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GRENADA

ACT NO. 1 OF 2018

I assent,



26th January, 2018.

CÉCILE E. F. LA GRENADE
Governor-General.

AN ACT to amend the Public Procurement and Disposal of
Public Property Act No. 39 of 2014.

[26th January, 2018].

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives and by the authority of the same as follows—

1. This Act may be cited as the

Short title.

**PUBLIC PROCUREMENT AND DISPOSAL OF
PUBLIC PROPERTY (AMENDMENT) ACT, 2018,**

and shall be read as one with the Public Procurement and Disposal of Public Property Act No. 39 of 2014, hereinafter referred to as the “principal Act”.

Amendment
to section 2 of
principal Act.

2. Section 2 of the principal Act is amended as follows—

(a) by inserting the following definitions in the appropriate alphabetical order—

““Accountable Officer” is assigned the definition pursuant to section 2 of the Public Finance Management Act, 2015;”;

““Central Disposal Committee” means the Central Disposal Committee established under section 56;”;

““Central Procurement Unit” means the Central Procurement Unit established under section 7A;”;

““Director of Public Procurement” means the Director of Public Procurement appointed under section 7 (3);”;

““Line Minister” means generally the Minister who is the head of a Line Ministry;”;

““Line Ministry” means generally a Ministry, other than the Ministry of Finance of Grenada;”;

““Office” means the Office of Public Procurement established under section 6;”;

““working day” excludes Saturdays, Sundays and bank holidays;”;

- (b) by repealing the definition of “Board” and substituting therefor the following new definition—

““Board” means the Board appointed under section 6 (2);”;

- (c) by repealing the definition of “Chief Procurement Officer” and substituting therefor the following new definition—

““Chief Procurement Officer” means the Chief Procurement Officer under section 7A (5);”.

3. Section 3 of the principal Act is amended in subsection (1) by repealing paragraph (f) and substituting therefor the following new paragraph—

Amendment to section 3 of principal Act.

- “(f) promote local industry, sustainable development and protection of the environment;”.

4.—(1) The principal Act is amended by repealing section 6 and substituting therefor the following new section—

Amendment to section 6 of principal Act.

“Establishment of Office of Public Procurement.

6.—(1) There is hereby established a body to be called the Office of Public Procurement.

(2) The Office shall be managed by a Board appointed in accordance with the terms and conditions set out in Schedule I.

(3) The Board shall conduct the business and affairs of the Office in accordance with Schedule II.

(4) In respect of every procurement above the prescribed threshold, the Board shall be responsible for—

- (a) approving the membership of the evaluation committee above the prescribed threshold upon proposal by accountable officer of the respective procuring entity;
- (b) conducting the tender opening above the prescribed threshold;
- (c) providing a “Certificate of ‘No-objection’ for Contract Award” in accordance with the prescribed thresholds;
- (d) providing prior written approval for the use of procurement methods other than open competitive tendering above the prescribed threshold;
- (e) issuing and reviewing general procedures in relation to public procurement and the disposal of public property; and
- (f) approving in respect of each procuring entity, which is a state controlled enterprise or a statutory body, special procedures and guidelines in relation to public procurement and the disposal of public property under section 55 (4) after consultation with the Line Minister.

(5) In the performance of its functions, the Office shall—

- (a) act expeditiously and take such other steps as it thinks fit in order to minimise any negative economic impact arising out of the performance of its functions;
- (b) report to the Minister;
- (c) issue directions to public entities to ensure compliance with this Act and the Regulations;
- (d) where a reason exists, notify the relevant authorities and cause to be audited, inspected or reviewed any procurement or disposal of public property transaction to ensure compliance with the provisions of this Act and the Regulations;
- (e) enforce the monetary and prior review thresholds as are prescribed for the application of the provisions of this Act by the procuring entities;
- (f) from time to time stipulate to all procuring entities the procedures and documentation pre-requisite for the issuance of a “Certificate of ‘No-Objection’ for Contract Award” under this Act;

