

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

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FIRST SCHEDULE

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JUSTICE ORDINANCE

An ordinance to define the jurisdiction of the Island Magistrate, to prescribe the procedure of the Magistrate’s Court and to make provision for evidence and procedure in all criminal proceedings and other matters incidental to the administration of justice.

[1st February, 2000]

No. 3 of 1999
No. 1 of 2000
No. 3 of 2000
No. 10 of 2000
No. 13 of 2000
No. 16 of 2000
No. 4 of 2001
No. 12 of 2002
No. 3 of 2003
No. 6 of 2003
No. 4 of 2004
No. 7 of 2005
No. 2 of 2009
No. 4 of 2010
No. 6 of 2010
No. 2 of 2012
No. 2 of 2014
No. 1 of 2016
No. 2 of 2016
No. 1 of 2018

PART I—PRELIMINARY

- 1. This ordinance may be cited as the Justice Ordinance.
- 2. In this ordinance, unless the context otherwise requires—

Short title.
Interpretation.

- “Council” means the Island Council constituted under the provisions of the Local Government Ordinance;
- “Court” means the Magistrate’s Court;
- “islander” means any inhabitant, whether temporary or permanent, of the Islands or any of them;
- “Island Magistrate” means the person appointed under subsection (2) of section 11 of the Judicature (Courts) Ordinance to hold the office of Island Magistrate;
- “Island Secretary” means the person from time to time appointed by the Governor to hold the public office of Island Secretary;
- “Magistrate’s Court” has the same meaning as it has in the Judicature (Courts) Ordinance;
- “Medical Officer” means the person for the time being holding the office of Medical Officer;
- “police officer” means any person from time to time appointed by the Governor to hold the public office of a police officer and includes any person duly appointed as an assistant to such police officer;
- “Sabbath Day” means the period between sunset on any Friday and sunset on the next succeeding Saturday.

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PART II—THE MAGISTRATE’S COURT

3.—(1) The Court shall have and use as occasion may require a seal or stamp of such nature and pattern as the Governor may direct and all writs and processes issuing out of the Court shall be stamped or sealed therewith.

Constitution of Court.

(2) Subject to this ordinance, the Court shall be constituted by a Magistrate sitting with two assessors to be appointed in the manner hereafter provided.

- (3) Notwithstanding the provisions of subsection (2),
 - (a) a Magistrate may sit without assessors to hear—

- (i) any criminal case in which the penalty does not exceed a fine of [four hundred] dollars; or **(Amended by Ordinance No. 7 of 2005)**
- (ii) any civil case in which the amount in dispute does not exceed one hundred dollars; [or
- (iii) any dispute under the Marriage Ordinance;] **(Inserted by Ordinance No. 2 of 2012)**
- (b) a Magistrate shall sit without assessors—
 - (i) in all criminal cases within his or her jurisdiction in which the defendant admits the truth of the charge; and
 - (ii) in all enquiries held under the provisions of Parts VI, VII and VIII of this ordinance; and
 - [(iii) in all criminal cases within his or her jurisdiction in which it has not been possible under the procedure prescribed in subsection (2) of section 29 to select two assessors; and] **(Added by Ordinance No. 7 of 2005)**
- (c) in all criminal cases the punishment to be awarded shall be decided by the Magistrate alone.

Registrar.

4.—(1) [Without prejudice to the general powers and duties conferred by section 23 of the Judicature (Courts) Ordinance,] the Registrar shall, subject to the general directions of the Chief Justice, be under the immediate direction and control of the presiding Magistrate.

(Amended by Ordinance No. 2 of 2016)

- (2) The duties of the Registrar shall be—
 - (a) to attend all sittings of the Court as the Magistrate may direct;
 - (b) to fill up or cause to be filled up summonses, warrants, orders, convictions, recognizances, writs of summons, writs of execution and other documents and submit the same for signature by the Magistrate;
 - (c) to issue civil process in accordance with the provisions of this ordinance;
 - (d) to make or cause to be made copies of proceedings when required to do so by the Magistrate and to record the judgments, convictions and orders of the Court;
 - (e) to receive or cause to be received all fees, fines and penalties and all other moneys paid or deposited in respect of any proceedings in the Court and to keep or cause to be kept accounts of the same; and
 - (f) to perform or cause to be performed such other duties connected with the Court as may be assigned to him by the Chief Justice or the Magistrate.

5.—(1) Subject to the provisions of this or any other ordinance, the Island Magistrate shall have jurisdiction—

Jurisdiction of Island Magistrate.

(a) in civil cases—

- (i) in all personal suits whatsoever between islanders where the amount in dispute or the value of any property in dispute does not exceed one thousand dollars or, with the consent of all parties interested therein, where the amount in dispute or the value of any property in dispute does not exceed two thousand dollars;
- (ii) in all suits between landlord and tenant for the possession of any lands or houses claimed under any agreement or refused to be delivered up, where the annual value or rent does not exceed one thousand dollars or, with the consent of all parties interested therein, where such annual value or rent does not exceed two thousand dollars;
- [(iii) to hear and determine any proceedings concerning the care or protection of a child and to make any necessary orders and directions under the Children Ordinance or any rules made under it;]
- (Replaced by Ordinance No. 7 of 2005)**
- (iv) to make orders for the maintenance of any [spouse];
- (Amended by Ordinance No. 2 of 2014)**
- (v) to appoint guardians of the person and of the estate of persons of unsound mind and to make orders for the detention, care, custody and maintenance of persons of unsound mind; and
- (vi) to make orders for the care, custody and maintenance of sick and aged persons:

Provided that the Island Magistrate shall not exercise jurisdiction in—

- (i) any suits wherein the title to any right, duty or office is in question;
- (ii) any suits wherein the ownership of any land is in dispute;
- (iii) any suits wherein the legitimacy of any person is in question or, except as may be specifically provided in any ordinance for the time being in force, in suits wherein the validity or dissolution of any marriage is in question; or
- (iv) in any action for malicious prosecution, libel or slander;

- (b) in criminal cases over all offences committed within the Islands or in the territorial waters thereof against the provisions of this or any other ordinance except insofar as the jurisdiction of the Island Magistrate is therein expressly excluded:

Provided that—

- (i) the maximum penalty which the Island Magistrate may impose shall be a fine of [four hundred] dollars or imprisonment for one hundred days or both such fine and imprisonment; and
- (ii) the Island Magistrate shall not hear or determine any offence unless the complaint relating to it is brought within six months from the time when the matter of such complaint arose; and
- (iii) the Island Magistrate shall not exercise jurisdiction in respect of any offence arising only by virtue of the provisions of [section 42 of the Constitution of Pitcairn]; and
- (iv) the Island Magistrate shall not exercise jurisdiction in any inquiry under Part VII of this ordinance;

For the avoidance of doubt, the remand of an accused person to a later sitting of the Court prior to the commencement of a preliminary enquiry shall not be construed as an exercise of jurisdiction for the purposes of sub-paragraph (iv) hereof or of subsection (1) of section 12 of the Judicature (Courts) Ordinance;

- (c) to make all such orders as may be necessary or expedient for the execution of any judgment or order of the Island Magistrate made in the exercise of the jurisdiction conferred upon him or her by the provisions of this or any other ordinance.

(Amended by Ordinance No. 7 of 2005)

(Amended by Ordinance No. 4 of 2010)

[(2) The Island Magistrate shall be entitled at his discretion, before or during the hearing of any proceedings, to consult or to seek the advice of any Senior Magistrate, whether within or outside the Islands, on any question or questions of law, procedure or legal principle, in accordance with the following conditions—

- (a) the Island Magistrate shall notify the parties in advance of his or her intention to do so and shall adjourn the proceedings if necessary for this purpose;

- (b) the Island Magistrate shall if possible conduct his enquiry by email or facsimile and seek a reply by the same means.
- (c) the resulting emails or facsimile messages, or if there are none the Magistrate's note of his or her exchanges with the Senior Magistrate, shall be shown to the parties and incorporated in the decision of the Court, so that in the event of an appeal to the Supreme Court they shall be taken to be part of the Island Magistrate's judgment.]

(Inserted by Ordinance No. 7 of 2005)

6. The Governor may by order authorise an increased jurisdiction in any civil or criminal case to be exercised by the Island Magistrate to the extent specified in such order and any such order may at any time be revoked by the Governor by order.

Extension of jurisdiction.

7. Every Magistrate shall have power to issue writs of summons for the commencement of actions in the Court, to administer oaths and take solemn affirmations and declarations, to receive production of books and documents and to make such decrees and orders and issue such process and exercise such powers, judicial and administrative, in relation to the administration of justice as may from time to time be prescribed by any ordinance or by any special order of the Chief Justice.

General powers of Magistrates.

8.—(1) The Governor may, in case of illness or incapacity of the Island Magistrate, or for any other good and sufficient reason, appoint any other fit and proper person to act as Island Magistrate for the purpose of presiding over the Magistrate's Court in his or her place.

Provision for appointment of acting Island Magistrate before Court.

(2) Every appointment under subsection (1) shall continue in force until revoked by the Governor or by expiration of any time prescribed in such appointment for its determination.

(3) Where the Island Magistrate is a party to or has any personal interest in any case, whether civil or criminal, before the Court, he or she shall not hear such case and the fact that the Island Magistrate is a party to or has a personal interest in the case shall be deemed to be a good and sufficient reason within the meaning of subsection (1) for the appointment by the Governor of another fit and proper person to act as Island Magistrate for the purpose of hearing such case.

9.—(1) Not less than 24 hours before the time appointed for the hearing of a case by the Court, the Island Secretary shall cause the names of all persons entitled to vote in any

List of assessors.

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elections held under the provisions of the Local Government Ordinance and who are present on Pitcairn Island (excepting those persons disqualified from selection as assessors under the provisions of the next succeeding subsection) to be written on separate pieces of paper of equal size and put into a box and the Island Magistrate shall thereupon draw from the box by lot the names of six persons recording such names on a list to be known as the “list of assessors” and cause summonses to be served on each of such persons requiring them to attend at the time and place appointed in and by such summons for the hearing of such case.

(2) The following persons are disqualified from selection as assessors—

- (a) the Mayor;
- (b) the Chairman of the Internal Committee;
- (c) the Island Secretary;
- (d) the Medical Officer;
- (e) the Education Officer;
- (f) any minister of religion;
- (g) any police officer;
- (h) any other person who is a party to the case before the Court or is intended to be called as a witness in such case by either party;
- [(i) the registrar or deputy-registrar or any person acting as such;
- (j) the Island Magistrate, when the hearing is presided over by a Senior Magistrate;
- (k) the spouse or partner of the Island Magistrate, when the Island Magistrate is presiding over the hearing;
- (l) the parents, siblings and children of any party or witness;
- (m) any person unfit by reason of age or health to serve;
- (n) any person convicted of a criminal offence whose sentence has not yet been completed.]

