Subject to the legal principles of the Party, the liability of a legal person may be criminal, civil or administrative.</p>	<p><b><u>Penal Code (Draft Amendment) Bill (2020)</u></b></p> <p><b>Part 20A. Cybercrime</b>  <b>Section 289S (Offence by body corporate under this Part)</b>  Where a body corporate commits an offence under this Act and a court is satisfied that a director, manager, secretary or other similar officer of the body corporate or any person who purports to act in such capacity—</p> <ul style="list-style-type: none"> <li>(a) connived in or consented to the commission of the offence; or</li> <li>(b) failed to exercise due diligence to prevent the commission of the offence, the director, manager, secretary or other similar officer or person purporting to act in that capacity also commits the offence.</li> </ul>

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4 Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offence.	
<p><b>Article 13 – Sanctions and measures</b></p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to ensure that the criminal offences established in accordance with Articles 2 through 11 are punishable by effective, proportionate and dissuasive sanctions, which include deprivation of liberty.</p> <p>2 Each Party shall ensure that legal persons held liable in accordance with Article 12 shall be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions or measures, including monetary sanctions.</p>	
<b>Section 2 – Procedural law</b>	
<p><b>Article 15 – Conditions and safeguards</b></p> <p>1 Each Party shall ensure that the establishment, implementation and application of the powers and procedures provided for in this Section are subject to conditions and safeguards provided for under its domestic law, which shall provide for the adequate protection of human rights and liberties, including rights arising pursuant to obligations it has undertaken under the 1950 Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, the 1966 United Nations International Covenant on Civil and Political Rights, and other applicable international human rights instruments, and which shall incorporate the principle of proportionality.</p> <p>2 Such conditions and safeguards shall, as appropriate in view of the nature of the procedure or power concerned, <i>inter alia</i>, include judicial or other independent supervision, grounds justifying application, and limitation of the scope and the duration of such power or procedure.</p> <p>3 To the extent that it is consistent with the public interest, in particular the sound administration of justice, each Party shall consider the impact of the powers and procedures in this section upon the rights, responsibilities and legitimate interests of third parties.</p>	<p><b><u>Constitution of Montserrat (2010)</u></b></p> <p><b>Part I. Fundamental Rights and Freedoms of the Individual</b>  <b>Section 2 (Fundamental rights and freedoms of the individual)</b></p> <p>Whereas the realisation of the right to self-determination must be promoted and respected in conformity with the provisions of the Charter of the United Nations; Whereas every person in Montserrat is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, without distinction of any kind, such as sex, sexual orientation, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely—</p> <ul style="list-style-type: none"> <li>(a) life, liberty, security of the person and the protection of the law;</li> <li>(b) freedom of conscience and of religion, of expression, and of assembly and association;</li> <li>(c) protection for his or her private and family life, the privacy of his or her home and other property and from deprivation of property save in the public interest and on payment of fair compensation,</li> </ul> <p>the subsequent provisions of this Part shall have effect for the purpose of affording protection to the aforesaid rights and freedoms, and related rights and freedoms, subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said protected</p>

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	<p>rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.</p> <p><b>Section 3 (Protection of right to life)</b>  (1) Every person's right to life shall be protected by law.  (2) No person shall be deprived intentionally of his or her life.  (3) A person shall not be regarded as having been deprived of his or her life in contravention of this section if he or she dies as the result of a lawful act of war or the use, to such extent and in such circumstances as are permitted by law, of such force as is no more than absolutely necessary—  (a) for the defence of any person from violence;  (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or  (c) in action lawfully taken for the purpose of suppressing a riot, insurrection or mutiny.</p> <p><b>Section 4 (Protection from inhuman treatment)</b>  No person shall be subjected to torture or to inhuman or degrading treatment or punishment.</p> <p><b>Section 6 (Protection from arbitrary arrest or detention)</b>  (1) No person shall be deprived of his or her personal liberty save in any of the following cases where reasonably required and in accordance with a procedure prescribed by law—  (a) in execution of the sentence or order of a court, whether established for Montserrat or some other country, in respect of a criminal offence of which he or she has been convicted or in consequence of his or her unfitness to plead to a criminal charge;  (b) in execution of the order of a court punishing him or her for contempt of that court or of another court;  (c) in execution of the order of a court made in order to secure the fulfillment of any obligation imposed on him or her by law;  (d) for the purpose of bringing him or her before a court in execution of the lawful order of a court;  (e) on reasonable suspicion that he or she has committed, is committing or is about to commit a criminal offence;</p>

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	<p>(f) in the case of a minor, under the order of a court or with the consent of his or her parent or guardian, for the purpose of his or her education or welfare;</p> <p>(g) for the purpose of preventing the spread of an infectious or contagious disease;</p> <p>(h) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his or her care or treatment or the protection of the community;</p> <p>(i) for the purpose of preventing the unlawful entry of that person into Montserrat or for the purpose of effecting the expulsion, extradition or other lawful removal from Montserrat of that person or the taking of proceedings relating thereto.</p> <p>(2) Any person who is arrested or detained shall be informed promptly, in a language that he or she understands, of the reasons for his or her arrest or detention and of any charge against him or her.</p> <p>(3) Any person who is arrested or detained shall have the right, at any stage and at his or her own expense, to retain and instruct without delay a legal representative of his or her own choice, and to hold private communication with him or her, and in the case of a minor he or she shall also be afforded a reasonable opportunity for communication with his or her parent or guardian; but when the person arrested or detained is unable to retain a legal representative of his or her own choice or be represented by a legal representative at the public expense, he or she may be represented, and hold private communication with, such person as a court may approve.</p> <p>(4) Every person who is arrested shall be informed, in a language that he or she understands and as soon as possible after he or she is brought to a police station or other place of custody, of his or her rights under subsection (3); and that person shall also have the right, and shall be informed at the same time that he or she has the right, to remain silent and to have one person informed by the quickest practicable means of his or her arrest and whereabouts.</p> <p>(5) Any person who is arrested or detained in such a case as is mentioned in subsection (1)(d) or (e) and who is not released shall be brought promptly before a judge or other officer authorised to exercise judicial power.</p> <p>(6) If any person arrested or detained in such a case as is mentioned in subsection (1)(e) is not tried within a reasonable time he or she shall (without prejudice to any further proceedings that may be brought against him or her) be released either unconditionally or upon reasonable conditions, including in particular such</p>

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	<p>conditions as are reasonably necessary to ensure that he or she appears at a later date for trial or for proceedings preliminary to trial.</p> <p>(7) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation in respect of it from that other person.</p> <p><b>Section 7 (Provisions to secure protection of law)</b></p> <p>(1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.</p> <p>(2) Every person who is charged with a criminal offence—</p> <ul style="list-style-type: none"> <li>(a) shall be presumed to be innocent until he or she is proved guilty according to law;</li> <li>(b) shall be informed promptly, in a language that he or she understands and in detail, of the nature and cause of the accusation against him or her;</li> <li>(c) shall be given adequate time and facilities for the preparation of his or her defence;</li> <li>(d) shall be permitted to defend himself or herself before the court in person or, at his or her own expense, by a legal representative of his or her own choice, or, when the interests of justice so require, by a legal representative at the public expense;</li> <li>(e) shall be afforded facilities to examine in person or by his or her legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his or her behalf before the court on the same conditions as those applying to witnesses for the prosecution;</li> <li>(f) shall be permitted to have without payment the assistance of an interpreter if he or she cannot understand or speak the language used at the trial of the charge; and</li> <li>(g) shall, when tried before the High Court, have the right to trial by jury except as otherwise provided for by Act of the Legislature;</li> </ul> <p>and, except with his or her own consent, the trial shall not take place in his or her absence, unless he or she so behaves in the court as to render the continuance of the proceedings in his or her presence impracticable and the court has ordered him or her to be removed and the trial to proceed in his or her absence, or unless, having had reasonable notice of the hearing and of the nature of the offence charged, he or she is voluntarily absent from the proceedings.</p>



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	<p>(3) When a person is tried for any criminal offence, the accused person or any person authorised by him or her shall, if he or she so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused of any record of the proceedings made by or on behalf of the court.</p> <p>(4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.</p> <p>(5) No person who shows that he or she has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he or she could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.</p> <p>(6) No person shall be tried for a criminal offence if that person shows that he or she has been lawfully pardoned for that offence.</p> <p>(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.</p> <p>(8) Any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be determined fairly within a reasonable time.</p> <p>(9) All proceedings instituted in any court for the determination of the existence or extent of any civil right or obligation or to try any criminal charge, including the announcement of the decision of the court, shall be held in public.</p> <p>(10) Nothing in subsection (9) shall prevent the court from excluding from the proceedings persons other than the parties and their legal representatives to such extent as the court—</p> <p style="padding-left: 40px;">(a) may be empowered by law so to do and may consider strictly necessary or expedient in circumstances where publicity would prejudice the interests of justice, in interlocutory proceedings, or in the interests of the welfare of minors or the private lives of persons concerned in the proceedings; or</p>