- (g) manage public procurement and disposal of public property within its jurisdiction in accordance with the provisions of this Act and the Regulations;
- (h) supervise the implementation of established procurement and disposal of public property policies;
- (i) only in accordance with the Regulations on debarment, debar any supplier, contractor, consultant or service provider for just cause under this Act and Regulations;
- (j) initiate public procurement policy and propose amendments to this Act or to the Regulations;
- (k) prepare advice for the Cabinet on matters relating to public sector procurement and disposal of public property;
- (l) promote the application of fair, competitive, transparent, value-for-money standards and practices for the procurement and disposal of public assets and services;
- (m) monitor and report on the functioning of public procurement and the disposal of public property;

- (n) support the implementation and operation of the public procurement system in accordance with this Act and the Regulations and in doing so—
 - (i) establish and disseminate mandatory forms and templates for use by procuring entities including but not limited to: annual and contract specific procurement plans, standard tender documents for all types of procurement (requests for quotation, tendering, pre-qualification etc.), standard forms of contract, advertisement notices, contract award notices and templates for maintaining records;
 - (ii) provide advice and assistance to procuring entities;
 - (iii) develop a procurement methodology for the purchase of common use items including the use of centralised procurement and framework contracting;
 - (iv) develop, promote and support the training and professional development of persons involved in procurement;
 - (v) foster improvements with the use of technology in public pro-

curement including electronic trading;

(vi) develop a procurement methodology for the purchase of common use items including the use of centralised procurement and framework contracting; and

(vii) do such other things as it considers necessary or expedient for the efficient performance of its functions under this Act and the Regulations.

(6) The Office may, upon such terms and conditions as the Office may determine, hire the services of such consultants, experts or independent investigators as may be necessary for the proper performance of its functions under this Act and the Regulations.”.

(2) The principal Act is amended in sections 8 (2), 11 (1), 12 (7), 12 (9), 22, 46, 47, 51 (a), 53, 55 (4), 55 (5) (a), 55 (6), 57 (6) (b), 58, 62, 63 (2) and 65 (a) (i) and Schedule II as follows—

- (a) by deleting the word “Board” wherever it appears and substituting therefor the word “Office”; and
- (b) by deleting the word “Board’s” wherever it appears and substituting therefor the word “Office’s”.

(3) Notwithstanding subsection (1), upon commencement of this section—

- (a) the Public Procurement Board established under section 6 (1) of the principal Act is dissolved and the Office of Public Procurement under the new section 6 (1) inserted to the principal Act by subsection (1) becomes the successor;
- (b) the members of the Public Procurement Board appointed under section 6 (3) and Schedule I to the principal Act shall be deemed to have been appointed as the members of the Board under the new section 6 (4) inserted to the principal Act by subsection (1) and Schedule I as amended by section 27 of this Act; and
- (c) the assets and liabilities of the Public Procurement Board established under the principal Act are transferred to and become the assets and liabilities of the Office of Public Procurement.”.

5. The principal Act is amended by repealing section 7 and substituting therefor the following new section—

Amendment to section 7 of principal Act.

“Staff of the Office.

7.—(1) The Board shall appoint staff of the Office as the Board considers necessary to provide administrative, technical, secretarial and other support for the Office, including the following functions—

- (a) establishing and maintaining an archival system of all public procurements and public property disposals, as prescribed by the Regulations;
- (b) establishing or maintaining a single internet portal that shall serve as a primary and definitive source of all information on public procurement and disposal of public property containing and displaying all public sector procurement and disposal of public property information at all times;
- (c) maintaining a list of firms and persons that have been debarred from participating in public procurement activities and publish them;
- (d) maintaining an up-to-date register of suppliers and contractors in works, goods and services, or any combination thereof, in order to be cognisant at all times of the workload and performance record of each supplier and contractor; and
- (e) using information provided by the Office and procuring entities, establishing a comprehensive database available for public access with information on procurement

processes, submissions received, the award and value of procurement contracts and such other information of public interest as the Board determines.

(2) The Public Service Commission may, subject to such conditions as it may impose, approve appointment or secondment of an officer in the public service to the Office and an officer so appointed or seconded shall, in relation to pension, gratuity or other allowances, and in relation to other rights as a public officer, be treated as continued service in the public service in Grenada.

(3) The Board shall, on such terms and conditions as it thinks fit, appoint a Director of Public Procurement who—

- (a) may, in accordance with subsection (2), be a public officer;
- (b) shall be responsible for management of the staff of the Office; and
- (c) for the purposes of discharging his or her duties, shall be present at all meetings of the Board, unless he or she has obtained leave of absence from the Chairperson or is incapacitated by illness or other cause from attending.”.