(Inserted by Ordinance No. 7 of 2005)

Appeal to Supreme
Court,
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10. For the avoidance of doubt, the provisions of section 14 of the Judicature (Courts) Ordinance (which confer a right of appeal to the Supreme Court in respect of any judgment, sentence or order of the Magistrate’s Court) apply with respect to proceedings presided over by the Island Magistrate under this Part.

Sittings of the Court.

11.—(1) The Court shall sit at such places and at such times and on such days as may from time to time be directed by the Chief Justice and in the absence of any such directions as shall be determined by the Magistrate.

(2) All sittings of the Court shall be open to the public so far as the available seating accommodation permits:

Provided that, in any case in which the Court deems it necessary or appropriate for the preservation of order, decency or the protection of witnesses, it shall have power to conduct a sitting *in camera* and to order that the names of witnesses, other particulars leading to disclosure of their identity and the contents of their evidence shall be suppressed and publication thereof prohibited.

(3) The presiding Magistrate may adjourn the Court from day to day or to any convenient day.

PART III—EVIDENCE

12. Subject to the provisions of this ordinance, every person who wishes or is required to give evidence before the Court shall, before giving such evidence, take an oath which shall be administered by the Magistrate by taking the Bible in his or her right hand and swearing as follows:—

Form of oath and affirmation.

“I swear that I will speak the truth, the whole truth and nothing but the truth. So help me God.”:

Provided that the Magistrate may permit such person instead of taking such oath to make a solemn declaration and affirmation by raising his or her right hand and saying as follows:—

“I do solemnly and sincerely and truly declare and affirm that I will speak the truth the whole truth and nothing but the truth.”,

which declaration and affirmation shall be of the same force and effect as an oath.

13. The question whether a child may give evidence before the Court without taking the oath or making the affirmation required under the provisions of the last preceding section shall be determined by the Court in accordance with the provisions of sections 70B and 70C of this ordinance.

Evidence of children.

14.—(1) In any cause or matter before the Court the Magistrate may, by a summons, either of his or her own motion or on the application of any party, require any person within the Islands to attend the Court and give evidence or to produce any documents in his or her possession.

Compelling attendance of witnesses before the Court.

(2) Any person summoned to attend the Court under the provisions of the last preceding subsection who, having reasonable notice of the time at which he or she is required to attend the Court, fails to attend accordingly and does not excuse such failure to the satisfaction of the Court, shall be in

contempt of Court and, in addition to any other penalty arising under the provisions of this ordinance, the Court may issue a warrant to arrest that person and bring him or her before the Court at such time as shall be specified in such warrant.

(3) Any person before the Court who, on being required to give evidence on oath or affirmation, refuses to take the oath or make the affirmation, or refuses, without reasonable cause to the satisfaction of the Court, to answer any question lawfully put to him or her, or to produce any document in his or her possession lawfully required to be produced may be committed to prison by the Court for any period not exceeding fourteen days unless in the meantime such person agrees to take the oath or make the affirmation or to answer the question as the case may be.

Service of Pitcairn process overseas.

14A.—(1) A summons or order requiring a person to attend before a court in the Islands for the purpose of giving evidence in criminal proceedings may be issued or made notwithstanding that the person in question is outside the Islands and may be served outside the Islands in accordance with arrangements made by the Governor.

(2) Service of any process outside the Islands by virtue of this section shall not impose any obligation under the law of the Islands 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.

(3) Subsection (2) 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 the Islands.

PART IV—CRIMINAL PROCEEDINGS

Jurisdiction of Magistrate's Court.

15. Subject to this ordinance, the Magistrate's Court shall have and may exercise jurisdiction in criminal cases—

(1) in proceedings under Part VII of this ordinance in which the Court is sitting to enquire into an information alleging that the accused person has committed an offence which may be tried only by the Supreme Court (hereinafter referred to as "committal proceedings");

(2) in proceedings in which the Court is sitting to try an information alleging that the accused person has committed an offence which may be tried only summarily (hereinafter referred to as "summary proceedings").

Summary offences and other offences.

16.—(1) The offences which are triable only summarily are—

(a) the offences specified in the Schedule to this

ordinance;

- (b) any other offence which any law for the time being in force in the Islands prescribes shall be triable only summarily.

(2) All offences which are not triable only summarily are triable only by the Supreme Court:

[Provided that an offence which any law for the time being in force in the Islands prescribes shall be triable either summarily by the Magistrate's Court or on information by the Supreme Court shall be triable either way at the election of the Public Prosecutor.]

(Amended by Ordinance No. 6 of 2003)

(3) The Governor may by order amend the First Schedule to this ordinance but no such order shall affect the trial of any offence which was committed before the publication of the order or such later date as it may specify for that purpose.

17.—(1) Except as may be provided by this or any other ordinance all criminal proceedings shall be taken by [the Public Prosecutor or by] a police officer in the name of Her Majesty the Queen.

Commencement of proceeding.

(Inserted by Ordinance No. 3 of 2003)

(2) Proceedings may be instituted by making complaint either orally or in writing to a Magistrate.

(3) The person making any complaint shall tender to the Magistrate a formal charge or, if so requested, the Magistrate shall draw up or cause to be drawn up a formal charge, which shall in either case be signed by the Magistrate and shall contain—

- (a) a statement of the offence with which the accused person is charged;
- (b) the statute, ordinance or other written law and the number of the section thereof creating the offence; and
- (c) such particulars as may be necessary for giving reasonable information as to the nature of the offence charged.

(4) Every charge shall be for one offence only but it shall be lawful for any complainant to lay one or more charges against the same person at the same time.

18. Upon receiving a complaint and having signed the charge in accordance with the provisions of the last preceding section, the Magistrate shall issue a summons or, in his or her discretion, a warrant of arrest to compel the attendance of the accused person (hereinafter in this Part referred to as “the defendant”) before the Court:

Issue of summons or warrant.

Provided that if the charge is for the offence of murder or treason the Magistrate must issue a warrant for the arrest of the accused person.

Summonses.

19.—(1) Every summons issued by the Magistrate shall be in writing in duplicate signed by him or her and shall bear the date on which it is issued.

(2) Every summons requiring the attendance of a defendant before the Court shall be directed to the defendant and shall require him or her to appear at the time therein appointed before the Court. It shall state shortly the offence with which the defendant is charged, the statute, ordinance or other written law and the number of the section thereof creating the offence and such other particulars as may be necessary for giving reasonable information to the defendant as to the offence alleged.

Service of summonses.

20. Every summons shall be served two clear days at least before the date appointed in and by it for [the initial appearance of the defendant before the Court] and shall if possible be served personally on the defendant by delivering or tendering one of the duplicates.

(Amended by Ordinance No. 7 of 2005)

Warrants of arrest.

21.—(1) Every warrant for the arrest of any person (hereinafter referred to as a “warrant of arrest”) shall be in writing signed by the Magistrate and shall—

- (a) bear the date on which it was issued;
- (b) name or otherwise describe the person against whom it is issued; and
- (c) order the person or persons to whom it is directed to apprehend the person against whom it is issued and bring him or her before the Court to be dealt with according to law;

and every warrant of arrest to compel the attendance of a defendant before the Court shall also state shortly the offence with which he or she is charged.

(2) Every warrant of arrest may be executed at any place within the Islands and shall remain in force until it is executed or until it is cancelled by the Court or by the Supreme Court.

(3) A warrant of arrest shall normally be directed to a police officer:

Provided that, if in the opinion of the Magistrate the immediate execution of such a warrant is necessary and no police officer is reasonably available, he or she may direct it to any other person or persons who shall execute the same.

(4) When a warrant of arrest is directed to more persons than one it may be executed by all or any of them.

(5) A police officer or other person or persons executing a warrant of arrest shall notify the substance thereof to the person who is to be arrested.

(6) The person arrested under a warrant of arrest shall without unnecessary delay be taken before the Court and, unless released on bail or the Court otherwise orders, shall be detained in custody until the conclusion of the proceedings before the Court.

22. Where any person, for whose appearance or arrest the Magistrate is empowered to issue a summons or warrant, is confined in any prison, the Magistrate may issue an order to the officer in charge of that prison requiring him or her to bring such person in proper custody, at a time to be specified in the order, before the Court and, on receipt of such order, the officer in charge of such prison shall provide for the safe custody of the prisoner during his or her absence from the prison for the purpose of attending the Court in accordance with the provisions of such order.

Powers of Court to order prisoner to be brought before it.

23.—(1) Where the Magistrate is satisfied by evidence on oath that there is reasonable cause to believe that any thing upon, by or in respect of which an offence has been committed or any thing which is necessary to the conduct of an investigation into any offence, is in any building, ship, vehicle, box, receptacle or place, the Magistrate may issue a search warrant authorising a police officer to search the building, ship, vehicle, box, receptacle or place (which shall be named or described in the search warrant) for any such thing and, if any thing searched for is found, or any other thing which there is reasonable cause to suspect to have been stolen or unlawfully obtained is found, to seize it and bring it before the Court to be dealt with according to law.

Search Warrants.

(2) Whenever any building or other place liable to search is closed, any person residing in or being in or being in charge of such building or place shall, on demand of a police officer and on production of the search warrant, allow him or her free ingress and egress and afford all reasonable facilities for a search.

[24. Nothing in this Part shall be construed so as to prevent a magistrate other than the magistrate who issued the charge or charges against the defendant in accordance with the provisions of section 17 from subsequently exercising further jurisdiction in the proceedings including the hearing and determination of the charge or charges against the defendant.]

Other Magistrate may sit

(Inserted by Ordinance No. 7 of 2005)

[Initial appearance of defendant

25. If the defendant appears at the time and place appointed for the initial appearance of the defendant before the Court, the Magistrate shall undertake such enquiries as are possible to ascertain the time required for the preparation of the cases of both parties in order that a date can be fixed for the hearing.]

(Repealed and replaced by Ordinance No. 7 of 2005)

Failure of defendant to appear.

26. If the defendant does not appear at the time and place appointed for his or her initial appearance before the Court and if it be proved on oath that the summons was duly served on him or her not less than two clear days before the time appointed for his or her initial appearance before the Court, the Court may either issue a warrant to apprehend the defendant and cause him or her to be brought before the Court or proceed to hear and determine the case in the absence of the defendant in accordance with the provisions of paragraph (c) of section 28 of this ordinance as though the defendant had appeared and not admitted the truth of the charge:

Provided that if the Court convicts the defendant in his or her absence, it shall set aside such conviction on being satisfied that the absence of the defendant was from any cause over which he or she had no control and that there exists a possible defence on the merits of the case.

Adjournments.

27. Before or during the hearing of any case, it shall be lawful for the Court in its discretion to adjourn the hearing to a certain time and place to be then appointed and stated in the presence of the party or parties then present:

[Provided that any such adjournment for a period greater than thirty clear days shall be notified in writing by the Magistrate to the Registrar of the Supreme Court for the attention of the Chief Justice together with a statement of the reasons therefor.]