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	<p>(b) may be empowered or required by law so to do in the interests of defence, public safety, public order or public morality.</p> <p>(11) Nothing in any law or done under its authority shall be held to contravene—</p> <p>(a) subsection (2)(a) to the extent that the law in question imposes on any person charged with a criminal offence the burden of proving particular facts;</p> <p>(b) subsection (2)(e) to the extent that the law in question imposes conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds;</p> <p>(c) subsection (5) to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force; but any court so trying such a member and convicting him or her shall in sentencing him or her to any punishment take into account any punishment imposed on him or her under that disciplinary law.</p> <p>(12) Every person convicted of a criminal offence by a court shall have the right to have his or her conviction or sentence reviewed by a higher court, and the exercise of this right, including the grounds on which it may be exercised, shall be governed by law.</p> <p>(13) When a person has by a final decision been convicted of a criminal offence and when subsequently his or her conviction has been reversed, or he or she has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him or her.</p> <p><b>Section 8 (Protection of right of prisoners to humane treatment)</b></p> <p>(1) All persons deprived of their liberty ("prisoners") have the right to be treated with humanity and with respect for the inherent dignity of the human person.</p> <p>(2) Save where the interests of defence, public safety, public order, public morality, public health or the administration of justice otherwise require, unconvicted prisoners shall be segregated from convicted prisoners; and every unconvicted prisoner shall be entitled to be treated in a manner appropriate to his or her status as such.</p>

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	<p>(3) Juvenile prisoners shall be segregated from adult prisoners and every juvenile prisoner shall be treated in a manner appropriate to his or her age and legal status and, if he or she is an unconvicted prisoner and unless he or she is earlier released, be entitled to have any criminal proceedings against him or her pursued with the greatest possible expedition.</p> <p><b>Section 9 (Protection of private and family life and privacy of home and other property)</b></p> <p>(1) Every person has the right to respect for his or her private and family life, his or her home and his or her correspondence.</p> <p>(2) Except with his or her consent, no person shall be subjected to the search of his or her person or property or the entry by others on his or her premises.</p> <p>(3) Nothing in any law or done under its authority shall be held to contravene this section to the extent that it is reasonably justifiable in a democratic society—</p> <ul style="list-style-type: none"> <li>(a) in the interests of defence, public safety, public order, public morality, public health, town or country planning, the developm7ent of mineral resources, or the development or utilisation of any other property in such a manner as to promote the public benefit;</li> <li>(b) for the purpose of protecting the rights and freedoms of other persons;</li> <li>(c) for the prevention or detection of offences against the criminal law or the customs law;</li> <li>(d) to enable an officer or agent of the Government, a local government authority or a body corporate established by law for a public purpose to enter on the premises of any person in order to inspect those premises or anything on them for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to the Government or that authority or body corporate, as the case may be; or</li> <li>(e) to authorise, for the purpose of enforcing the judgment or order of a court, the search of any person or property by order of a court or the entry on such premises by such order.</li> </ul> <p><b>Section 21 (Interpretation)</b></p> <p>(1) "court" means any court of law or tribunal having jurisdiction in Montserrat, including Her Majesty in Council, but excepting, save in section 5, a court established by or under disciplinary law;</p> <p>"legal representative" means a person entitled to practice law in Montserrat;</p>

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	<p>"minor" means a person who has not attained the age of eighteen years;</p> <p><b><u>Criminal Procedure Code (2019)</u></b></p> <p><b>CAP.04.01, Part 12. Indictable Offences: sending cases from the Magistrate's Court to the High Court</b></p> <p><b>Section 68 (Defendant's rights)</b></p> <p>The defendant's rights referred to in section 67(3)(d) are –</p> <ul style="list-style-type: none"> <li>(a) the right to bail, if any;</li> <li>(b) the right to retain counsel, including the right to request an adjournment to retain counsel;</li> <li>(c) the right to have counsel appointed at the expense of the Crown where the defendant has been charged with murder;</li> <li>(d) the right to disclosure by the prosecution before trial in accordance with Part 11;</li> <li>(e) the right to remain silent, except as to plea and the right to know that any statement made by him or her may be used against him or her;</li> <li>(f) the right to enter a plea to the charges;</li> <li>(g) the right to trial, if a not guilty plea is entered; and</li> <li>(h) the right, in the circumstances state</li> </ul> <p><b>Part 15.B – Indictable Cases: preparing and preferring indictment: Restrictions on offences with which accused may be charged</b></p> <p><b>Section 109 (Persons convicted or acquitted not to be tried again for same offence)</b></p> <p>A person who has been once tried by a Court of competent jurisdiction for an offence and acquitted or convicted of the offence, shall not be liable to be tried again on the same facts for the same offence while the acquittal or conviction has not been reversed or set aside.</p> <p><b><u>Evidence Act (2019)</u></b></p> <p><b>Chapter 2.08</b></p> <p><b>Section 5 (Witness not compellable to incriminate himself)</b></p> <p>Nothing in this Act shall render any person charged with a criminal offence compellable to give evidence for or against himself, and no person called as a</p>

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	witness shall be compellable to answer any question tending to incriminate himself.
<p><b>Article 16 – Expedited preservation of stored computer data</b></p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to enable its competent authorities to order or similarly obtain the expeditious preservation of specified computer data, including traffic data, that has been stored by means of a computer system, in particular where there are grounds to believe that the computer data is particularly vulnerable to loss or modification.</p> <p>2 Where a Party gives effect to paragraph 1 above by means of an order to a person to preserve specified stored computer data in the person’s possession or control, the Party shall adopt such legislative and other measures as may be necessary to oblige that person to preserve and maintain the integrity of that computer data for a period of time as long as necessary, up to a maximum of ninety days, to enable the competent authorities to seek its disclosure. A Party may provide for such an order to be subsequently renewed.</p> <p>3 Each Party shall adopt such legislative and other measures as may be necessary to oblige the custodian or other person who is to preserve the computer data to keep confidential the undertaking of such procedures for the period of time provided for by its domestic law.</p> <p>4 The powers and procedures referred to in this article shall be subject to Articles 14 and 15.</p>	
<p><b>Article 17 – Expedited preservation and partial disclosure of traffic data</b></p> <p>1 Each Party shall adopt, in respect of traffic data that is to be preserved under Article 16, such legislative and other measures as may be necessary to:</p> <ul style="list-style-type: none"> <li>a ensure that such expeditious preservation of traffic data is available regardless of whether one or more service providers were involved in the transmission of that communication; and</li> <li>b ensure the expeditious disclosure to the Party’s competent authority, or a person designated by that authority, of a sufficient amount of traffic data to enable the Party to identify the service providers and the path through which the communication was transmitted.</li> </ul>	

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<p>2 The powers and procedures referred to in this article shall be subject to Articles 14 and 15.</p>	
<p><b>Article 18 – Production order</b></p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to order:</p> <p style="padding-left: 40px;">a a person in its territory to submit specified computer data in that person’s possession or control, which is stored in a computer system or a computer-data storage medium; and</p> <p style="padding-left: 40px;">b a service provider offering its services in the territory of the Party to submit subscriber information relating to such services in that service provider’s possession or control.</p> <p>2 The powers and procedures referred to in this article shall be subject to Articles 14 and 15.</p> <p>3 For the purpose of this article, the term “subscriber information” means any information contained in the form of computer data or any other form that is held by a service provider, relating to subscribers of its services other than traffic or content data and by which can be established:</p> <p style="padding-left: 40px;">a the type of communication service used, the technical provisions taken thereto and the period of service;</p> <p style="padding-left: 40px;">b the subscriber’s identity, postal or geographic address, telephone and other access number, billing and payment information, available on the basis of the service agreement or arrangement;</p> <p style="padding-left: 40px;">c any other information on the site of the installation of communication equipment, available on the basis of the service agreement or arrangement.</p>	<p><b><u>Criminal Procedure Code (2019)</u></b></p> <p><b>Part 3.B. Courts, Judges and Parties: Powers of Magistrate, Justice of the Peace and Judge</b></p> <p><b>Section 10 (Powers of magistrate and justice of the peace)</b></p> <p>(1) In respect of its criminal jurisdiction, the magistrate has the powers set out in this Code relating to—</p> <p style="padding-left: 40px;">(a) the administration of oaths;</p> <p style="padding-left: 40px;">(b) the receipt of complaints;</p> <p style="padding-left: 40px;">(c) the issue of criminal process to secure the attendance of persons before it;</p> <p style="padding-left: 40px;">(d) the issue of search warrants;</p> <p style="padding-left: 40px;">(e) the conduct of hearings before trial and the sending of an accused person to the High Court for a Sufficiency Hearing;</p> <p style="padding-left: 40px;">(f) the enforcement of judgments; and</p> <p style="padding-left: 40px;">(g) the making of orders for the forfeiture of any vessel or thing liable to be forfeited on the committing by any person of an offence triable summarily.</p> <p>(2) The magistrate also has the power—(a) to place a person on a bond to keep the peace and be of good behaviour; and (b) to exercise the jurisdiction and powers given to a magistrate, a justice of the peace or two Justices of the Peace, as the case may be, under an enactment of the Parliament of the United Kingdom relating to fugitive offenders or to merchant shipping in force in Montserrat.</p> <p>(3) The powers of a justice of the peace in respect of criminal proceedings are set out in section 13 of the Magistrates Court Act.</p> <p><b>Section 11 (Powers of judge to issue process)</b></p> <p>In addition to the powers conferred on the judge by this Code or any other law, a judge is deemed to have all the powers conferred by this Code or any other law on a magistrate or justice of the peace to issue a summons, arrest warrant, search warrant or other judicial process.</p>