Insertion of
new section
7A to principal
Act.

6. The principal Act is amended by inserting after section 7 the following new section—

“Central
Procurement
Unit

7A.—(1) A Central Procurement Unit is hereby established in the Ministry of Finance to—

- (a) carry out, on behalf of selected or all procuring entities, the purchase of common-use items either under individual contract arrangements or framework contract arrangements;
- (b) conduct procurement on the behalf of the Ministry of Finance;
- (c) manage the disposal of government property pursuant to Part IX; and
- (d) conduct any other activities relating to procurement, as the Minister of Finance may determine.

(2) The Central Procurement Unit shall prepare an annual procurement plan in respect of every major item of expenditure for procurements envisaged to be purchased in any financial year, and shall maintain records of particulars with respect to ad-hoc procurements in the format as provided by the Board.

(3) The Central Procurement Unit may also conduct procurement on behalf of another Government department pursuant to a request under section 12 (3) (a).

(4) The Central Procurement Unit shall comply with the procurement procedures set down by the Board and the Regulations.

(5) There shall be a Chief Procurement Officer, who shall be a public officer, and who shall be responsible for the management of the affairs of the Central Procurement Unit.”.

7. Section 11 of the principal Act is amended as follows— Amendment to section 11 of principal Act.

- (a) in subsection (1)—
 - (i) in paragraph (b), by inserting after the “semi-colon” the word “and”; and
 - (ii) by repealing paragraph (c);
- (b) in subsection (2), by inserting after the words “issued by the Board” the words “or the Accountable Officer”;
- (c) in subsection (3), by deleting the words “by the Board” after the words “duly issued”;
- (d) by repealing subsection (4) and substituting therefor the following new subsection—

“(4) Each entity shall establish a procurement unit, for the purpose of managing and conducting procurement on behalf of the procuring entity.”;
- (e) by repealing subsection (5); and
- (f) by repealing subsection (6).

Amendment
to section 12
of principal
Act.

8. Section 12 of the principal Act is amended as follows—

- (a) by repealing subsections (1), (2), (3) and (4) and substituting therefor the following new subsections—

“(1) The Accountable Officer of a procuring entity and any public officer to whom responsibility is delegated shall be primarily responsible and accountable for ensuring that the procuring entity fulfils its obligations under section 11 (1) and for any actions taken or omitted to be taken either in compliance with or in contravention of this Act, the Regulations and any directions of the Office or the Commission.

(1A) Without prejudice to the generality of subsection (1), the Accountable Officer shall—

- (a) establish a procurement unit for undertaking public procurement;
- (b) approve the evaluation committee for each procurement within the prescribed threshold;
- (c) approve the entity’s annual procurement plan and ensure its dispatch to the Office for publication;

- (d) for contracts with a value above the prescribed thresholds, ensure the dispatch of the composition of the evaluation committee, the tender evaluation report and contract award recommendation to the Office for no objection, as the case may be;
- (e) issue the letter of award to the successful tenderer and inform unsuccessful tenderers of the result; and
- (f) sign the procurement contract.

(2) Each employee of a procuring entity and each member of a unit or evaluation committee of the procuring entity shall ensure, within the areas of responsibility of the employee or member, that this Act, the Regulations and any directions of the Office, or the Commission are complied with.

(3) With the approval of the Office, a procuring entity may decide to use the services of—

- (a) another procuring entity and its procurement unit; or
- (b) a procuring agent provided that such procuring agent is selected on a competi-

tive basis in accordance with the procedures set out in this Act and the Regulations.

(4) A procuring entity shall not enter into a contract for a procurement with—

- (a) an employee of the procuring entity or a member of an evaluation committee of the procuring entity;
- (b) a Minister, public servant or a member of a committee of the Government or any department of the Government; or
- (c) a person, including a corporation, who has a close family or business relationship with a person described in paragraph (a) or (b).”.

(b) in subsection (8), by repealing paragraph (a) and substituting therefor the following new paragraph—

“(a) shall be prepared by a procuring entity which is a state controlled enterprise or

a statutory body and submitted to the Office for its approval after consultation with the Line Minister;”.

9. The principal Act is amended by repealing section 13 and substituting therefor the following new section—

Amendment to section 13 of principal Act.