(Amended by Ordinance No. 7 of 2005)

Plea.

28. If both parties appear [before the Court on the date fixed by the Court for the hearing—]

- (a) the Registrar shall read the charge to the defendant and shall ask whether he or she admits or denies the truth of the charge;
- (b) if the defendant admits the truth of the charge, such admission shall be recorded as nearly as possible in the words used and the Magistrate shall convict the defendant and pass sentence upon him or her unless there shall appear to be sufficient cause to the contrary;

- (c) if the defendant does not admit the truth of the charge, the Magistrate shall record a plea of not guilty and—
 - (i) in the case of the Magistrate sitting without assessors, proceed to hear and determine the charge; or
 - (ii) in the case of the Magistrate sitting with assessors, the Court shall proceed to select assessors in the manner hereinafter provided and, having done so, proceed to hear and determine the charge.

(Amended by Ordinance No. 7 of 2005)

29.—(1) In cases in which the Magistrate sits with assessors, the procedure set out in subsection (2) shall be followed.

Selection of assessors.

- (2) (a) The Registrar shall inform the defendant and the prosecutor that the assessors for that case are about to be selected, that they each have the right to object to any person serving as an assessor in the case without assigning any reason for such objection and that if either of them has any objection it must be raised as each person's name is called before being sworn.
- (b) The Registrar shall then call out in alphabetical order the names of the persons appearing on the list of assessors for that case.
- (c) As each name is called out, the defendant shall be asked by the Registrar if he or she has any objection to that person serving as an assessor in the case. The prosecutor shall then be asked if he or she has any objection to that person serving as an assessor in the case. If neither the defendant nor the prosecutor has any objection, the person called shall then be sworn in as an assessor for the case. If either the defendant or the prosecutor objects to the person whose name is called serving as an assessor in the case, the next name shall be called from the list of assessors and the same procedure followed until two assessors have been selected.
- (d) If all the names on the list of assessors are called without two assessors being selected, the names of the persons objected to shall be again called in alphabetical order by the Registrar who shall ask first the defendant and then the prosecutor if they have any objections to such person serving as an assessor in the case and their reasons for such objection. The same procedure shall be followed

with each name on the list of assessors until two assessors are selected against whom neither the defendant nor the prosecutor has any reason for objection.

- [(e) if all the names on the list of assessors are again called without two assessors being selected, the Magistrate shall direct that a supplementary list of assessors be forthwith prepared in the manner provided by subsection (1) of section 9 and the procedure set out in paragraphs (b), (c) and (d) hereof shall be followed until two assessors have been selected.]

(Repealed and replaced by Ordinance No. 7 of 2005)

- (f) When two assessors have been selected, the Magistrate shall discharge the other persons whose names appear on the list of assessors and the Registrar shall read the charge brought against the defendant to the two persons selected as assessors for the case and then swear each of them in on the following oath:—

“I swear that I will well and truly serve as an assessor in this case and a true verdict on the evidence give.”

Evidence for
prosecution.

30. The Court shall proceed first to hear the evidence for the prosecution. Counsel for the defendant shall have the right to put questions to each witness called for the prosecution and for that purpose the Magistrate shall at the close of the examination of each witness by the prosecutor ask counsel for the defendant if he or she wishes to ask any questions of that witness and shall record the answer. After any cross-examination on behalf of the defendant, the prosecutor will be entitled to re-examine the witness on any point arising out of that cross-examination:

Provided that, in any case where the defendant is not represented by counsel, every such question in cross-examination shall be directed to the Magistrate who may to the extent that he or she considers it to be proper ask the said question on behalf of the defendant.

Procedure at close
of evidence for
prosecution.

31. At the close of the evidence for the prosecution—

- (a) if it appears to the Court that a case is made out against the defendant sufficiently to require the defendant to make a defence to the charge, the Magistrate shall—
- (i) again explain the substance of the charge to the defendant and shall inform the defendant that he or she has the right to give evidence

but does not have to do so and that if the defendant wishes to give evidence he or she may give such evidence on oath, in which case he or she will be liable to be cross-examined by the prosecutor and asked questions by the Court; and

- (ii) ask the defendant if he or she has any witnesses to call,

and the Court shall then hear the defendant and any witnesses called for the defence. If the defendant states that he or she has witnesses to call but they are not present in Court and the Magistrate is satisfied that the absence of such witnesses is not due to any fault or neglect of the defendant, and that there is a likelihood that they could, if heard, give material evidence on behalf of the defendant, the Magistrate may adjourn the trial and take steps to secure the attendance of such witnesses;

- (b) if it appears to the Court that a case is not made out sufficiently to require the defendant to make a defence to the charge, the Court shall dismiss the charge and shall forthwith acquit the defendant.

32.—(1) In cases in which the Magistrate sits with assessors— Close of hearing.

- (a) the Magistrate shall at the conclusion of the evidence require the assessors to state their opinions and such opinions shall be recorded;
- (b) the Magistrate shall then give the decision of the Court and in so doing shall not be bound to conform with the opinions of the assessors, provided that, if the decision of the Court is given against the opinions of the assessors, the Magistrate shall record his or her reasons for giving such decision and shall forthwith after the conclusion of the case send a copy of the record to the Chief Justice; and
- [(c) after giving the decision of the Court, the Magistrate shall discharge the assessors and proceed to deal with the defendant by determining the penalty or process then to follow.]

(Repealed and replaced by Ordinance No. 7 of 2005)

(2) In cases in which the Magistrate sits without assessors, he or she shall, at the conclusion of the evidence, give a decision and shall make such order as he or she shall think appropriate and just in accordance with that decision.

(Amended by Ordinance No. 7 of 2005)

Sentence.

33.—(1) If the defendant admits the truth of the charge or is found guilty by the decision of the Court, the Magistrate shall, after convicting the defendant, ask if he or she has anything to say in mitigation of penalty or as to the nature thereof; but the omission so to ask shall not affect the validity of the proceedings.

(Amended by Ordinance No. 7 of 2005)

(2) Having heard the defendant on the question of sentence, the Magistrate shall pass sentence upon the defendant stating the reasons for so doing and such reasons shall be recorded.

Imprisonment.

34.—(1) In all cases where the Court has jurisdiction under the provisions of this or any other ordinance to impose a sentence of imprisonment, the Magistrate may impose a sentence of imprisonment on the defendant.

(2) When the Court is of opinion that a higher sentence should be passed in respect of the offence than it has power to pass, it may commit the offender for sentence to the Supreme Court and shall remand the offender in custody or on bail to appear before the Supreme Court for sentence as though he or she had been convicted by that Court.

Punishment of children.

35.—(1) Unless otherwise specified, no child convicted of an offence shall be liable to be imprisoned or to pay a fine exceeding five dollars.

(2) Where a child is ordered to pay a fine, the payment thereof may be enforced against the parent or guardian of the child.

(3) When a child is convicted of an offence, the Magistrate may discharge such child without inflicting any punishment.

Sentence where person convicted is already undergoing imprisonment.

36. (Repealed by Ordinance No. 1 of 2016)

Form of warrant of commitment.

37. A warrant of commitment to prison shall be in writing in such form as may be appropriate and shall be signed by the Magistrate and bear the date upon which it is issued.

Powers of Court on conviction.

38.—(1) When a defendant is, upon conviction, ordered to pay a sum of money only, the Magistrate may—

- (a) allow time for payment of such sum or any part thereof;
- (b) direct payment of such sum or any part thereof by instalments and order imprisonment in default of payment of any of such instalments; or
- (c) order the defendant to work on the public roads or on such other public service as the Magistrate may direct for eight hours a day from the day following the date of conviction, crediting the defendant at

the rate of ten dollars a day for such work until the full amount of the sum ordered is thus paid:

Provided that no such work shall be done on the Sabbath Day nor on any public holiday; or

- (d) accept payment of the sum in such goods useful for public services as may be approved by the Magistrate at an amount to be assessed by the Magistrate:

Provided that where the amount assessed is less than the amount ordered to be paid on conviction, the Magistrate may make any such other order under the provisions of this section in respect of the amount still due; or

- (e) issue a warrant for the levy of the sum on the real and personal property of the defendant by distress and sale under warrant.

(Amended by Ordinance No. 2 of 2014)

(2) When a defendant is, upon conviction, sentenced to imprisonment for a period not exceeding forty days, the Magistrate may direct that, in lieu of such imprisonment, the defendant shall work on the public roads or on such other public service as the Magistrate may direct for eight hours a day commencing on the day following the date of conviction and continuing until the expiration of such period of imprisonment:

Provided that no such work shall be done on the Sabbath Day nor on any public holiday.

(Amended by Ordinance No. 2 of 2014)

(3) The Magistrate may direct that any person ordered to be imprisoned or to work on the public roads or other public service, under the provisions of this ordinance shall be allowed to attend to his or her plantation for one day in every week during the period of such imprisonment or work.

[(4) In this section, a reference to imprisonment includes detention in a home detention residence under a sentence of home detention given in accordance with section 76A of the Sentencing Ordinance 2002.]

(Inserted by Ordinance No. 1 of 2016)

39. The period of imprisonment which may be imposed by the Magistrate under the provisions of this or any other ordinance in respect of the non-payment of any sum of money ordered to be paid, or in respect of default in payment of any instalment of that sum or in respect of any portion of that sum which remains unpaid when a part of the sum ordered is paid in goods as provided in the last preceding section, shall

Scale of imprisonment
in default of payment
of a fine.

be according to the scale of one day's imprisonment for each five dollars or part thereof of the sum unpaid.

Disposal of fines.

40. All fines shall be paid to the Registrar and shall be credited to the public revenue.

Magistrate may order person convicted to enter into recognizance.

41. The Magistrate, in sentencing a person convicted of any offence against the provisions of this or any other ordinance, may, instead of or in addition to imposing a fine or term of imprisonment, make an order that the person convicted enter into a recognizance in such amount not exceeding one hundred dollars as the Magistrate thinks fit, on condition that the person entering in to such recognizance shall keep the peace and be of good behaviour for a term not exceeding one year, to be fixed by the Magistrate.

Complaint for recognizance.

42.—(1) Any person may make a complaint on oath before a Magistrate that any other person is likely to commit a breach of the peace or do any wrongful act likely to cause a breach of the peace.

(2) The Magistrate, on receiving such a complaint, may issue a summons requiring the person against whom the complaint is made to appear before the Court at the time and place appointed in such summons to show cause why he or she should not be ordered to enter into a recognizance in such amount not exceeding one hundred dollars and for such period, not exceeding one year, as the Magistrate sees fit.

(3) At the time and place appointed in the summons, the Court, which shall comprise the Magistrate sitting with two assessors to be selected in the manner as hereinbefore provided, shall inquire into the truth of the complaint on which the summons has been issued, and such inquiry shall be conducted in the same manner as that prescribed for conducting trials and recording evidence in criminal cases.