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	<p><b><u>Magistrate's Court Act (2019)</u></b></p> <p><b>Chapter 2.02, Part 2. Jurisdiction</b></p> <p><b>Section 22 (Jurisdiction of the Magistrate's Court)</b></p> <p>The Magistrate's Court shall have jurisdiction</p> <ul style="list-style-type: none"> <li>(a) subject to the Criminal Procedure Code, to examine any power in respect of receiving complaints, informations or other process, or issuing warrants or other process for all offences;</li> <li>(b) subject to the Criminal Procedure Code – <ul style="list-style-type: none"> <li>(i) to try summarily any person charged with an offence triable summarily under the Criminal Code or any other law; and</li> <li>(ii) to conduct any proceedings, other than trial, for all offences;</li> </ul> </li> <li>(f) to exercise such other powers and do such other acts not hereinbefore mentioned as may be prescribed or permitted to be done by the Magistrate or a Justice of the Peace by or under any law for the time being in force in Montserrat.</li> </ul> <p><b>Part 14. Supplementary</b></p> <p><b>Section 144 (Power to issue subpoena)</b></p> <p>In the exercise of its civil jurisdiction under this Act, the Court shall have the same powers to issue a subpoena (to compel a witness to attend before the Court and give evidence or to compel a witness to attend before the Court and to procure documents, records or otherwise as may be specified) as the High Court has under the Supreme Court Act; and section 77 of that Act (with respect to the punishment of disobedience of a subpoena shall apply mutatis mutandis to confer power for the Magistrate to punish any person who refuses or neglects to comply with a subpoena issued by the Magistrate's Court.</p> <p><b>Part 8. Practice and Procedure in Civil Proceedings</b></p> <p><b>Section 80 (Production of documents, etc.)</b></p> <p>The Court may, in any proceeding, order any party or any witness to procure before it any books, papers and documents in his possession, custody or control, the production of which shall appear necessary for the proper determination of the matter in dispute.</p>

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	<p><b><u>Evidence Act (2019)</u></b></p> <p><b>Section 12 (Documents, admissible in England, admissible in Montserrat)</b> Every document, which, by any law now in force, or hereinafter to be in force, is or shall be admissible in evidence in any Court of Justice in England, shall be admissible in evidence in the like manner, to the same extent, and for the same purpose, in any Court in Montserrat, or before any person having by law, or by consent of parties, authority to hear, receive and examine evidence.</p>
<p><b>Article 19 – Search and seizure of stored computer data</b></p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to search or similarly access:</p> <ul style="list-style-type: none"> <li>a a computer system or part of it and computer data stored therein; and</li> <li>b a computer-data storage medium in which computer data may be stored in its territory.</li> </ul> <p>2 Each Party shall adopt such legislative and other measures as may be necessary to ensure that where its authorities search or similarly access a specific computer system or part of it, pursuant to paragraph 1.a, and have grounds to believe that the data sought is stored in another computer system or part of it in its territory, and such data is lawfully accessible from or available to the initial system, the authorities shall be able to expeditiously extend the search or similar accessing to the other system.</p> <p>3 Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to seize or similarly secure computer data accessed according to paragraphs 1 or 2. These measures shall include the power to:</p> <ul style="list-style-type: none"> <li>a seize or similarly secure a computer system or part of it or a computer-data storage medium;</li> <li>b make and retain a copy of those computer data;</li> <li>c maintain the integrity of the relevant stored computer data;</li> <li>d render inaccessible or remove those computer data in the accessed computer system.</li> </ul>	<p><b><u>Criminal Procedure Code (2019)</u></b></p> <p><b>Part 2.A. Provisions relating to powers of investigations: Entry and search under warrant</b></p> <p><b>Section 4 (Search warrants)</b> (1) If a Court or magistrate or justice of the peace is satisfied by evidence on oath that there is reasonable cause to believe that property with respect to which an offence has been committed is in any place, the Court, magistrate or justice of the peace may issue a warrant directed to a police officer or other person to enter and search the place in any part of Montserrat, by reasonable force if necessary, at any time. (2) If the property or any part of it is found, the police officer or person shall seize it and bring the same and the person in whose possession the place is, or a person in the place reasonably suspected of being privy to the property being therein, before the magistrate's court to be dealt with according to law.</p> <p><b>Section 5 (Execution of search warrants)</b> (1) If a place liable to search under a search warrant, issued under section 4, is closed, a person who resides in or is in charge of the place shall, on demand of the police officer or other person executing such warrant and in production to him of the warrant, allow such police officer or person free ingress and egress and afford all reasonable facilities for a search. (2) If ingress or egress from the place cannot be obtained or the person in charge cannot be found, the police officer or other person may use force that is reasonably necessary to break open any outer or inner door or window of the place in order to enter or leave.</p>



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<p>4 Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to order any person who has knowledge about the functioning of the computer system or measures applied to protect the computer data therein to provide, as is reasonable, the necessary information, to enable the undertaking of the measures referred to in paragraphs 1 and 2.</p> <p>5 The powers and procedures referred to in this article shall be subject to Articles 14 and 15.</p>	<p>(3) If a person in or about the place is reasonably suspected of concealing about his person any article for which search should be made, the person may be searched by a person of the same sex and with strict regard to decency.</p> <p>(4) If anything is seized and brought before a Court under powers conferred by any search warrant, it may be retained until the conclusion of the case of investigation in respect of which its seizure was authorised, reasonable care being taken for its preservation.</p> <p>(5) If an appeal is made in the case or if a person is committed for a trial, a Court may order the thing to be retained further for the purpose of the appeal or trial.</p> <p>(6) If no appeal is made or if no person is committed for trial, the Court shall direct the thing to be restored to the person from whom it was taken, unless the Court is authorised and sees fit, or is required by law, to dispose of it otherwise.</p> <p><b><u>Magistrate's Court Act (2019)</u></b></p> <p><b>Part 2. Jurisdiction</b></p> <p><b>Section 22 (Jurisdiction of the Magistrate's Court)</b></p> <p>The Magistrate's Court shall have jurisdiction—</p> <ul style="list-style-type: none"> <li>(a) subject to the Criminal Procedure Code, to exercise any power in respect of receiving complaints, informations or other process, or issuing warrants or other process for all offences;</li> <li>(b) subject to the Criminal Procedure Code— <ul style="list-style-type: none"> <li>(i) to try summarily any person charged with an offence triable summarily under the Criminal Code or any other law; and</li> <li>(ii) to conduct any proceedings, other than trial, for all offences;</li> </ul> </li> <li>(f) to exercise such other powers and do such other acts not hereinbefore mentioned as may be prescribed or permitted to be done by the Magistrate or a Justice of the Peace by or under any law for the time being in force in Montserrat.</li> </ul>
<p><b>Article 20 – Real-time collection of traffic data</b></p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to:</p> <ul style="list-style-type: none"> <li>a collect or record through the application of technical means on the territory of that Party, and</li> <li>b compel a service provider, within its existing technical capability:</li> </ul>	

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<ul style="list-style-type: none"> <li>i to collect or record through the application of technical means on the territory of that Party; or</li> <li>ii to co-operate and assist the competent authorities in the collection or recording of, traffic data, in real-time, associated with specified communications in its territory transmitted by means of a computer system.</li> </ul> <p>2 Where a Party, due to the established principles of its domestic legal system, cannot adopt the measures referred to in paragraph 1.a, it may instead adopt legislative and other measures as may be necessary to ensure the real-time collection or recording of traffic data associated with specified communications transmitted in its territory, through the application of technical means on that territory.</p> <p>3 Each Party shall adopt such legislative and other measures as may be necessary to oblige a service provider to keep confidential the fact of the execution of any power provided for in this article and any information relating to it.</p> <p>4 The powers and procedures referred to in this article shall be subject to Articles 14 and 15.</p>	
<p><b>Article 21 – Interception of content data</b></p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary, in relation to a range of serious offences to be determined by domestic law, to empower its competent authorities to:</p> <ul style="list-style-type: none"> <li>a collect or record through the application of technical means on the territory of that Party, and</li> <li>b compel a service provider, within its existing technical capability: <ul style="list-style-type: none"> <li>i to collect or record through the application of technical means on the territory of that Party, or</li> <li>ii to co-operate and assist the competent authorities in the collection or recording of, content data, in real-time, of specified communications in its territory transmitted by means of a computer system.</li> </ul> </li> </ul>	