“Responsibilities of procurement units. **13.**—(1) The procurement unit shall be responsible for—

- (a) overall procurement planning on behalf of the procuring entity and shall submit the annual procurement plan to the Accountable Officer for approval;
- (b) preparing, in cooperation with end-user departments, the procurement plans and tender documents of the procuring entity in respect of each procurement in accordance with the templates issued by the Office;
- (c) preparing the draft contract documents in accordance with the templates issued by the Office; and
- (d) ensuring the release of the performance security in accordance with the terms of the contract.

(2) For all contract award procedures, the procurement unit shall—

- (a) prepare all requests for quotations, invitations to tender and tendering documents in accordance with the templates issued by the Office;
- (b) publish and dispatch requests for quotation and invitations to tender;
- (c) receive and safeguard quotations, tenders and applications to pre-qualify;
- (d) respond to requests for clarification from tenderers;
- (e) organise and record pre-tender meetings and site visits, if any;
- (f) organise the work of the appointed evaluation committee and receive its evaluation report and contract award recommendation;
- (g) for contracts with a value below the prescribed threshold—
 - (i) conduct the tender opening; and

- (ii) submit tenders to the evaluation committee;
- (h) prepare and dispatch the evaluation report and contract award recommendation for approval by the Accountable Officer of the procuring entity, the Office or the Cabinet, as the case may be;
- (i) publish the contract award notice;
- (j) administer and implement procurement contracts to the extent that it is not carried out by end-user departments; and
- (k) maintain the procurement file and complete the full record of the procurement and submit a summary report of the record to the Office in accordance with this Act and Regulations.”.

10. The principal Act is amended by repealing section 14 and substituting therefor the following new section—

Amendment to section 14 of principal Act.

“Establishment and responsibilities of evaluation committees

14.—(1) Evaluation committees shall be appointed by the Accountable Officer of the procuring entity for all contracts whose value is under the prescribed threshold.

(2) Each evaluation committee shall be composed of a minimum of three members which shall include—

- (a) the officer responsible for preparing the requirement or technical specifications;
- (b) the financial officer of the procuring entity; and
- (c) other members to provide technical, legal or commercial expertise, as appropriate,

and, in the case of the procurement of works, the evaluation committee shall be the evaluation committee of the Ministry of Works together with at least one member identified in paragraph (c) from the requesting Ministry.

(3) The evaluation committee shall include skills, knowledge and experience relevant to the procurement requirement, which may include—

- (a) technical skills relevant to the procurement requirement;
- (b) end-user representation;
- (c) procurement and contracting skills;
- (d) financial management or analysis skills; or

(e) legal expertise.

(4) The duties of the evaluation committee shall include—

- (a) receiving from the procurement unit the tender opening record and tenders;
- (b) evaluating tenders and preparing the tender evaluation report and recommendation for award of a contract and submitting them to the procurement unit for onward transmission to the Accountable Officer or the Office as the case may be; and
- (c) responding to any queries raised by the approving authority.”.

11. Section 27 of the principal Act is amended in subsection (1) in the chapeau by inserting after the words “or member of a” the words “procurement unit or evaluation”. Amendment to section 27 of principal Act.

12. Section 29 of the principal Act is amended in paragraph (a) by deleting the words “tender committee” after the words “approved in writing by the” and substituting therefor the words “Accountable Officer”. Amendment to section 29 of principal Act.

13. The principal Act is amended by repealing section 32 and substituting therefor the following new section— Amendment to section 32 of principal Act.

“Local
Competitive
Bidding

32. Unless otherwise regulated by funding or other agreements, where necessary to promote the development of local industry,

open competitive tendering may be limited to bidders established in Grenada.”.

Amendment to section 33 of principal Act.

14. Section 33 of the principal Act is amended as follows—

- (a) the marginal note is renamed as “Open Competitive Tendering”;
- (b) by deleting the chapeau and substituting therefor the follow new chapeau—

“Procedures to allow for open competitive tendering for the purposes of this Act, shall include the following—”;

- (c) by repealing paragraph (b) and substituting therefor the following new paragraph—

“(b) if the procuring entity is required to advertise the invitation to tender, the procuring entity shall advertise the invitation to tender in one or more English Language newspapers or other publications that have sufficient circulation to allow effective competition for the procurement;”.

Amendment to section 39 of principal Act.