(4) If, upon such inquiry, it is proved to the satisfaction of the Court that it is necessary for keeping the peace or for maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should enter into a recognizance, the Magistrate shall make an order accordingly and the recognizance so ordered shall be in an amount not exceeding one hundred dollars and for a period not exceeding one year.

Imprisonment for failure to enter into recognizance.

43. The Magistrate may order that any person ordered to enter into a recognizance under the provisions of sections 41 or 42 of this ordinance be imprisoned until such recognizance is entered into; but so that the period of imprisonment for not entering into such recognizance shall not exceed forty days.

44. When it is proved on oath to the satisfaction of the Magistrate that the conditions of a recognizance have not been observed, the Magistrate shall record the grounds of such proof and may order the person bound by the recognizance to pay the sum for which he or she is bound. The payment of such sum may be enforced in the same manner as a fine.

Enforcement of recognizance.

PART V—CIVIL PROCEEDINGS

45. Every civil case shall be commenced by a writ of summons to be issued by a Magistrate at the request of the person making the claim (hereinafter referred to as the “plaintiff”). A writ of summons may issue without any application in writing.

Civil case to commence with writ of summons.

46.—(1) Every writ of summons shall be in writing and shall contain the name, address and occupation of the plaintiff and of the person against whom the claim is made (hereinafter referred to as the “defendant”) and the date and place of hearing and there shall be endorsed on each writ of summons particulars of the claim in respect of which it is issued, signed by the plaintiff, which shall state briefly and clearly the subject matter of the claim and the relief sought.

Form and service of writ of summons.

(2) Every writ of summons shall bear the date on which it is issued.

(3) Every writ of summons shall be served eight clear days at least before the date appointed in and by it for the hearing and shall be served in the same manner as a summons in a criminal case.

47. If neither party appears on the day appointed for the hearing of a civil case, the Magistrate shall, unless there is good reason to the contrary, dismiss the case.

Procedure if neither party appears.

48. If the defendant appears and the plaintiff does not appear, the Magistrate shall, unless there is good reason to the contrary, dismiss the case:

Appearance by defendant but not by plaintiff.

Provided that, if the defendant admits the truth of the claim, the Magistrate may give judgment for the plaintiff against the defendant as if the plaintiff had appeared.

49. If the defendant admits the truth of the plaintiff’s claim, the Magistrate shall give judgment for the plaintiff.

Admission of claim by defendant.

50. If the plaintiff appears and the defendant does not appear and does not admit the truth of the plaintiff’s claim, the Magistrate may, on proof on oath of the service of the writ of summons upon the defendant—

Appearance by plaintiff but not by defendant.

- (a) in cases in which the Magistrate sits without assessors, proceed to hear and determine the case

and give judgment on the evidence of the plaintiff and his or her witnesses (if any);

- (b) in cases in which the Magistrate sits with assessors, the Court shall proceed to select the two assessors in the same manner as that prescribed for criminal cases, and, having done so, proceed to hear and determine the case giving judgment on the evidence of the plaintiff and his or her witnesses, if any:

Provided that in either of such cases the Court may, instead of proceeding to hear and determine the case, postpone the hearing thereof to another date and direct that notice of such postponement be served on the defendant.

Appearance by both parties.

51.—(1) If both parties appear, the Magistrate shall read the particulars of the plaintiff's claim to the defendant and ask if he or she admits the truth of the claim or not.

(2) If the defendant denies the truth of the plaintiff's claim—

- (a) in cases in which the Magistrate sits without assessors, he or she shall proceed to hear and determine the claim in the manner hereinafter provided; and
- (b) in cases in which the Magistrate sits with assessors, the Court shall proceed to select two assessors in the same manner as that prescribed for criminal cases and, having done so, proceed to hear and determine the case in the manner hereinafter provided.

Evidence.

52. The evidence of the parties shall be taken in the same manner as that prescribed for criminal cases and shall be recorded by the Court.

Adjournment.

53. The Magistrate may, at any time and whether either or both of the parties be present or not, adjourn the hearing of any case.

Enforcement of judgment.

54. Upon a judgment of the Court for the payment of money by any person the Magistrate may—

- (a) order the sum to be forthwith paid by or levied on the real and personal property of such person and, in default, that such person be imprisoned; or
- (b) order the sum to be paid by instalments and, in default of the payment of any instalment, that such person be imprisoned:

Provided that—

- (i) any imprisonment ordered shall be on the scale prescribed in section 39 of this ordinance subject, however, to a maximum of forty-two days imprisonment;
- (ii) no imprisonment may be ordered unless the

- Magistrate is satisfied by evidence on oath before ordering such imprisonment that the person against whom the order is made is able to pay the sum and will not do so, or that since the date of judgment he or she has been able to pay and has neglected or refused to do so;
- (iii) imprisonment in default of payment shall not release the judgment debtor from liability to pay the same after his or her release and successive orders for imprisonment may be made in respect of the same judgment debt;
 - (iv) any judgment debtor sentenced to imprisonment under this section who pays the whole amount due during the course of imprisonment shall forthwith be released from prison;
 - (v) in the case of payment of part of the judgment debt during the course of imprisonment, the judgment debtor shall be released from such proportion of the term of imprisonment as the payment made bears to the whole judgment debt.

PART VI—DEATH AND FIRE INQUIRIES

55.—(1) Wherever there is reason to believe or suspect that the death of any person occurring, or who may be found dead, in any of the Islands, has been brought about or accelerated by any unnatural cause, it shall be lawful for the Court, if it shall think fit, at such time and place as it shall appoint, to hold an inquiry into the cause of such death.

Enquiry into cause of death.

(2) If a body shall have been interred before an inquiry has been held under the provisions of the last preceding subsection, it shall be lawful for a Magistrate by warrant to order the disinterment of such body for the purpose of holding such inquiry and such disinterment shall be made accordingly.

56. Where any property has been damaged or destroyed by fire on any of the Islands it shall be lawful for the Court, if it shall think fit, to hold an inquiry into the cause and origin of such fire.

Inquiry into cause of fire.

PART VII—COMMITTAL OF PERSONS FOR TRIAL BEFORE THE SUPREME COURT

57. Subject to this ordinance, the Court may commit any person for trial before the Supreme Court.

Power to commit for trial.

Court to hold preliminary enquiry.

58. Whenever any charge has been brought against any person of an offence not triable by it, the Court may hold a preliminary inquiry for the purpose of determining whether there is sufficient evidence to put such person on trial by the Supreme Court.

General nature of committal proceedings.

59.—(1) Every preliminary inquiry into an offence shall be conducted by a Magistrate (other than the Island Magistrate) sitting without assessors.

(2) The Magistrate shall sit in open court except where any enactment contains an express provision to the contrary and except where it appears to the Magistrate as respects the whole or any part of a preliminary inquiry that the ends of justice would not be served by sitting in open court.

(3) Subject to subsection (4) of this section, evidence tendered before the Magistrate shall be tendered in the presence of the accused.

(4) The Magistrate may allow evidence to be tendered in the absence of the accused if—

- (a) the Magistrate considers that by reason of his or her disorderly conduct it is not practicable for the evidence to be tendered in his or her presence; or
- (b) he or she cannot be present for reasons of health but is represented by a legal representative and has consented to the evidence being tendered in his or her absence.

(5) The Magistrate's Court may, before beginning to inquire into an offence or at any time during the inquiry, adjourn the hearing and if it does so shall remand the accused.

(6) The Court shall when adjourning fix the time and place at which the hearing is to be resumed and the time fixed shall be that at which the accused is required to appear or be brought before the Court in pursuance of the remand or would be required to be brought before the Court but for section 128(3A) of the Magistrates' Courts Act 1980.

Defendant may plead guilty before or during preliminary inquiry.

59A.—(1) Notwithstanding the provisions of this Part, if a defendant is represented by a barrister or solicitor, he or she may, at any time before or during the preliminary inquiry into any information, request that he or she be brought before the Court (or if at that time before the Court, that he or she be permitted) to plead guilty to the offence charged.

(2) As soon as practicable after such request (which shall be in writing if made before the commencement of the preliminary hearing), the defendant shall be brought before the Court to be dealt with (or if before the Court at the time of such request, shall be dealt with) under this section.

(3) If the defendant is not before the Court at the time of such request and is not in custody, notice shall be given to him or her of the time and place for attendance before the Court for the purpose of being dealt with under this section.

(4) On the defendant's (or, where the defendant is a corporation, the defendant's representative's) attendance before a Court for the purposes of this section, the charge to which the defendant is required to plead shall be read to the defendant and the defendant shall then be called upon to plead either guilty or not guilty.

(5) If the defendant does not plead guilty, or if he or she (or where the defendant is a corporation, a representative of the defendant) does not personally attend the proceedings, he or she shall be treated in all respects as if he or she had not made any request to plead guilty, and no comment shall be made at the preliminary hearing or any subsequent proceedings on the fact that such a request has been made, nor shall the request be admissible in evidence against him or her in any proceedings.

(6) If the defendant pleads guilty, the Court shall commit the defendant to the Supreme Court for sentence.

(7) Where the defendant pleads guilty and is committed to the Supreme Court for sentence pursuant to this section, the relevant provisions of law as to bail, as far as they are applicable and with the necessary modifications, shall apply as if the defendant had pleaded guilty and been committed to the Supreme Court for sentence at the close of a preliminary hearing.

60.—(1) Evidence falling within subsection (2) of this section and only that evidence, shall be admissible by a Magistrate inquiring into an offence.

Evidence which is admissible.

(2) Evidence falls within this subsection if it—

- (a) is tendered by or on behalf of the prosecutor; and
- (b) falls within subsection (3) of this section.

(3) The following evidence falls within this subsection—

- (a) written statements complying with section 61 of this ordinance;
- (b) the documents or other exhibits (if any) referred to in such statements;
- (c) depositions complying with section 62 of this ordinance;
- (d) the documents or other exhibits (if any) referred to in such depositions;
- (e) statements complying with section 63 of this ordinance;
- (f) documents falling within section 64 of this ordinance.

(4) In this section “document” means anything in which information of any description is recorded.

Written statements.

61.—(1) For the purposes of section 60 above, a written statement complies with this section if—

- (a) the conditions falling within subsection (2) of this section are met; and
- (b) such of the conditions falling within subsection (3) of this section as apply are met.

(2) The conditions falling within this subsection are that—

- (a) the statement purports to be signed by the person who made it;
- (b) the statement contains a declaration by that person to the effect that it is true to the best of his or her knowledge and belief and that it was made in the knowledge that, if it were tendered in evidence, he or she would be liable to prosecution if in it anything had been wilfully stated which the person making the statement knew to be false or did not believe to be true;
- (c) before the statement is tendered in evidence a copy of the statement is given, by or on behalf of the prosecutor, to each of the other parties to the proceedings.