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<p>2 Where a Party, due to the established principles of its domestic legal system, cannot adopt the measures referred to in paragraph 1.a, it may instead adopt legislative and other measures as may be necessary to ensure the real-time collection or recording of content data on specified communications in its territory through the application of technical means on that territory.</p> <p>3 Each Party shall adopt such legislative and other measures as may be necessary to oblige a service provider to keep confidential the fact of the execution of any power provided for in this article and any information relating to it.</p> <p>4 The powers and procedures referred to in this article shall be subject to Articles 14 and 15.</p>	
<b>Section 3 – Jurisdiction</b>	
<p><b>Article 22 – Jurisdiction</b></p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish jurisdiction over any offence established in accordance with Articles 2 through 11 of this Convention, when the offence is committed:</p> <ul style="list-style-type: none"> <li>a in its territory; or</li> <li>b on board a ship flying the flag of that Party; or</li> <li>c on board an aircraft registered under the laws of that Party; or</li> <li>d by one of its nationals, if the offence is punishable under criminal law where it was committed or if the offence is committed outside the territorial jurisdiction of any State.</li> </ul> <p>2 Each Party may reserve the right not to apply or to apply only in specific cases or conditions the jurisdiction rules laid down in paragraphs 1.b through 1.d of this article or any part thereof.</p> <p>3 Each Party shall adopt such measures as may be necessary to establish jurisdiction over the offences referred to in Article 24, paragraph 1, of this Convention, in cases where an alleged offender is present in its territory and it does not extradite him or her to another Party, solely on the basis of his or her nationality, after a request for extradition.</p>	<p><b><u>Criminal Procedure Code (2019)</u></b></p> <p><b>Part 3.A. Courts, judges and Parties: Jurisdiction</b></p> <p><b>Section 9 (Jurisdiction over persons)</b></p> <p>(1) The Court has authority to cause to be brought before it a person who is within Montserrat and who is charged with an offence—</p> <ul style="list-style-type: none"> <li>(a) committed within Montserrat; or</li> <li>(b) which according to law may be tried as if it had been committed within Montserrat, and to deal with the accused person according to law and subject to the jurisdiction of the Court concerned.</li> </ul> <p>(2) The Court has jurisdiction over a person accused of committing an offence immediately when, in accordance with Part 5, a summons is served on the person or immediately when the person is arrested either with or without warrant.</p>

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<p>4 This Convention does not exclude any criminal jurisdiction exercised by a Party in accordance with its domestic law.</p> <p>When more than one Party claims jurisdiction over an alleged offence established in accordance with this Convention, the Parties involved shall, where appropriate, consult with a view to determining the most appropriate jurisdiction for prosecution.</p>	
Chapter III – International co-operation	
<p><b>Article 24 – Extradition</b></p> <p>1 a This article applies to extradition between Parties for the criminal offences established in accordance with Articles 2 through 11 of this Convention, provided that they are punishable under the laws of both Parties concerned by deprivation of liberty for a maximum period of at least one year, or by a more severe penalty.</p> <p>b Where a different minimum penalty is to be applied under an arrangement agreed on the basis of uniform or reciprocal legislation or an extradition treaty, including the European Convention on Extradition (ETS No. 24), applicable between two or more parties, the minimum penalty provided for under such arrangement or treaty shall apply.</p> <p>2 The criminal offences described in paragraph 1 of this article shall be deemed to be included as extraditable offences in any extradition treaty existing between or among the Parties. The Parties undertake to include such offences as extraditable offences in any extradition treaty to be concluded between or among them.</p> <p>3 If a Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it does not have an extradition treaty, it may consider this Convention as the legal basis for extradition with respect to any criminal offence referred to in paragraph 1 of this article.</p> <p>4 Parties that do not make extradition conditional on the existence of a treaty shall recognise the criminal offences referred to in paragraph 1 of this article as extraditable offences between themselves.</p>	<p><a href="#"><u>Extradition Act (2013)</u></a></p> <p><b>Notes on Applicable Law</b></p> <p><b>Section 2. (Other Countries)</b></p> <p>2.1 The extradition of persons between Montserrat and other countries not covered by the Commonwealth scheme, is controlled by the (UK) Extradition Act 1870 as amended, and the various orders made under that Act to apply it to reciprocating states. This Act was repealed by the (UK) Extradition Act 1989, but the Orders made under it were saved and they continue to apply.</p> <p>2.2 The (UK) Extradition Act 1870 was extended to Montserrat by section 17 and the Extradition (Montserrat) Order (UK) 1976, No. 54. The (UK) Extradition Act 1870 as amended, with footnotes and a list of countries to whom the Act has been applied, may be found in Volume 17 of Halsburys Statutes of England, under the title Extradition and Fugitive Offenders, (page 478 of the 4<sup>th</sup> edition).</p> <p>2.3 The (UK) Extradition Act 1870 applies to countries only when reciprocal arrangements are made by treaty and a UK Order is made specifying the other country and the arrangements.</p>

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<p>5 Extradition shall be subject to the conditions provided for by the law of the requested Party or by applicable extradition treaties, including the grounds on which the requested Party may refuse extradition.</p> <p>6 If extradition for a criminal offence referred to in paragraph 1 of this article is refused solely on the basis of the nationality of the person sought, or because the requested Party deems that it has jurisdiction over the offence, the requested Party shall submit the case at the request of the requesting Party to its competent authorities for the purpose of prosecution and shall report the final outcome to the requesting Party in due course. Those authorities shall take their decision and conduct their investigations and proceedings in the same manner as for any other offence of a comparable nature under the law of that Party.</p> <p>7 a Each Party shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, communicate to the Secretary General of the Council of Europe the name and address of each authority responsible for making or receiving requests for extradition or provisional arrest in the absence of a treaty.</p> <p>b The Secretary General of the Council of Europe shall set up and keep updated a register of authorities so designated by the Parties. Each Party shall ensure</p>	
<p><b>Article 25 – General principles relating to mutual assistance</b></p> <p>1 The Parties shall afford one another mutual assistance to the widest extent possible for the purpose of investigations or proceedings concerning criminal offences related to computer systems and data, or for the collection of evidence in electronic form of a criminal offence.</p> <p>2 Each Party shall also adopt such legislative and other measures as may be necessary to carry out the obligations set forth in Articles 27 through 35.</p> <p>3 Each Party may, in urgent circumstances, make requests for mutual assistance or communications related thereto by expedited means of communication, including fax or e-mail, to the extent that such means provide appropriate levels of security and authentication (including the use of encryption, where necessary), with formal confirmation to follow, where</p>	<p><b><u>Criminal Justice (International Co-operation) Act (2019)</u></b></p> <p><b>Chapter 4.06, Part 1. Criminal Proceedings and Investigations: Mutual Service of Process</b></p> <p><b>Section 2 (Service of overseas process in Montserrat)</b></p> <p>(1) This section has effect where the Governor receives from the government of, or other authority in, a country or territory outside Montserrat—</p> <p>(a) a summons or other process requiring a person to appear as defendant or attend as a witness in criminal proceedings in that country or territory; or</p> <p>(b) a document issued by a court exercising criminal jurisdiction in that country or territory and recording a decision of the court made in the exercise of the jurisdiction, together with a request for it to be served on a person in Montserrat.</p>