15. Section 39 of the principal Act is amended by inserting the words “or the single source selection method” after the words “proposal methods”.

Amendment to section 40 of principal Act.

16. Section 40 of the principal Act is amended by repealing and substituting therefor the following new subsection—

“(1) Individual consultants may be selected on assignments for which—

- (a) a team of experts is not required;
- (b) no additional outside (home office) professional support is required; and
- (c) the experience and qualifications of the individual are the paramount requirement.”.

17. Section 44 of the principal Act is amended as follows—

Amendment to section 44 of principal Act.

- (a) in subsection (11), by deleting the words “twenty-one (21)” after the words “shall be issued within” and substituting therefor the word “thirty”;
- (b) by inserting after subsection (12) the following new subsection—

“(13) For the purposes of this section, “standstill period” means the period commencing from the date of dispatch of notification issued under section 12 (1) (d) and ending when the procurement contract is signed.”.

18. The principal Act is amended as follows—

Amendment to title of Part IX of principal Act and reference to “stores and equipment”.

- (a) by renaming the title of Part IX as “Disposal of Property”;
- (b) in sections 54, 55 (4), 57, 58, 59, 60 and 67 by deleting the word “stores and equipment” wherever it appears and substituting therefor the word “property”.

Amendment to section 55 of principal Act.

19. Section 55 of the principal Act is amended as follows—

- (a) by repealing subsection (1) and substituting therefor the following new subsection—

“(1) A public entity shall ensure that this Act and the Regulations, and guidelines or directions issued by the Office, are complied with in respect of each disposal to which this Part applies.”;

- (b) in subsection (2), by deleting the words “chief accounting officer” before the words “of a public entity” and substituting therefor the words “Accountable Officer”; and

- (c) in subsection (3), by deleting the words “a committee of the public entity” after the words “and a member of” and substituting therefor the words “the Central Disposal Committee”.

Amendment to section 56 of principal Act.

20.—(1) The principal Act is amended by repealing section 56 and substituting therefor the following new section—

“Central Disposal Committee

56.—(1) The Central Procurement Unit shall establish a Central Disposal Committee in accordance with the Regulations for the purpose of recommending the best method of disposing of unserviceable, obsolete or surplus property.

(2) The Central Disposal Committee shall meet within the prescribed period to report on the items and subject to a technical report

where necessary, recommend the best method of disposal.”.

(2) The principal Act is amended in section 57 by deleting the words “disposal committee” wherever they appear and substituting therefor the words “Central Disposal Committee”.

21. Section 57 of the principal Act is amended by deleting the words “chief accounting officer” wherever they appear and substituting therefor the words “Accountable Officer”. Amendment to section 57 of principal Act.

22. Section 63 of the principal Act is amended as follows— Amendment to section 63 of principal Act.

(a) by inserting after subsection (1) the following new subsection—

“(1A) Officers or employees of other procuring entities as defined herein shall be subject to the disciplinary procedures established by those entities.”;

(b) by repealing subsection (3) and substituting therefor the following new subsection—

“(3) Where a public officer or another person, referred to under subsection (1), (1A) or (2), is considered to have been in breach of applicable criminal laws relating to fraud and corruption, he or she shall be referred to the appropriate law enforcement agencies for investigation and prosecution.”.

Amendment to section 67 of principal Act.

23. Section 67 of the principal Act is amended in paragraph (a), by inserting after the words “creation of specified” the words “units or”.

Amendment to Schedule I to principal Act.

24. The principal Act is amended by repealing Schedule I and substituting therefor the following new schedule—

“SCHEDULE I

(Section 6 (2))

PROVISIONS RELATING OF THE BOARD

1. Constitution of Board. (1) The Board shall comprise not less than five but not more than seven members which shall include—

- (a) the Permanent Secretary responsible for the Ministry of Finance;
- (b) the Attorney-General;
- (c) the Chief Technical Officer of the Ministry of Works;
- (d) two individuals with qualifications and experience in one or more of the following areas—
 - (i) business and finance management;
 - (ii) procurement; or
 - (iii) any other field relating to procurement; and
- (e) no more than two other persons.

(2) A member of the Board under paragraph (d) or (e) of subsection (1) shall be appointed by the Minister by instrument in writing.

(3) In every case, the Board shall include not less than two individuals from the private sector.