(3) The conditions falling within this subsection are that—

- (a) if the statement is made by a person under 18 years of age, it gives his or her age;
- (b) if it is made by a person who cannot read it, it is read to him or her before it is signed and is accompanied by a declaration by the person who so read the statement to the effect that it was so read;
- (c) if it refers to any other document as an exhibit, the copy given to any other party to the proceedings under subsection (2)(c) of this section is accompanied by a copy of that document or by such information as may be necessary to enable the party to whom it is given to inspect the document or a copy of it.

(4) So much of any statement as is admitted in evidence by virtue of this section shall, unless the Court commits the accused for trial by virtue of section 65A(2) or the Court otherwise directs, be read aloud at the hearing; and, where the Court so directs, an account shall be given orally of so much of any statement as is not read aloud.

(5) Any document or other object referred to as an exhibit and identified in a statement admitted in evidence by virtue of this section shall be treated as if it had been produced as an exhibit and identified in Court by the maker of the statement.

(6) In this section “document” means anything in which information of any description is recorded.

62.—(1) For the purposes of section 60 a deposition complies with this section if—

Depositions.

- (a) a copy of it is sent to the prosecutor under section 97A(9) of the Magistrates’ Courts Act 1980;
- (b) the condition falling within subsection (2) of this section is met; and
- (c) the condition falling within subsection (3) of this section is met, in a case where it applies.

(2) The condition falling within this subsection is that before the Magistrate begins to inquire into the offence concerned a copy of the deposition is given, by or on behalf of the prosecutor, to each of the other parties to the proceedings.

(3) The condition falling within this subsection is that, if the deposition refers to any other document as an exhibit, the copy given to any other party to the proceedings under subsection (2) of this section is accompanied by a copy of that document or by such information as may be necessary to enable the party to whom it is given to inspect that document or a copy of it.

(4) So much of any deposition as is admitted in evidence by virtue of this section shall, unless the Court commits the accused for trial by virtue of section 65A(2) or the Court otherwise directs, be read aloud at the hearing; and, where the Court so directs, an account shall be given orally of so much of any deposition as is not read aloud.

(5) Any document or other object referred to as an exhibit and identified in a deposition admitted in evidence by virtue of this section shall be treated as if it had been produced as an exhibit and identified in Court by the person whose evidence is taken as the deposition.

(6) In this section “document” means anything in which information of any description is recorded.

63.—(1) For the purposes of section 60, a statement complies with this section if the conditions falling within subsections (2) to (4) are met.

Statements.

(2) The condition falling within this subsection is that, before the preliminary inquiry begins, the prosecutor notifies the Magistrate’s Court and each of the other parties to the proceedings that he or she believes—

- (a) that the statement might by virtue of section 23 or 24 of the Criminal Justice Act 1988 (statements in certain documents) be admissible as evidence if the case came to trial; and
- (b) that the statement would not be admissible as

evidence otherwise than by virtue of section 23 or 24 of that Act if the case came to trial.

- (3) The condition falling within this subsection is that—
- (a) the prosecutor's belief is based on information available to him or her at the time the notification is made;
 - (b) he or she has reasonable grounds for this belief; and
 - (c) he or she gives the reasons for this belief when the notification is made.

(4) The condition falling within this subsection is that, when the Court or a party is notified as mentioned in subsection (2) of this section, a copy of the statement is given, by or on behalf of the prosecutor, to the Court or to the party concerned.

(5) So much of any statement as is in writing and is admitted in evidence by virtue of this section shall, unless the Court commits the accused for trial by virtue of section 65A(2) or the Court otherwise directs, be read aloud at the hearing; and where the Court so directs, an account shall be given orally of so much of any statement as is not read aloud.

Other documents.

- 64.**—(1) The following documents fall within this section—
- (a) any document which by virtue of any enactment is evidence in proceedings before the Magistrate's Court when conducting a preliminary inquiry into an offence;
 - (b) any document which by virtue of any enactment is admissible, or may be used, or is to be admitted or received, in or as evidence in such proceedings;
 - (c) any document which by virtue of any enactment may be considered in such proceedings;
 - (d) any document whose production constitutes proof in such proceedings by virtue of any enactment;
 - (e) any document by the production of which evidence may be given in such proceedings by virtue of any enactment.
- (2) In subsection (1) of this section—
- (a) references to evidence include references to prima facie evidence;
 - (b) references to any enactment include references to any provision of this ordinance or the Magistrates' Courts Act 1980.

(3) So much of any document as is admitted in evidence by virtue of this section shall, unless the Court commits the accused for trial by virtue of section 65A(2) or the Court otherwise directs, be read aloud at the hearing; and where the Court so directs an account shall be given orally of so much of any document as is not read aloud.

(4) In this section “document” means anything in which information of any description is recorded.

65.—(1) Where a statement, deposition or document is admissible in evidence by virtue of section 61, 62, 63 or 64, it may be proved by production of—

Proof by production of copy.

- (a) the statement, deposition or document; or
- (b) a copy of it or the material part of it.

(2) Subsection (1)(b) of this section applies whether or not the statement, deposition or document is in existence.

(3) It is immaterial for the purposes of this section how many removes there are between a copy and the original.

(4) In this section “copy”, in relation to a statement, deposition or document, means anything on to which information recorded in the statement, deposition or document has been copied, by whatever means and whether directly or indirectly.

65A.—(1) The Magistrate’s Court conducting a preliminary inquiry into an offence shall on consideration of the evidence—

Discharge or committal for trial.

- (a) commit the accused for trial if it is of the opinion that there is sufficient evidence to put him or her on trial for any offence triable by the Supreme Court on information; or
- (b) discharge the accused if it is not of that opinion and he or she is in custody for no other cause than the offence under inquiry

but the foregoing provisions of this subsection have effect subject to the provisions of this and any other law relating to the summary trial of offences triable on information by the Supreme Court.

(2) If the Magistrate’s Court conducting a preliminary inquiry into an offence is satisfied that all the evidence tendered by or on behalf of the prosecutor falls within section 60(3) of this ordinance it may commit the accused for trial for the offence without consideration of the contents of any statements, depositions or other documents and without consideration of any other exhibits which are not documents, unless—

- (a) the accused or one of the accused has no legal representative acting for him or her in the case; or
- (b) a legal representative for the accused or one of the accused, as the case may be, has requested the Court to consider a submission that there is insufficient evidence to put the accused on trial for the offence

and subsection (1) of this section shall not apply to a committal for trial under this subsection.

Procedure where
s.65A(2)(a) or (b)
applies.

65B. If the accused or one of the accused has no legal representation in the case or a legal representative for the accused or one of the accused, as the case may be, has requested the Court to consider a submission that there is insufficient evidence to put that accused on trial for the offence, the Court shall enter upon a consideration of the evidence in the proceedings in accordance with the following procedure—

- (i) the Court shall permit the prosecutor to make an opening submission to the Court either orally or in writing, if he or she so wishes, before any evidence is tendered;
- (ii) after such opening address, if any, the Court shall cause evidence to be tendered in accordance with sections 61(4), 62(4), 63(5) and 64(3) of this ordinance;
- (iii) the Court may view any exhibits produced before the Court and may take possession of them;
- (iv) after the evidence has been tendered, the Court shall hear or receive any submission which the accused may wish to make as to whether there is sufficient evidence to put him or her on trial before the Supreme Court for any offence;
- (v) the Court shall permit the prosecutor to make a submission, either orally or in writing,
 - (a) in reply to any submission made by the accused in pursuance of paragraph (iv); or
 - (b) where the accused has not made any such submission but the Court is nevertheless minded not to commit him or her for trial;
- (vi) after hearing or receiving any submission made in pursuance of paragraph (iv) or (v), the Court shall, unless it decides not to commit the accused for trial, cause the charge to be written down, if this has not already been done and, if the accused is not represented by counsel, shall read the charge to him and explain it in ordinary language.

Right to object to
written evidence at
trial without further
proof.

65C.—(1) A person committed by the Magistrate's Court for trial shall have the right to object, by written notification to the prosecutor and the Supreme Court within 14 days of being committed, unless the Court in its discretion permits such an objection to be made outside that period, to a statement or deposition being read as evidence at the trial without oral evidence being given by the person who made the statement or deposition and without the opportunity to cross-examine that person.

(2) Upon making a decision to commit the accused for trial, the Magistrate shall remind the accused in open court of the right to object conferred on him or her by subsection (1) of this section.

[66.—(1) Upon committing any accused person for trial before the Supreme Court, the Court shall, until the trial, either admit him or her to bail or remand him or her in custody and in such case the warrant of the Magistrate's Court shall be sufficient authority to the officer in charge of any prison appointed for the custody of prisoners committed for trial.

Procedure on committal for trial.

(2) The Court shall bind by recognizance with or without sureties, as it considers necessary, every witness called on behalf of the prosecution to appear at the trial and to give evidence and also to appear and to give evidence if required at any further examination concerning the charge which may be held by direction of the Public Prosecutor.

(3) If any person required to enter into a recognizance under the provisions of the last preceding subsection refuses to enter into the same, the Court may admit that person to prison until after the trial unless, in the meantime, he or she enters into such recognizance; but, if afterwards, from want of sufficient evidence or any other cause, the accused person is discharged, the Court shall order that any person so imprisoned shall also be discharged.

(4) The Court shall, upon the application of the accused person (but not otherwise), take steps described in subsections (2) and (3) to secure the attendance of any witnesses called on behalf of the accused person at the trial to give evidence and to give evidence if required at any further examination directed by the Public Prosecutor and shall take the names and addresses of persons whom the accused person wishes to give evidence at the trial, other than those whose evidence has been recorded at the committal proceedings, so that they may be summoned to appear at the trial.]

(Replaced by Ordinance No. 12 of 2002)

67. Any person who has been committed for trial before the Supreme Court under the provisions of this Part of this ordinance shall without payment, before the commencement of such trial, be supplied with a copy of the record of the proceedings resulting in such committal for trial and of the record of proceedings in any further examination held at the direction of the Public Prosecutor.

Accused person entitled to copy of record of proceedings.

68.—(1) Whenever it appears to a Magistrate that any person dangerously ill, or hurt and not likely to recover, is able

Preservation of testimony of persons dangerously ill.

and willing to give material evidence relating to any offence triable by the Supreme Court and that it shall not be practicable to take the depositions of such person in accordance with the provisions of this Part of this ordinance, the Magistrate may take in writing the statement on oath or affirmation of such person and shall sign the same and certify that it contains accurately the whole of the statement made by such person and shall add a note of the reasons for taking such statement and of the date and place when and where it was taken, and shall preserve such statement and file it for record.

(2) If any statement taken under the provisions of this section relates or is expected to relate to an offence for which any person has been charged or committed for trial, reasonable notice of the intention to take such statement shall be served upon the police officer and on the accused person and, if in custody, the accused person shall be brought by the person in whose charge he or she is, under an order in writing of the Magistrate, to the place where the statement is to be taken.