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<p>required by the requested Party. The requested Party shall accept and respond to the request by any such expedited means of communication.</p> <p>4 Except as otherwise specifically provided in articles in this chapter, mutual assistance shall be subject to the conditions provided for by the law of the requested Party or by applicable mutual assistance treaties, including the grounds on which the requested Party may refuse co-operation. The requested Party shall not exercise the right to refuse mutual assistance in relation to the offences referred to in Articles 2 through 11 solely on the ground that the request concerns an offence which it considers a fiscal offence.</p> <p>5 Where, in accordance with the provisions of this chapter, the requested Party is permitted to make mutual assistance conditional upon the existence of dual criminality, that condition shall be deemed fulfilled, irrespective of whether its laws place the offence within the same category of offence or denominate the offence by the same terminology as the requesting Party, if the conduct underlying the offence for which assistance is sought is a criminal offence under its laws.</p>	<p>(2) The Governor may cause the process or document to be served by post or, if the request is for personal service, direct the Commissioner of Police to cause it to be personally served on him.</p> <p>(3) Service by virtue of this section of any such process as is mentioned in subsection (1)(a) above shall not impose any obligation under the law of Montserrat to comply with it.</p> <p>(4) Any such process served by virtue of this section shall be accompanied by a notice—</p> <ul style="list-style-type: none"> <li>(a) stating the effect of subsection (3) above;</li> <li>(b) indicating that the person on whom it is served may wish to seek advice as to the possible consequences of his failing to comply with the process under the law of the country or territory where it was issued; and</li> <li>(c) indicating that under the law he may not, as a witness, be accorded the same rights and privileges as would be accorded to him in criminal proceedings in Montserrat.</li> </ul> <p>(5) Where the Commissioner of Police is directed under this section to cause any process or document to be served he shall after it has been served forthwith inform the Governor when and how it was served and (if possible) furnish him with a receipt signed by the person on whom it was served; and if the Commissioner of Police has been unable to cause the process or document to be served he shall forthwith inform the Governor of that fact and of the reason.</p> <p><b>Section 4 (Appointment of prosecuting authority)</b> The Governor may by Order appoint a prosecuting authority for the purposes of section</p> <p><b>Mutual Provision of Evidence</b> <b>Section 5 (Mutual Provision of Evidence Overseas evidence for use in Montserrat)</b></p> <p>(1) Where on an application made in accordance with subsection (2) it appears to a judge</p> <ul style="list-style-type: none"> <li>(a) that an offence has been committed or that there are reasonable grounds for suspecting that an offence has been committed; and</li> <li>(b) that proceedings in respect of the offence have been instituted or that the offence is being investigated,</li> </ul>

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	<p>he may issue a letter ("a letter of request") requesting assistance in obtaining outside Montserrat such evidence as is specified in the letter for use in the proceedings or investigation.</p> <p>(2) An application under subsection (1) may be made by a prosecuting authority or, if proceedings have been instituted, by the person charged in those proceedings.</p> <p>(3) The prosecuting authority may issue a letter of request if—</p> <ul style="list-style-type: none"> <li>(a) it is satisfied as to the matters mentioned in subsection (1)(a); and</li> <li>(b) the offence in question is being investigated or the authority has instituted proceedings in respect of it.</li> </ul> <p>(4) Subject to subsection (5) a letter of request shall be sent to the Governor for transmission either</p> <ul style="list-style-type: none"> <li>(a) to a court or tribunal specified in the letter and exercising jurisdiction in the place where the evidence is to be obtained; or</li> <li>(b) to any authority recognized by the government of the country or territory in question as the appropriate authority for receiving requests for assistance of the kind to which this section applies.</li> </ul> <p>(5) In cases of urgency a letter or request may be sent direct to such a court or tribunal as is mentioned in subsection (4)(a).</p> <p>(6) In this section "evidence" includes documents and other articles.</p> <p>(7) Evidence obtained by virtue of a letter of request shall not without the consent of such an authority as is mentioned in subsection (4)(b) be used for any purpose other than that specified in the letter; and when any document or other article obtained pursuant to a letter of request is no longer required for that purpose (or for any other purpose for which such consent has been obtained), it shall be returned to such an authority unless that authority indicates that the document or article need not be returned.</p> <p><b>Section 6 (Montserrat evidence for use overseas)</b></p> <p>(1) This section has effect where the Governor receives</p> <ul style="list-style-type: none"> <li>(a) from a court or tribunal exercising criminal jurisdiction in a country or territory outside Montserrat or a prosecuting authority in such a country or territory; or</li> <li>(b) from any other authority in such a country or territory which appears to him to have the function of making requests of the kind to which this section applies,</li> </ul>

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	<p>a request for assistance in obtaining evidence in Montserrat in connection with criminal proceedings that have been instituted, or a criminal investigation that is being carried on, in that country or territory.</p> <p>(2) If the Governor is satisfied</p> <p>(a) that an offence under the law of the country or territory in question has been committed or that there are reasonable grounds for suspecting that such an offence has been committed; and</p> <p>(b) that proceedings in respect of that offence have been instituted in that country or territory or that an investigation into that offence is being carried on there,</p> <p>he may, if he thinks fit, by a notice in writing nominate, with the approval of the Chief Justice, the Magistrate's Court to receive such of the evidence to which the request relates as may appear to the court to be appropriate for the purpose of giving effect to the request.</p> <p>(3) Where it appears to the Governor that the request relates to a fiscal offence in respect of which proceedings have not yet been instituted he shall not exercise his powers under subsection (2) unless</p> <p>(a) the request is from a country or territory which is a member of the Commonwealth or is made pursuant to a treaty to which Montserrat is a party; or</p> <p>(b) he is satisfied that the conduct constituting the offence would constitute an offence of the same or a similar nature if it had occurred in Montserrat.</p> <p>(4) For the purpose of satisfying himself as to the matters mentioned in subsections (2)(a) and (b) the Governor shall regard as conclusive a certificate issued by such authority in the country or territory in question as appears to him to be appropriate.</p> <p>(5) In this section "evidence" includes documents and other articles.</p> <p>(6) Schedule 1 to this Act shall have effect with respect to the proceedings before the Magistrate's Court in pursuance of a notice under subsection (2).</p> <p><b>Section 7 (Transfer of Montserrat prisoner to give evidence or assist investigation overseas)</b></p> <p>(1) The Governor may, if he thinks fit, issue a warrant providing for any person ("a prisoner") serving a sentence in a prison or other institution to which the Prison Act applies to be transferred to a country or territory outside Montserrat for the purpose</p>



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	<p>(a) of giving evidence in criminal proceedings there; or  (b) of being identified in, or otherwise by his presence assisting, such proceedings or the investigation of an offence.</p> <p>(2) No warrant shall be issued under this section in respect of any prisoner unless he has consented to being transferred as mentioned in subsection (1) and that consent may be given either</p> <p>(a) by the prisoner himself; or  (b) in circumstances in which it appears to the Governor inappropriate, by reason of the prisoner's physical or mental condition or his youth, for him to act for himself, by a person appearing to the Governor to be an appropriate person to act on his behalf,</p> <p>but a consent once given shall not be capable of being withdrawn after the issue of the warrant.</p> <p>(3) The effect of a warrant under this section shall be to authorise</p> <p>(a) the taking of the prisoner to a place in Montserrat and his delivery at a place of departure from Montserrat into the custody of a person representing the appropriate authority of the country or territory to which the prisoner is to be transferred; and  (b) the bringing of the prisoner back to Montserrat and his transfer in custody to the place where he is liable to be detained under the sentence to which he is subject.</p> <p>(4) Where a warrant has been issued in respect of a prisoner under this section he shall be deemed to be in legal custody at any time when, being in Montserrat or on board a ship, aircraft or hovercraft, he is being taken under the warrant to or from any place or being kept in custody under the warrant.</p> <p>(5) A person authorised by or for the purposes of the warrant to take the prisoner to or from any place or to keep him in custody shall have all the powers, authority, protection and privileges</p> <p>(a) of a Police Officer of Montserrat where that person is for the time being in Montserrat; or  (b) if he is outside Montserrat, of a Police Officer of Montserrat from where the prisoner is to be taken under the warrant.</p> <p>(6) If the prisoner escapes or is unlawfully at large, he may be arrested without warrant by a Police Officer and taken to any place to which he may be taken under the warrant issued under this section.</p> <p>(7) This section applies to a person in custody awaiting trial or sentence and a person committed to prison for default in paying a fine as it applies to a prisoner</p>

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	and the reference in subsection (3)(b) to a sentence shall be construed accordingly.
<p><b>Article 26 – Spontaneous information</b></p> <p>1 A Party may, within the limits of its domestic law and without prior request, forward to another Party information obtained within the framework of its own investigations when it considers that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings concerning criminal offences established in accordance with this Convention or might lead to a request for co-operation by that Party under this chapter.</p> <p>2 Prior to providing such information, the providing Party may request that it be kept confidential or only used subject to conditions. If the receiving Party cannot comply with such request, it shall notify the providing Party, which shall then determine whether the information should nevertheless be provided. If the receiving Party accepts the information subject to the conditions, it shall be bound by them.</p>	
<p><b>Article 27 – Procedures pertaining to mutual assistance requests in the absence of applicable international agreements</b></p> <p>1 Where there is no mutual assistance treaty or arrangement on the basis of uniform or reciprocal legislation in force between the requesting and requested Parties, the provisions of paragraphs 2 through 9 of this article shall apply. The provisions of this article shall not apply where such treaty, arrangement or legislation exists, unless the Parties concerned agree to apply any or all of the remainder of this article in lieu thereof.</p> <p>2     a     Each Party shall designate a central authority or authorities responsible for sending and answering requests for mutual assistance, the execution of such requests or their transmission to the authorities competent for their execution.</p> <p>          b     The central authorities shall communicate directly with each other;</p> <p>          c     Each Party shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, communicate to</p>	<p><b><u>Criminal Justice (International Co-operation) Act (2019)</u></b></p> <p><b>Part 1. Criminal Proceedings and Investigations, Mutual Service of Process</b></p> <p><b>Section 2 (Service of overseas process in Montserrat)</b></p> <p>(1) This section has effect where the Governor receives from the government of, or other authority in, a country or territory outside Montserrat—</p> <p>      (a) a summons or other process requiring a person to appear as defendant or attend as a witness in criminal proceedings in that country or territory; or</p> <p>      (b) a document issued by a court exercising criminal jurisdiction in that country or territory and recording a decision of the court made in the exercise of the jurisdiction, together with a request for it to be served on a person in Montserrat.</p> <p>(2) The Governor may cause the process or document to be served by post or, if the request is for personal service, direct the Commissioner of Police to cause it to be personally served on him.</p>