(4) Where a member under paragraph (d) or (e) of subsection (1) is incapable of performing his or her duties as a member of the Board, the Minister may appoint a person to act temporarily in the place of that member.

2. Chairperson and Deputy Chairperson. (1) The Minister shall, by instrument in writing, appoint the Chairperson and the Deputy Chairperson to the Board, from amongst the membership of the Board.

(2) The Deputy Chairperson shall act as the Chairperson of the Board—

- (a) during a vacancy in the office of the Chairperson; or
- (b) during all periods when the Chairperson is absent from duty or, for any other reason is unable to perform the functions of his or her office.

3. Alternate Member. (1) In the case of a member under paragraphs (a), (b) or (c) of section 1 (1), the Minister shall appoint, in writing, an alternate member who shall, in the absence of the member—

- (a) exercise the member's powers; and
- (b) carry out that member's duties in relation to the taking of decisions by the member.

(2) An alternate member shall not be counted as participating for the purposes of determining whether a quorum is participating, unless the member for whom the alternate member acts is absent.

4. Tenure. A member under section 1 (1) (b) shall hold office for a period not exceeding three years unless he or she dies, resigns or his or her appointment has been revoked before the completion of his or her term, and shall be eligible for re-appointment.

5. Remuneration. A member of the Board shall be entitled to be paid such remuneration and allowances as may be prescribed.

6. Disqualification. An individual shall be disqualified from being a member under section 1 (1) (d) if the individual—

- (a) has been declared bankrupt;
- (b) has been declared by the Court to be physically and mentally incapacitated by reason of unsoundness of the mind;
- (c) has been convicted of a criminal offence, except where the offence is a minor traffic offence;

- (d) has been convicted of an offence pursuant to the provisions of this Act; or
- (e) is employed by the Board.

7. Revocation. (1) The Minister may revoke the appointment of a member under section 1 (1) (d) if—

- (a) paragraph (a), (b), (c) or (d) of section 6 applies to the member;
- (b) the member has been absent from three consecutive meetings of the Board without reasonable excuse; or
- (c) the member has become incapable, willful or otherwise, of carrying out his or her functions pursuant to the provisions of the Act.

(2) The Minister may revoke the appointment of an alternate member under section 3 (1) if—

- (a) paragraph (a), (b), (c) or (d) of section 6 applies to the alternate member; or
- (b) the alternate member has become incapable, whether willfully or otherwise, of carrying out his or her functions pursuant to the provisions of the Act.

8. Resignation. A member, other than the Chairperson, may at any time resign his or her office by notice in writing addressed to the Minister and submitted to the Chairperson and, from the date of the receipt by the Minister of the notice, the member shall cease to be a member.

9. Resignation of Chairperson. (1) The Chairperson may at any time resign his or her office as Chairperson by notice in writing addressed to the Minister.

(2) The Chairperson shall cease to hold office upon the date of receipt of the notice by the Minister or from a date specified in the notice, whichever is later.

(3) Where the Chairperson is a member under section 1 (1) (d), wishes to resign under this section and wishes to resign as a member, the notice in writing under subsection (1) shall indicate that the person seeks to resign as a member.

10. Vacation of office. (1) A member under section 1 (1) (d) vacates his or her office if—

- (a) the member resigns pursuant to section 8 or 7;
- (b) the Minister revokes the appointment in accordance with section 7; or
- (c) the member dies.

(2) Where a vacancy is created, the Minister may appoint a new member under section 1 (1) (d) to fill that vacancy and the new member shall hold office only for the unexpired portion of the term of the former member.

11. Publication in the *Gazette*. The Minister shall by Notice published in the *Gazette*, inform the public of the names of members of the Board as first constituted and every change in membership of the Board.

12. Liability of members of the Board. No member of the Board shall be personally liable for any act or default of the Board done or omitted to be done or any default of the Board made, in good faith in the course of the operation of the Board.”.

Passed by the House of Representatives this 19th day of January, 2018.

WILLAN A. THOMPSON
Clerk to the House of Representatives.

Passed by the Senate this 24th day of January, 2018.

WILLAN A. THOMPSON
Clerk to the Senate.

GRENADA

PRINTED BY THE GOVERNMENT PRINTER, AT THE GOVERNMENT
PRINTING OFFICE, ST. GEORGE'S

26/1/2018.