(3) If any statement taken under the provisions of this section relates to any offence for which any person is then or subsequently committed for trial, it shall be sent by the Magistrate to the Registrar of the Supreme Court and a copy of such statement shall be supplied to the Public Prosecutor.

(4) Any statement taken under the provisions of this Part of this ordinance may afterwards be used in evidence on the trial of any person accused of an offence to which such statement relates, if the person who made the statement is then dead, or if the Court before which the trial takes place is satisfied that for any sufficient cause the attendance of such person cannot be procured, and if reasonable notice of the intention to take such statement was served upon the person (whether prosecutor or accused person) against whom it is proposed to be read in evidence and that person had or might have had, if he or she had chosen to be present, full opportunity of cross-examining the person making the same.

Record to be sent to the Registrar of the Supreme Court and to Public Prosecutor.

69. In the event of any person being committed for trial as the result of an inquiry under the provisions of this Part of this ordinance, the Magistrate shall without delay cause the record of proceedings, which shall include the written charge, the depositions, the statement of the accused person, the recognizances of all witnesses, the recognizances of bail (if any) and all documents or things which have been put in evidence in the course of the inquiry to be sent to the Registrar of the Supreme Court and an authenticated copy of such record of proceedings shall be supplied to the Public Prosecutor.

70.—(1) If, after receipt of the authenticated copy of the record of proceedings provided for by the last preceding subsection and before the trial, the Public Prosecutor is of the opinion that further investigation is required before such trial or that the depositions of any material or necessary witnesses for the prosecution or the defence have not been taken, then he or she may direct that the inquiry be reopened and that the depositions of any material or necessary witnesses be taken and on receipt of any such direction, the Court shall thereupon reopen the inquiry and may deal with it in all respects as if the accused person had not been committed for trial.

(2) If, after receipt of the authenticated copy of the record of proceedings and of any additional depositions taken under the provisions of the last preceding subsection, the Public Prosecutor considers that the evidence against the accused person is not sufficient to put him or her on trial, the Public Prosecutor shall direct that the accused person be discharged and, upon receipt of such direction, the Court shall cause the accused person to be discharged and shall release all persons bound by recognizance to appear at the trial of the accused person by the Supreme Court from all further obligations under any such recognizance:

Provided that the discharge of the accused person under the provisions of this subsection shall not be a bar to any subsequent charge in respect of the same facts.

(3) If, after receipt of the authenticated copy of the record of proceedings and of any additional depositions taken under the provisions of subsection (1) of this section, the Public Prosecutor is of the opinion that the evidence against the accused person is sufficient to put him or her on trial on a charge of any offence disclosed thereby, he or she may —

- (a) if the Public Prosecutor is of the opinion that the case is one which should be tried on information before the Supreme Court, cause an information to be drawn up, signed by him or her and filed in the registry of the Supreme Court; or
- (b) if the Public Prosecutor is of the opinion that the case is one which may suitably be dealt with by the Magistrate's Court notwithstanding any other provision of law, cause the record of proceedings to be retained in that Court for the trial of the accused person on any charge which in his or her opinion is disclosed by the record of proceedings, either in addition to or in substitution for the offence upon which the accused person was originally committed for trial and thereafter the Magistrate's Court shall

proceed to try the accused person accordingly:
Provided that in every such case, the accused person shall be entitled to have recalled for cross-examination or further cross-examination all witnesses for the prosecution whom he or she may require to be recalled.

[(4) A count in an information filed by or on behalf of the Public Prosecutor in accordance with paragraph (a) of subsection (3) shall not be deemed objectionable on the ground that it charges in the alternative several different matters, acts or omissions which are stated in the alternative in the enactment describing any offence or declaring the matters, acts or omissions charged to be an offence, or on the ground that it is double or multiple.

(5) The accused may at any stage of the trial apply to the Court to amend or divide any such count on the ground that it is so framed as to embarrass the accused in his or her defence and the Court, if satisfied that the ends of justice require it, may order any count to be amended or divided into two or more counts.

(6) Any number of counts for any offences whatever may be joined in the same information:

Provided that to a count charging murder, no count charging any offence other than murder shall be joined.

(7) If the Court thinks it conducive to the ends of justice to do so it may order that the accused shall be tried upon any one or more of such counts separately.

(8) If an information does not state in substance an offence, the Court may on application made before the accused pleads, in its discretion, quash or amend the information; but on a defect appearing during the course of the trial, the Court may either amend the information or in its discretion quash the information or leave the objection to be taken in arrest of judgment.

(9) If on the trial of an information there appears to be a variance between the proof and the charge in any count of the information either as presented or as amended, or as it would have been if amended in conformity with any such further particulars, the Court before which the case is tried or the Court of Appeal may amend the information or any count in it, in order to make it conformable with the proof.

(10) If the Court is of opinion that the accused has not been misled or prejudiced in his or her defence by such variance it shall make the amendment.

(11) If it appears that there is in the information or in any count in it an omission to state or a defective statement of anything requisite to constitute the crime or an omission to

negative any exception which ought to be negated but that the matter omitted is proved by the evidence, the Court before which the trial takes place or the Court of Appeal, if of opinion that the accused has not been misled or prejudiced in his or her defence by the error or omission, shall amend the information or count as may be necessary.

(12) In any such case the trial or the appeal may then proceed in all respects as if the information or count had been originally framed as amended.

(13) If the Court is of opinion that the accused has been misled or prejudiced in his or her defence by any such variance, error, omission or defective statement as aforesaid, but that the effect of his or her being misled or prejudiced might be removed by adjourning or postponing the trial, the Court may in its discretion make the amendment and adjourn the trial to a future day, on such terms as it thinks just.

(14) Where an amendment of any information or count is made under this section by the Court of Appeal, that Court may, in its discretion in making the amendment, either affirm the sentence or direct a new trial.

(15) In determining whether the accused has been misled or prejudiced in his or her defence, the Court which has to determine the question shall consider the contents of the documents, depositions and statements, as well as the other circumstances of the case.

(16) The propriety of making or refusing to make any such amendment shall be deemed a question for the Court and the decision of the Court upon it may be reserved for the Court of Appeal or may be brought on appeal before the Court of Appeal in the same manner as any other decision on a point of law.]

(Added by Ordinance No. 12 of 2002)

PART VIIA—SPECIAL PROVISIONS FOR PROCEDURE AND EVIDENCE IN CRIMINAL PROCEEDINGS

70A. Notwithstanding the provisions of section 17(1) of the Judicature (Courts) Ordinance, the provisions of this Part shall apply and have effect in all criminal proceedings in the Magistrate's Court, whether on the summary trial of any offence or in committal proceedings under Part VII, and in the Supreme Court on the trial of any person on information for an indictable offence.

Application of Part.
cap. 2

[70AA.—(1) Where any person is [to be tried for a criminal offence] and—

Interlocutory
order relating to
admissibility of
evidence

- (a) the prosecutor or the accused wishes to adduce any particular evidence at the trial; and

- (b) he or she believes that the admissibility of that evidence may be challenged—
 he or she may at any time before the trial apply to a [Magistrate or] Judge of the Court by or before which the [case] is to be tried for an order to the effect that the evidence is admissible.
- (2) The [Magistrate or] Judge shall give each party an opportunity to be heard in respect of the application before deciding whether or not to make the order.
- (3) The [Magistrate or] Judge may make an order under this section on such terms and subject to such conditions as he or she thinks fit.
- (4) Nothing in this section nor in any order made under this section shall affect the right of the prosecutor or the accused to seek to adduce evidence that he or she claims is admissible during the trial, nor the discretion of the trial [Magistrate or] Judge to allow or exclude any evidence in accordance with any rule of law.]

(Inserted by Ordinance No. 12 of 2002)
(Amended by Ordinance No. 7 of 2005)

Determining whether
 witness to be sworn.

- 70B.**—(1) Any question whether a witness in criminal proceedings may be sworn for the purpose of giving evidence on oath, whether raised—
- (a) by a party to the proceedings, or
 - (b) by the Court of its own motion,
- shall be determined by the Court in accordance with this section.
- (2) The witness may not be sworn for that purpose unless—
- (a) he or she has attained the age of 14; and
 - (b) he or she has a sufficient appreciation of the solemnity of the occasion and of the particular responsibility to tell the truth which is involved in taking an oath.
- (3) The witness shall, if able to give intelligible testimony, be presumed to have a sufficient appreciation of those matters if no evidence tending to show the contrary is adduced (by any party).
- (4) If any such evidence is adduced, it is for the party seeking to have the witness sworn to satisfy the Court that, on a balance of probabilities, the witness has attained the age of 14 and has a sufficient appreciation of the matters mentioned in subsection (2)(b).
- (5) Expert evidence may be received on the question mentioned in subsection (1).
- (6) Any questioning of the witness (where the Court considers that necessary) shall be conducted by the Court in

the presence of the parties.

(7) For the purposes of this section a person is able to give intelligible testimony if he or she is able to—

- (a) understand questions put to him or her as a witness, and
- (b) give answers to them which can be understood.

70C.—(1) Subsections (2) and (3) apply to a person (of any age) who—

Reception of unsworn evidence.

- (a) is competent to give evidence in criminal proceedings, but
- (b) (by virtue of section 70B(2)) is not permitted to be sworn for the purpose of giving evidence on oath in such proceedings.

(2) The evidence in criminal proceedings of a person to whom this subsection applies shall be given unsworn.

(3) A deposition of unsworn evidence given by a person to whom this subsection applies may be taken for the purposes of criminal proceedings as if that evidence had been given on oath.

(4) A court in criminal proceedings shall accordingly receive in evidence any evidence given unsworn in pursuance of subsection (2) or (3).

(5) Where a person (“the witness”) who is competent to give evidence in criminal proceedings gives evidence in such proceedings unsworn, no conviction, verdict or finding in those proceedings shall be taken to be unsafe by reason only that it appears to the Court of Appeal that the witness was a person falling within section 70B(2) (and should accordingly have given evidence on oath).

(Sections 70CA, 70CB and 70CC repealed by Ordinance No. 6 of 2010)

70D.—(1) For the purposes of this section, “case of a sexual nature” means proceedings in which a person is charged with, or is to be sentenced for—

Special provision in cases of sexual nature.

- (a) any offence against the person of a sexual nature;
- (b) being a party to the commission of any offence referred to in paragraph (a) of this subsection;
- (c) conspiring with any person to commit any such offence.