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<p>the Secretary General of the Council of Europe the names and addresses of the authorities designated in pursuance of this paragraph;</p> <p>d The Secretary General of the Council of Europe shall set up and keep updated a register of central authorities designated by the Parties. Each Party shall ensure that the details held on the register are correct at all times.</p> <p>3 Mutual assistance requests under this article shall be executed in accordance with the procedures specified by the requesting Party, except where incompatible with the law of the requested Party.</p> <p>4 The requested Party may, in addition to the grounds for refusal established in Article 25, paragraph 4, refuse assistance if:</p> <p>a the request concerns an offence which the requested Party considers a political offence or an offence connected with a political offence, or</p> <p>b it considers that execution of the request is likely to prejudice its sovereignty, security, <i>ordre public</i> or other essential interests.</p> <p>5 The requested Party may postpone action on a request if such action would prejudice criminal investigations or proceedings conducted by its authorities.</p> <p>6 Before refusing or postponing assistance, the requested Party shall, where appropriate after having consulted with the requesting Party, consider whether the request may be granted partially or subject to such conditions as it deems necessary.</p> <p>7 The requested Party shall promptly inform the requesting Party of the outcome of the execution of a request for assistance. Reasons shall be given for any refusal or postponement of the request. The requested Party shall also inform the requesting Party of any reasons that render impossible the execution of the request or are likely to delay it significantly.</p> <p>8 The requesting Party may request that the requested Party keep confidential the fact of any request made under this chapter as well as its subject, except to the extent necessary for its execution. If the requested Party cannot comply with the request for confidentiality, it shall promptly</p>	<p>(3) Service by virtue of this section of any such process as is mentioned in subsection (1)(a) above shall not impose any obligation under the law of Montserrat to comply with it.</p> <p>(4) Any such process served by virtue of this section shall be accompanied by a notice—</p> <p>(a) stating the effect of subsection (3) above;</p> <p>(b) indicating that the person on whom it is served may wish to seek advice as to the possible consequences of his failing to comply with the process under the law of the country or territory where it was issued; and</p> <p>(c) indicating that under the law he may not, as a witness, be accorded the same rights and privileges as would be accorded to him in criminal proceedings in Montserrat.</p> <p>(5) Where the Commissioner of Police is directed under this section to cause any process or document to be served he shall after it has been served forthwith inform the Governor when and how it was served and (if possible) furnish him with a receipt signed by the person on whom it was served; and if the Commissioner of Police has been unable to cause the process or document to be served he shall forthwith inform the Governor of that fact and of the reason.</p> <p><b>Section 3 (Service of Montserrat process overseas)</b></p> <p>(1) Process of the following descriptions, that is to say—</p> <p>(a) a summons requiring a person charged with an offence to appear before a court in Montserrat; and</p> <p>(b) a summons or order requiring a person to attend before a court in Montserrat for the purpose of giving evidence in criminal proceedings, may be issued or made notwithstanding that the person in question is outside Montserrat and may be served outside Montserrat in accordance with arrangements made by the Governor.</p> <p>(2) Service of any process outside Montserrat by virtue of this section shall not impose any obligation under the law of Montserrat to comply with it and accordingly failure to do so shall not constitute contempt of any court or be a ground for issuing a warrant to secure the attendance of the person in question for imposing any penalty.</p> <p>(3) Subsection (2) above is without prejudice to the service of any process (with the usual consequences for non-compliance) on the person in question if subsequently effected in Montserrat.</p>

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<p>inform the requesting Party, which shall then determine whether the request should nevertheless be executed.</p> <p>9 a In the event of urgency, requests for mutual assistance or communications related thereto may be sent directly by judicial authorities of the requesting Party to such authorities of the requested Party. In any such cases, a copy shall be sent at the same time to the central authority of the requested Party through the central authority of the requesting Party.</p> <p>b Any request or communication under this paragraph may be made through the International Criminal Police Organisation (Interpol).</p> <p>c Where a request is made pursuant to sub-paragraph a. of this article and the authority is not competent to deal with the request, it shall refer the request to the competent national authority and inform directly the requesting Party that it has done so.</p> <p>d Requests or communications made under this paragraph that do not involve coercive action may be directly transmitted by the competent authorities of the requesting Party to the competent authorities of the requested Party.</p> <p>e Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, inform the Secretary General of the Council of Europe that, for reasons of efficiency, requests made under this paragraph are to be addressed to its central authority.</p>	<p><b>Mutual Provision of Evidence</b></p> <p><b>Section 5 (Mutual Provision of Evidence Overseas evidence for use in Montserrat)</b></p> <p>(1) Where on an application made in accordance with subsection (2) it appears to a judge</p> <ul style="list-style-type: none"> <li>(a) that an offence has been committed or that there are reasonable grounds for suspecting that an offence has been committed; and</li> <li>(b) that proceedings in respect of the offence have been instituted or that the offence is being investigated,</li> </ul> <p>he may issue a letter ("a letter of request") requesting assistance in obtaining outside Montserrat such evidence as is specified in the letter for use in the proceedings or investigation.</p> <p>(2) An application under subsection (1) may be made by a prosecuting authority or, if proceedings have been instituted, by the person charged in those proceedings.</p> <p>(3) The prosecuting authority may issue a letter of request if-</p> <ul style="list-style-type: none"> <li>(a) it is satisfied as to the matters mentioned in subsection (1)(a); and</li> <li>(b) the offence in question is being investigated or the authority has instituted proceedings in respect of it.</li> </ul> <p>(4) Subject to subsection (5) a letter of request shall be sent to the Governor for transmission either</p> <ul style="list-style-type: none"> <li>(a) to a court or tribunal specified in the letter and exercising jurisdiction in the place where the evidence is to be obtained; or</li> <li>(b) to any authority recognized by the government of the country or territory in question as the appropriate authority for receiving requests for assistance of the kind to which this section applies.</li> </ul> <p>(5) In cases of urgency a letter or request may be sent direct to such a court or tribunal as is mentioned in subsection (4)(a).</p> <p>(6) In this section "evidence" includes documents and other articles.</p> <p>(7) Evidence obtained by virtue of a letter of request shall not without the consent of such an authority as is mentioned in subsection (4)(b) be used for any purpose other than that specified in the letter; and when any document or other article obtained pursuant to a letter of request is no longer required for that purpose (or for any other purpose for which such consent has been obtained), it shall be returned to such an authority unless that authority indicates that the document or article need not be returned.</p>

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	<p><b>Section 6 (Montserrat evidence for use overseas)</b></p> <p>(1) This section has effect where the Governor receives</p> <ul style="list-style-type: none"> <li>(a) from a court or tribunal exercising criminal jurisdiction in a country or territory outside Montserrat or a prosecuting authority in such a country or territory; or</li> <li>(b) from any other authority in such a country or territory which appears to him to have the function of making requests of the kind to which this section applies,</li> </ul> <p>a request for assistance in obtaining evidence in Montserrat in connection with criminal proceedings that have been instituted, or a criminal investigation that is being carried on, in that country or territory.</p> <p>(2) If the Governor is satisfied</p> <ul style="list-style-type: none"> <li>(a) that an offence under the law of the country or territory in question has been committed or that there are reasonable grounds for suspecting that such an offence has been committed; and</li> <li>(b) that proceedings in respect of that offence have been instituted in that country or territory or that an investigation into that offence is being carried on there,</li> </ul> <p>he may, if he thinks fit, by a notice in writing nominate, with the approval of the Chief Justice, the Magistrate's Court to receive such of the evidence to which the request relates as may appear to the court to be appropriate for the purpose of giving effect to the request.</p> <p>(3) Where it appears to the Governor that the request relates to a fiscal offence in respect of which proceedings have not yet been instituted he shall not exercise his powers under subsection (2) unless</p> <ul style="list-style-type: none"> <li>(a) the request is from a country or territory which is a member of the Commonwealth or is made pursuant to a treaty to which Montserrat is a party; or</li> <li>(b) he is satisfied that the conduct constituting the offence would constitute an offence of the same or a similar nature if it had occurred in Montserrat.</li> </ul> <p>(4) For the purpose of satisfying himself as to the matters mentioned in subsections (2)(a) and (b) the Governor shall regard as conclusive a certificate issued by such authority in the country or territory in question as appears to him to be appropriate.</p> <p>(5) In this section "evidence" includes documents and other articles.</p>

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	<p>(6) Schedule 1 to this Act shall have effect with respect to the proceedings before the Magistrate's Court in pursuance of a notice under subsection (2).</p> <p><b>Section 7 (Transfer of Montserrat prisoner to give evidence or assist investigation overseas)</b></p> <p>(1) The Governor may, if he thinks fit, issue a warrant providing for any person ("a prisoner") serving a sentence in a prison or other institution to which the Prison Act applies to be transferred to a country or territory outside Montserrat for the purpose</p> <ul style="list-style-type: none"> <li>(a) of giving evidence in criminal proceedings there; or</li> <li>(b) of being identified in, or otherwise by his presence assisting, such proceedings or the investigation of an offence.</li> </ul> <p>(2) No warrant shall be issued under this section in respect of any prisoner unless he has consented to being transferred as mentioned in subsection (1) and that consent may be given either</p> <ul style="list-style-type: none"> <li>(a) by the prisoner himself; or</li> <li>(b) in circumstances in which it appears to the Governor inappropriate, by reason of the prisoner's physical or mental condition or his youth, for him to act for himself, by a person appearing to the Governor to be an appropriate person to act on his behalf,</li> </ul> <p>but a consent once given shall not be capable of being withdrawn after the issue of the warrant.</p> <p>(3) The effect of a warrant under this section shall be to authorise</p> <ul style="list-style-type: none"> <li>(a) the taking of the prisoner to a place in Montserrat and his delivery at a place of departure from Montserrat into the custody of a person representing the appropriate authority of the country or territory to which the prisoner is to be transferred; and</li> <li>(b) the bringing of the prisoner back to Montserrat and his transfer in custody to the place where he is liable to be detained under the sentence to which he is subject.</li> </ul> <p>(4) Where a warrant has been issued in respect of a prisoner under this section he shall be deemed to be in legal custody at any time when, being in Montserrat or on board a ship, aircraft or hovercraft, he is being taken under the warrant to or from any place or being kept in custody under the warrant.</p> <p>(5) A person authorised by or for the purposes of the warrant to take the prisoner to or from any place or to keep him in custody shall have all the powers, authority, protection and privileges</p>

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	<p>(a) of a Police Officer of Montserrat where that person is for the time being in Montserrat; or</p> <p>(b) if he is outside Montserrat, of a Police Officer of Montserrat from where the prisoner is to be taken under the warrant.</p> <p>(6) If the prisoner escapes or is unlawfully at large, he may be arrested without warrant by a Police Officer and taken to any place to which he may be taken under the warrant issued under this section.</p> <p>(7) This section applies to a person in custody awaiting trial or sentence and a person committed to prison for default in paying a fine as it applies to a prisoner and the reference in subsection (3)(b) to a sentence shall be construed accordingly.</p> <p><b>Section 8 (Transfer of overseas prisoner to give evidence or assist in investigation in Montserrat)</b></p> <p>(1) This section has effect where—</p> <p>(a) a witness order has been made or a witness summons or citation issued in criminal proceedings in Montserrat in respect of a person ("a prisoner") who is detained in custody in a country or territory outside Montserrat by virtue of a sentence or order of a court or tribunal exercising criminal jurisdiction in that country or territory; or</p> <p>(b) it appears to the Governor that it is desirable for a prisoner to be identified in, or otherwise by his presence to assist, such proceedings or the investigation in Montserrat of an offence.</p> <p>(2) If the Governor is satisfied that the appropriate authority in the country or territory where the prisoner is detained will make arrangements for him to come to Montserrat to give evidence pursuant to the witness order, witness summons or citation or, as the case may be, for the purpose mentioned in subsection (1)(b), he may issue a warrant under this section.</p> <p>(3) No warrant shall be issued under this section in respect of any prisoner unless he has consented to being brought to Montserrat to give evidence as aforesaid or, as the case may be, for the purpose mentioned in subsection (1)(b) but a consent once given shall not be capable of being withdrawn after the issue of the warrant.</p> <p>(4) The effect of the warrant shall be to authorise—</p> <p>(a) the bringing of the prisoner to Montserrat;</p> <p>(b) the taking of the prisoner to, and his detention in custody at, such place or places in Montserrat as are specified in the warrant; and</p>

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	<p>(c) the returning of the prisoner to the country or territory from which he has come.</p> <p>(5) Section 6(4) to (6) shall have effect in relation to a warrant issued under this section as they have effect in relation to a warrant issued under that section.</p> <p>(6) A person shall not be subject to the Immigration Act in respect of his entry into or presence in Montserrat in pursuance of a warrant under this section but if the warrant ceases to have effect while he is still in Montserrat—</p> <p>(a) he shall be treated for the purpose of that Act as if he has then illegally entered Montserrat; and</p> <p>(b) the provisions of that Act shall have effect for the removal of such person and no liability shall attach to any carrier by which he was brought to Montserrat.</p> <p>(7) This section applies to a person detained in custody in a country or territory outside Montserrat in consequence of having been transferred there—</p> <p>(a) from Montserrat under the Repatriation of Prisoners Act 1984 (UK) as modified and extended to Montserrat by the Overseas Territories Order (S.I. 1986 No. 2226); or</p> <p>(b) under any similar provision or arrangement from any other country or territory,</p> <p>as it applies to a person detained as mentioned in subsection (1).</p> <p><b>Additional Co-operation Powers</b></p> <p><b>Section 9 (Search, etc. for material relevant to overseas investigation)</b></p> <p>(1) The provisions of the Criminal Procedure Code Act (powers of entry, search and seizure) shall have effect as if references to serious arrestable offences included any conduct which is an offence under the law of a country or territory outside Montserrat and would constitute a serious arrestable offence if it had occurred in Montserrat.</p> <p>(2) In this section, “serious arrestable offence” means an indictable offence. (Inserted by Act 18 of 2012)</p> <p>(3) If, on an application made by a Police Officer, a Magistrate is satisfied—</p> <p>(a) that criminal proceedings have been instituted against a person in a country or territory outside Montserrat or that a person has been arrested in the course of a criminal investigation carried on their;</p> <p>(b) that the conduct constituting the offence which is the subject of the proceedings or investigation would constitute an arrestable offence within the meaning of the Penal Code if it had occurred in Montserrat; and</p>



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	<p>(c) that there are reasonable grounds for suspecting that there is on premises in Montserrat evidence relating to the offence other than items subject to legal privilege within the meaning of that Code,</p> <p>he may issue a warrant authorising a Police Officer to enter and search those premises and to seize any such evidence found there.</p> <p>(4) The power to search conferred by subsection (3) is only a power to search to the extent that is reasonably required for the purpose of discovering such evidence as is there mentioned.</p> <p>(5) No application for a warrant or order shall be made by virtue of subsection (1) or (3) except in pursuance of a direction given by the Governor in response to a request received—</p> <p>(a) from a court or tribunal exercising criminal jurisdiction in the overseas country or territory in question or a prosecuting authority in that country or territory; or</p> <p>(b) from any other authority in that country or territory which appears to him to have the function of making requests for the purposes of this section, and any evidence seized by a police officer by virtue of this section shall be furnished by him to the Governor for transmission to that court, tribunal or authority.</p> <p>(6) If in order to comply with the request it is necessary for any such evidence to be accompanied by any certificate, affidavit or other verifying document the police officer shall also furnish for transmission such document of that nature as may be specified in the direction given by the Governor.</p> <p>(7) Where the evidence consists of a document the original or a copy shall be transmitted, and where it consists of any other article the article itself or a description, photograph or other representation of it shall be transmitted, as may be necessary in order to comply with the request.</p> <p>(8) The Governor may by order direct that any powers which by virtue of this section are exercisable by a police officer shall also be exercisable by, or by any person acting under the direction of, the Comptroller of Customs and Excise and the Governor may by order direct that any of those powers shall also be exercisable by a person of any other description specified in the order.</p> <p>(9) An order under subsection (8) shall be made by Statutory Rules and Orders subject to annulment by a Secretary of State on a resolution made by the Legislative Assembly. (Amended by Acts 6 of 2004 and 9 of 2011)</p>