(2) While the complainant in a case of a sexual nature is giving oral evidence (whether in chief or under cross-examination or on re-examination), no person shall be present in the courtroom except the following—

- (a) the Magistrate or Judge and assessors (if any);
- (b) the accused and any person who is for the time being

- acting as custodian of the accused;
- (c) any barrister or solicitor engaged in the proceedings;
 - (d) any officer of the Court;
 - (e) any person who is for the time being responsible for recording the proceedings;
 - (f) any member of the police in charge of the case;
 - (g) any accredited news media reporter;
 - (h) any person whose presence is requested by the complainant;
 - (i) any person expressly permitted by the Magistrate or Judge to be present.
- (3) Before the complainant in a case of a sexual nature commences to give evidence, the Magistrate or Judge shall—
- (a) ensure that no person other than one referred to in subsection (2) of this section is present in the courtroom; and
 - (b) advise the complainant of the complainant’s right to request the presence of any person under paragraph (h) of that subsection.
- (4) When in a case of a sexual nature the Court is of the opinion that the interests of the complainant so require, it may make an order forbidding publication of any report or account giving details of the criminal acts alleged to have been performed on the complainant or of any acts that the complainant is alleged to have been compelled or induced to perform or consent to or acquiesce in.
- (5) The breach of any order made under subsection (4) of this section, or any evasion or attempted evasion of it, may be dealt with as contempt of court.
- (6) Nothing in this section shall limit or affect the powers of the Court to exclude any person or forbid any report or account of any evidence under any other enactment.
- (7) Subject to this section, every accused person shall be entitled to be present in Court during the whole of the proceedings unless he or she commits misconduct by so interrupting the proceedings as to render their continuance in his or her presence impracticable.
- (8) The Court may permit the accused to be out of Court during the whole or any part of the proceedings on such terms as it thinks proper.

Evidence of complainant in sexual cases.

70E.—(1) For the purposes of this section, “cases of a sexual nature” means proceedings in which a person is charged with, or is to be sentenced for—

- (a) any offence against the person of a sexual nature;
- (b) being a party to the commission of any offence referred to in paragraph (a) of this subsection;

- (c) conspiring with any person to commit any such offence.

(2) In any case of a sexual nature, no evidence shall be given and no question shall be put to a witness relating directly or indirectly to—

- (a) the sexual experience of the complainant with any person other than the accused; or
- (b) the reputation of the complainant in sexual matters, except by leave of the Court.

(3) The Court shall not grant leave under subsection (2) of this section unless satisfied that the evidence to be given or the question to be put is of such direct relevance to—

- (a) facts in issue in the proceeding; or
- (b) the issue of the appropriate sentence,

as the case may require, that to exclude it would be contrary to the interests of justice:

Provided that any such evidence or question shall not be regarded as being of such direct relevance by reason only of any inference it may raise as to the general disposition or propensity of the complainant in sexual matters.

(4) Notwithstanding subsection (2) of this section, leave shall not be required—

- (a) to the giving of evidence or the putting of a question for the purpose of contradicting or rebutting evidence given by any witness, or given by any witness in answer to a question relating directly or indirectly, in either case, to—
 - (i) the sexual experience of the complainant with any person other than the accused; or
 - (ii) the reputation of the complainant in sexual matters, or

- (b) where the accused is charged as a party, and cannot be convicted unless it is shown that a person other than the accused committed an offence referred to in subsection (1) of this section against the complainant, to the giving of evidence or the putting of a question relating directly or indirectly to the sexual experience of the complainant with that other person.

(5) An application for leave under subsection (2) of this section—

- (a) may be made from time to time whether before or after the commencement of the proceeding; and
- (b) if made in the course of a proceeding before assessors, shall be made and dealt with in the absence of the assessors; and

- (c) if the accused or the accused's counsel so requests, shall be made and dealt with in the absence of the complainant.

(6) Nothing in this section shall authorise evidence to be given or questions to be put that could not be given or put apart from this section.

(7) Subject to this section, the restrictions imposed upon the cross-examination of prosecution witnesses by the accused in person provided by section 30 of this ordinance shall apply also to the cross-examination of complainants in the trial of cases of a sexual nature.

Address and occupation of complainant not to be disclosed in open Court.

70F.—(1) This section applies to proceedings in which a person is charged with, or is to be sentenced for, any offence specified in section 70E(1) of this ordinance.

(2) In any proceedings to which this section applies, the following provisions shall apply;

- (a) except where leave is given under paragraph (c) of this subsection, the complainant shall not be required to state his or her address or occupation in Court;
- (b) except where leave is given under paragraph (c) of this subsection, no barrister, solicitor, officer of the Court or other person involved in the proceedings shall state the address or occupation of the complainant in Court;
- (c) no oral evidence shall be given and no question shall be put to a witness relating to the address or occupation of the complainant except by leave of the Court.

(3) The Court shall not grant leave under subsection (2) of this section unless the satisfied that the evidence to be given or the question to be put is of such direct relevance to facts in issue that to exclude it would be contrary to the interests of justice.

(4) An application for leave under subsection (2) of this section—

- (a) may be made from time to time, whether before or after the commencement of any hearing or other proceeding; and
- (b) shall, where practicable, be made and dealt with in Chambers.

Corroboration in sexual cases.

70G.—(1) Where any person is tried for an offence against the person of a sexual nature, no corroboration of the complainant's evidence shall be necessary for that person to be convicted; and in any such case the Court shall not be

required to give any warning to the assessors, if any, relating to the absence of corroboration.

(2) If, in any such case, the Court decides to comment on the absence of any evidence tending to support any other evidence, no particular form of words shall be required.

70H. Where, during the trial of any person for any offence against the person of a sexual nature, evidence is given or a question is asked or a comment is made that tends to suggest an absence of complaint in respect of the alleged offence by the person upon whom the offence is alleged to have been committed or to suggest delay by that person in making any such complaint, the Court may tell the assessors, if any, that there may be good reasons why the victim of such offence may refrain from or delay in making such a complaint.

Delay in making complaint in sexual cases.

70I. Sections 70J to 70P of this ordinance apply to every case where a person is charged with—

Application of sections 70J to 70P.

- (a) any offence against the person of a sexual nature; or
- (b) being a party to the commission of any offence referred to in paragraph (a) of this section; or
- (c) conspiring with any person to commit any such offence.

70J.—(1) Where, in any case to which this section applies, the accused is charged with a summary offence before the Magistrate’s Court or is the subject of committal proceedings before the Magistrate’s Court or has been committed for trial by the Supreme Court on any indictable offence, the prosecutor shall, before the hearing, apply to the Court by or before which the hearing is to take place for directions under section 70K of this ordinance as to the mode by which the complainant’s evidence is to be given at the hearing.

Directions as to mode by which complainant’s evidence is to be given.

(2) The Court shall hear and determine the application in Chambers and shall give each party an opportunity to be heard in respect of the application.

(3) The Court may call for and receive any reports from any persons whom the Court considers to be qualified to advise on the effect on the complainant of giving evidence in person in the ordinary way or in any particular mode described in section 70K of this ordinance.

(4) In considering what directions (if any) to give under section 70K of this ordinance, the Court shall have regard to the need to minimise stress on the complainant while at the same time ensuring a fair trial for the accused.

(5) For the purposes of this section, the reference to a “hearing” shall include any application for remand,

adjournment or any other interlocutory relief.

Modes in which
complainant's
evidence may be
given.

70K.—(1) On an application under section 70J of this ordinance, the Court may give any of the following directions in respect of the mode in which the complainant's evidence is to be given at the trial—

- (a) where a videotape of the complainant's evidence has been previously made, a direction that the complainant's evidence be admitted in the form of that videotape, with such excisions (if any) as the Court may order under subsection (2) of this section;
- (b) where the Court is satisfied that the necessary facilities and equipment are available, a direction that the complainant shall give his or her evidence outside the courtroom but within the court precincts, the evidence being transmitted to the courtroom by means of closed circuit television;
- (c) a direction that, while the complainant is giving evidence or is being examined in respect of his or her evidence, a screen or one-way glass be so placed in relation to the complainant that—
 - (i) the complainant cannot see the accused; but
 - (ii) the assessors (if any) and counsel for the accused can see the complainant;
- (d) where the Court is satisfied that the necessary facilities and equipment are available, a direction that, while the complainant is giving evidence or is being examined in respect of his or her evidence, the complainant be placed behind a wall or partition, constructed in such a manner and of such materials as to enable those in the courtroom to see the complainant while preventing the complainant from seeing them, the evidence of the complainant being given through an appropriate audio link;
- (e) where the Court is satisfied that the necessary facilities and equipment are available, a direction—
 - (i) that the complainant give his or her evidence at a location outside the Court precincts; and
 - (ii) that those present while the complainant is giving evidence include the Court, the accused, counsel and such other persons as the Court thinks fit; and
 - (iii) that the giving of evidence by the complainant be recorded on videotape and that the complainant's evidence be admitted in the form of that videotape with such excisions (if any) as the Court may order under subsection

(2) of this section.

(2) Where a videotape of the complainant's evidence is to be shown at the trial, the Court shall view the videotape before it is shown and may order to be excised from the videotape any matters that, if the complainant's evidence were to be given in person in the ordinary way, would be excluded either—

- (a) in accordance with any rule of law relating to the admissibility of evidence; or
- (b) pursuant to any discretion of the Court to order the exclusion of any evidence.

(3) Where a videotape of the complainant's evidence is to be shown at the trial, the Court shall give such directions under this section as the court may think fit relating to the manner in which any cross-examination or re-examination of the complainant is to be conducted.

(4) Where the complainant is to give his or her evidence in the mode described in paragraph (b) or paragraph (d) of subsection (1) of this section, the Court may direct that any questions to be put to the complainant shall be given through an appropriate audio link to a person approved by the Court, placed next to the complainant, who shall repeat the question to the complainant.

(5) Where the complainant is to give his or her evidence at a location outside the Court precincts, the Court may also give any directions under paragraph (c) or paragraph (d) of subsection (1) of this section that the Court may think fit.

(6) Where a direction is given under this section, the evidence of the complainant shall be given substantially in accordance with the terms of the direction; but no such evidence shall be challenged in any proceedings on the ground of any failure to observe strictly all the terms of the direction.

70L.—(1) Subject to the succeeding provisions of this section, the accused shall not be entitled in any case to which this section applies to cross-examine the complainant.

Cross-examination and questioning of accused.

(2) Nothing in subsection (1) of this section nor any direction given under section 70K of this ordinance shall affect the right of counsel for the accused to cross-examine the complainant.

(3) Where the accused is not represented by counsel, the accused may put questions to the complainant (whether by means of an appropriate audio-link or otherwise as the Court may direct) by stating the questions to a person, approved by the Court, who shall repeat the questions to the complainant.

(4) No direction given under section 70K of this ordinance shall affect the right of the Court to question the complainant.

(5) Where the complainant is being cross-examined by counsel for the accused or any questions are being put to

the complainant by the accused, the Court may disallow any question put to the complainant that the Court considers is, having regard to the age or emotional condition of the complainant, intimidating or overbearing.

- (6) The Court shall forbid any question it regards as—
- (a) indecent or scandalous, although such question may have some bearing on the case before the Court, unless the question relates to facts in issue or to matters necessary to be known in order to determine whether or not the facts in issue existed; or
 - (b) intended to insult or annoy or needlessly offensive in form, notwithstanding that such question may be proper in itself.

Expert witnesses.