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	<p><b>Section 10 (Enforcement of overseas forfeiture orders)</b></p> <p>(1) The Governor acting on the advice of Cabinet may by order provide for the enforcement in Montserrat of any order which—</p> <ul style="list-style-type: none"> <li>(a) is made by a court in a country or territory outside Montserrat designated for the purposes of this section by the order; and</li> <li>(b) is for the forfeiture and destruction, or the forfeiture and other disposal, of anything in respect of which an offence to which this section applies has been committed or which was used in connection with the commission of such an offence.</li> </ul> <p>(2) Without prejudice to the generality of subsection (1) an order under this section may provide for the registration by a court in Montserrat of any order as a condition of its enforcement and prescribe requirements to be satisfied before an order can be registered.</p> <p>(3) An order under this section may include such supplementary and incidental provisions as appear to the Governor acting on the advice of Cabinet to be necessary or expedient and may apply for the purposes of the order (with such modifications as appear to the Governor acting on the advice of Cabinet to be appropriate) any provisions relating to confiscation or forfeiture orders under any other enactment.</p> <p>(4) An order under this section may make different provision for different cases.</p> <p>(5) No order shall be made under this section unless a draft of it has been laid before and approved by a resolution of the Assembly.</p>
<p><b>Article 28 – Confidentiality and limitation on use</b></p> <p>1 When there is no mutual assistance treaty or arrangement based on uniform or reciprocal legislation in force between the requesting and the requested Parties, the provisions of this article shall apply. The provisions of this article shall not apply where such treaty, arrangement or legislation exists, unless the Parties concerned agree to apply any or all the remainder of this article in lieu thereof.</p> <p>2 The requested Party may make the supply of information or material in response to a request dependent on the condition that it is:</p> <ul style="list-style-type: none"> <li>a kept confidential where the request for mutual legal assistance could not be complied with in the absence of such condition, or</li> <li>b not used for investigations or proceedings other than those stated in the request.</li> </ul>	

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<p>3 If the requesting Party cannot comply with a condition referred to in paragraph 2, it shall promptly inform the other Party, which shall then determine whether the information should nevertheless be provided. When the requesting Party accepts the condition, it shall be bound by it.</p> <p>4 Any Party that supplies information or material subject to a condition referred to in paragraph 2 may require the other Party to explain, in relation to that condition, the use made of such information or material.</p>	
<p><b>Article 29 – Expedited preservation of stored computer data</b></p> <p>1 A Party may request another Party to order or otherwise obtain the expeditious preservation of data stored by means of a computer system, located within the territory of that other Party and in respect of which the requesting Party intends to submit a request for mutual assistance for the search or similar access, seizure or similar securing, or disclosure of the data.</p> <p>2 A request for preservation made under paragraph 1 shall specify:</p> <ul style="list-style-type: none"> <li>a the authority seeking the preservation;</li> <li>b the offence that is the subject of a criminal investigation or proceedings and a brief summary of the related facts;</li> <li>c the stored computer data to be preserved and its relationship to the offence;</li> <li>d any available information identifying the custodian of the stored computer data or the location of the computer system;</li> <li>e the necessity of the preservation; and</li> <li>f that the Party intends to submit a request for mutual assistance for the search or similar access, seizure or similar securing, or disclosure of the stored computer data.</li> </ul> <p>3 Upon receiving the request from another Party, the requested Party shall take all appropriate measures to preserve expeditiously the specified data in accordance with its domestic law. For the purposes of responding to a request, dual criminality shall not be required as a condition to providing such preservation.</p>	

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<p>4 A Party that requires dual criminality as a condition for responding to a request for mutual assistance for the search or similar access, seizure or similar securing, or disclosure of stored data may, in respect of offences other than those established in accordance with Articles 2 through 11 of this Convention, reserve the right to refuse the request for preservation under this article in cases where it has reasons to believe that at the time of disclosure the condition of dual criminality cannot be fulfilled.</p> <p>5 In addition, a request for preservation may only be refused if:</p> <p style="padding-left: 40px;">a the request concerns an offence which the requested Party considers a political offence or an offence connected with a political offence, or</p> <p style="padding-left: 40px;">b the requested Party considers that execution of the request is likely to prejudice its sovereignty, security, <i>ordre public</i> or other essential interests.</p> <p>6 Where the requested Party believes that preservation will not ensure the future availability of the data or will threaten the confidentiality of or otherwise prejudice the requesting Party's investigation, it shall promptly so inform the requesting Party, which shall then determine whether the request should nevertheless be executed.</p> <p>7 Any preservation effected in response to the request referred to in paragraph 1 shall be for a period not less than sixty days, in order to enable the requesting Party to submit a request for the search or similar access, seizure or similar securing, or disclosure of the data. Following the receipt of such a request, the data shall continue to be preserved pending a decision on that request.</p>	
<p><b>Article 30 – Expedited disclosure of preserved traffic data</b></p> <p>1 Where, in the course of the execution of a request made pursuant to Article 29 to preserve traffic data concerning a specific communication, the requested Party discovers that a service provider in another State was involved in the transmission of the communication, the requested Party shall expeditiously disclose to the requesting Party a sufficient amount of traffic data to identify that service provider and the path through which the communication was transmitted.</p>	

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<p>2 Disclosure of traffic data under paragraph 1 may only be withheld if:</p> <ul style="list-style-type: none"> <li>a the request concerns an offence which the requested Party considers a political offence or an offence connected with a political offence; or</li> <li>b the requested Party considers that execution of the request is likely to prejudice its sovereignty, security, <i>ordre public</i> or other essential interests.</li> </ul>	
<p><b>Article 31 – Mutual assistance regarding accessing of stored computer data</b></p> <p>1 A Party may request another Party to search or similarly access, seize or similarly secure, and disclose data stored by means of a computer system located within the territory of the requested Party, including data that has been preserved pursuant to Article 29.</p> <p>2 The requested Party shall respond to the request through the application of international instruments, arrangements and laws referred to in Article 23, and in accordance with other relevant provisions of this chapter.</p> <p>3 The request shall be responded to on an expedited basis where:</p> <ul style="list-style-type: none"> <li>a there are grounds to believe that relevant data is particularly vulnerable to loss or modification; or</li> <li>b the instruments, arrangements and laws referred to in paragraph 2 otherwise provide for expedited co-operation.</li> </ul>	
<p><b>Article 32 – Trans-border access to stored computer data with consent or where publicly available</b></p> <p>A Party may, without the authorisation of another Party:</p> <ul style="list-style-type: none"> <li>a access publicly available (open source) stored computer data, regardless of where the data is located geographically; or</li> <li>b access or receive, through a computer system in its territory, stored computer data located in another Party, if the Party obtains the lawful and voluntary consent of the person who has the lawful authority to disclose the data to the Party through that computer system.</li> </ul>	
<p><b>Article 33 – Mutual assistance in the real-time collection of traffic data</b></p> <p>1 The Parties shall provide mutual assistance to each other in the real-time collection of traffic data associated with specified communications in their</p>	

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<p>territory transmitted by means of a computer system. Subject to the provisions of paragraph 2, this assistance shall be governed by the conditions and procedures provided for under domestic law.</p> <p>2 Each Party shall provide such assistance at least with respect to criminal offences for which real-time collection of traffic data would be available in a similar domestic case.</p>	
<p><b>Article 34 – Mutual assistance regarding the interception of content data</b></p> <p>The Parties shall provide mutual assistance to each other in the real-time collection or recording of content data of specified communications transmitted by means of a computer system to the extent permitted under their applicable treaties and domestic laws.</p>	
<p><b>Article 35 – 24/7 Network</b></p> <p>1 Each Party shall designate a point of contact available on a twenty-four hour, seven-day-a-week basis, in order to ensure the provision of immediate assistance for the purpose of investigations or proceedings concerning criminal offences related to computer systems and data, or for the collection of evidence in electronic form of a criminal offence. Such assistance shall include facilitating, or, if permitted by its domestic law and practice, directly carrying out the following measures:</p> <ul style="list-style-type: none"> <li>a the provision of technical advice;</li> <li>b the preservation of data pursuant to Articles 29 and 30;</li> <li>c the collection of evidence, the provision of legal information, and locating of suspects.</li> </ul> <p>2</p> <ul style="list-style-type: none"> <li>a A Party's point of contact shall have the capacity to carry out communications with the point of contact of another Party on an expedited basis.</li> <li>b If the point of contact designated by a Party is not part of that Party's authority or authorities responsible for international mutual assistance or extradition, the point of contact shall ensure that it is able to co-ordinate with such authority or authorities on an expedited basis.</li> </ul>	

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3 Each Party shall ensure that trained and equipped personnel are available, in order to facilitate the operation of the network.	
<b>Article 42 – Reservations</b> By a written notification addressed to the Secretary General of the Council of Europe, any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it avails itself of the reservation(s) provided for in Article 4, paragraph 2, Article 6, paragraph 3, Article 9, paragraph 4, Article 10, paragraph 3, Article 11, paragraph 3, Article 14, paragraph 3, Article 22, paragraph 2, Article 29, paragraph 4, and Article 41, paragraph 1. No other reservation may be made.	