70M.—(1) For the purposes of this section, a person is an expert witness if that person is—

- (a) a medical practitioner holding vocational registration in the speciality of psychiatry, practising or having practised in the field of psychiatry and with experience in the professional treatment of sexually abused persons; or
- (b) a psychologist registered in any Commonwealth country practising or having practised in the field of psychology and with experience in the professional treatment of sexually abused persons.

(2) In any case to which this section applies, an expert witness may give evidence on the following matters—

- (a) the intellectual attainment, mental capability and emotional maturity of the complainant, the witness's assessment of the complainant being based on—
 - (i) examination of the complainant before the complainant gives evidence; or
 - (ii) observation of the complainant giving evidence, whether directly or on a videotape.
- (b) the general development level of persons of the same age group as the complainant;
- (c) the question whether any evidence given during the proceedings by any person (other than the expert witness) relating to the complainant's behaviour is, from the expert witness's professional experience or from his or her knowledge of the professional literature, consistent or inconsistent with the behaviour of sexually abused persons of the same age group as the complainant.

Directions to assessors (if any).

70N. Where a case to which this section applies is tried in the Supreme Court with assessors, the following

provisions shall apply in respect of the Judge's directions to the assessors—

- (a) Where the evidence of the complainant is given in any particular mode described in section 70K of this ordinance, the Judge shall advise the assessors that the law makes special provision for the giving of evidence by complainants in sexual cases and that the assessors are not to draw any adverse inference against the accused from the mode in which the complainant's evidence is given;
- (b) The Judge shall not give any warning to the assessors relating to the absence of corroboration of the evidence of the complainant;
- (c) The Judge shall not instruct the assessors on the need to scrutinise the evidence of complainants in sexual cases generally with special care nor suggest to the assessors that such complainants generally have tendencies to invention or distortion;
- (d) Nothing in paragraph (b) or paragraph (c) of this section shall limit the discretion of the Judge to comment on—
 - (i) specific matters raised in any evidence during the trial; or
 - (ii) matters, whether of a general or specific nature, included in the evidence of an expert witness to whom section 70M of this ordinance applies.

700.—(1) The Registrar of the Supreme Court and the Registrar of the Magistrate's Court (including in each case any Deputy-Registrar) shall be entitled respectively to possession on behalf of the Court of every document and other exhibit produced by any witness in evidence in the course of any committal proceeding or trial and shall be responsible for the security and preservation thereof.

Powers and duties of Registrar as to exhibits.

(2) For the purposes of subsection (1), the Registrar shall have such powers and authority as may be necessary to maintain the safe possession of such exhibits and, if it is necessary to remove the exhibits from the precincts of the Court, may enlist the aid of any bailiff or police officer to take them into custody accordingly.

(3) In the event of the removal of the exhibits from the precincts of the Court, the Registrar shall report the same to the presiding Judge or Magistrate and seek his or her direction as to their further safekeeping.

Regulations.

70P. The Governor may from time to time make regulations for all or any of the following purposes—

- (a) prescribing the procedure to be followed, the type of equipment to be used and the arrangements to be made where the evidence of a complainant is to be given by videotape;
- (b) providing for the approval of interviewers or classes of interviewers in such cases, providing for the proof of any such approval to be by production of a certificate and prescribing the form of that certificate and prescribing the form of certificate by which the interviewer is to formally identify the videotape;
- (c) providing for the consent of the complainant to being videotaped and specifying who may give consent on behalf of the complainant;
- (d) prescribing the uses to which any such videotapes may be put and prohibiting their use for any other purposes;
- (e) providing for the safe custody of any such videotapes;
- (f) providing for such other matters as are contemplated by any of the sections of this Part or as may be necessary for the due administration of those provisions.

**PART VIII—MAINTENANCE AND THE CARE
AND CUSTODY OF CHILDREN, SICK AND AGED
PERSONS AND PERSONS OF UNSOUND MIND**

Meaning of spouse

[70Q. For the purposes of this Part –

“spouse” means a person’s husband or wife, and where that person’s marriage has been dissolved under Part VIII of the Marriage Ordinance, includes a person who was a spouse before that marriage was dissolved.]

(Inserted by Ordinance No. 2 of 2012)

Maintenance of spouse and children

71.—[(1) Any person, whose spouse has deserted them or has willfully neglected or refused to sufficiently maintain them or any of their children (including adopted children) may apply to the Court for an order against the spouse containing all or any of the following provisions –

- (a) maintenance for the applicant;
- (b) the legal custody and guardianship of any such children;
- (c) maintenance for any such children;

and, upon receipt of any such application, the Magistrate shall issue a summons to compel the attendance of the spouse of the applicant before the Court at the time and place appointed in and by such summons.]

(Repealed and replaced by Ordinance No. 2 of 2012)

(2) If, upon inquiry in the manner hereinafter provided into any complaint made under the provisions of this section, the Court is satisfied that the substance of such complaint has been proved, it may make an order against the [spouse] of the complainant containing all or any of the provisions specified in the last preceding subsection:

Provided that in exercising its discretion with respect to orders under paragraph (a) and (b) of subsection (1) the Court shall take the conduct of the parties into account.

(Amended by Ordinance No. 2 of 2012)

72.—(1) Any person having the care or custody of any child, [a parent] of whom has wilfully neglected or refused to maintain such child, may, by a complaint on oath, apply to the Court for an order against [that parent] for the maintenance of the child and, upon receipt of such complaint, the Magistrate shall issue a summons to compel the attendance of [that parent] before the Court at the time and place appointed in and by such summons.

Maintenance of children.

(2) If, upon inquiry in the manner hereinafter provided into any complaint made under the provisions of this section, the Court is satisfied that the substance of such complaint has been proved, it may make an order against [a parent] for the maintenance of such child.

(Amended by Ordinance No. 2 of 2012)

73.—(1) The mother of any child may, at any time within twelve months after the birth of such child, by a complaint on oath, apply to the Court for an order against any man alleged to be the father of such child to whom she was not married at the time of the birth, for the maintenance of such child, and, upon receipt of any such complaint, the Magistrate shall issue a summons to compel the attendance of the man alleged to be the father of such child before the Court at the time and place appointed in and by such summons.

Paternity of children.

(2) If, upon inquiry in the manner hereinafter provided into any complaint made under the provisions of this section, the Court is satisfied on the evidence of the mother, confirmed in some material particular by other evidence to the satisfaction of the Court, it may adjudge the man alleged to be the father of such child to be the putative father thereof and may make an order against him for the maintenance of such child.

74.—(1) Any person who is unable to provide himself with the necessaries of life by reason of sickness or age, or any person having the care or custody of any such person, or the Medical Officer, may, by a complaint on oath, apply to the Court for an order against any one or more of the parents, brothers, sisters or

Sick and aged persons.

children (including any adopted children) of such sick or aged person for the maintenance of such sick or aged person, and, upon receipt of any such complaint, the Magistrate shall issue a summons to compel the attendance of the person or persons against whom such complaint is made before the Court at the time and place appointed in and by such summons.

(2) If, upon inquiry in the manner hereinafter provided into any complaint made under the provisions of this section, the Court is satisfied that the substance of such complaint has been proved, it may make an order against the person or persons against whom such complaint is made, or any of them, for the maintenance of such sick or aged person.

Persons of unsound mind.

75.—(1) Wherever it is alleged that any person is of unsound mind and incapable of managing his or her personal welfare and property, the Court may, on the complaint on oath of—

- (a) any person having the care or custody of such person;
- (b) any of the parents, brothers, sisters or children (including any adopted children) of such person;
- (c) any police officer; or
- (d) the Medical Officer,

hold an inquiry for the purpose of determining whether the person alleged to be of unsound mind is or is not of unsound mind and incapable of managing his or her personal welfare and property.

(2) Upon receipt of any complaint made under the provisions of the last preceding subsection, the Magistrate shall issue a summons to compel the attendance before the Court of the person alleged to be of unsound mind:

Provided that, if it appears that the person alleged to be of unsound mind is in such a state that personal service of such summons would be ineffectual or unduly distressing, the Magistrate may direct such substituted service of the summons as he shall think proper or, instead of issuing such a summons, may issue a warrant of arrest to compel the attendance before the Court of the person alleged to be of unsound mind.

(3) In addition to any summons or warrant issued under the provisions of the last preceding subsection, the Magistrate may, if he or she thinks fit, issue a summons to compel the attendance before the Court at the time and place appointed for the hearing of an inquiry, of any person having the care and custody of the person alleged to be of unsound mind, or of any of the parents, brothers, sisters or children (including any adopted children) of the person alleged to be of unsound mind.

(4) At any time after receipt of any complaint made under the provisions of subsection (1) of this section, the Magistrate may, by order, require the person alleged to be of unsound mind to attend at such convenient time and place as the Magistrate may appoint for the purpose of being personally examined by the Court or by any person from whom the Court may desire to have a report and the Magistrate may also make an order authorising any person or persons named therein to have access to the person alleged to be of unsound mind for the purpose of any such personal examination.

(5) On the day appointed for the hearing of any inquiry held under the provisions of this section, after receiving such representations and hearing such evidence and arguments as it may think fit, the Court shall determine whether the person alleged to be of unsound mind is or is not of unsound mind and incapable of managing his or her personal welfare and property, and if the Court finds that such person is so of unsound mind it may —

(a) order the detention of the person found to be of unsound mind in such place and subject to such conditions as the Court may consider appropriate having regard to his or her welfare and treatment:
Provided that—

- (i) no such order shall be made except on the recommendation of the Medical Officer and unless the Court is of the opinion that the person found to be of unsound mind is dangerous to self or others and that no other method of dealing with such person would be appropriate to the circumstances of the case;
- (ii) the Court shall forthwith after making any such order report that fact to the Governor and such report shall include a full statement as to the personal particulars of the person found to be of unsound mind, the date when the order was made, the circumstances in which it was made and the place where and the conditions under which such person is to be detained;
- (iii) every such order shall be sent forthwith to the Governor who may direct that the record of proceedings in such case be submitted to the Supreme Court for examination in order that the Supreme Court may satisfy itself as to the correctness, legality and propriety of the proceedings, the findings and the order made;

- (iv) the Supreme Court on reviewing the record may make such orders and give such directions as it considers necessary or expedient in the interests of the person affected and remit the record to the Magistrate's Court for amendment in compliance with such orders or directions.
- (b) if any friend or relative of such person shall undertake to the satisfaction of the Court that such person shall be properly taken care of and prevented from doing injury to self or others, appoint such friend or relative to be the welfare guardian of the person found to be of unsound mind and commit that person to the care and custody of such guardian;
- (c) appoint a guardian of the estate of the person found to be of unsound mind with such powers as to the management of the property and affairs of that person as the Court may consider necessary;
- (d) make an order against any one or more of the parents, brothers, sisters or children (including adopted children) upon whom a summons has been served under the provisions of subsection (3) of this section, of the person found to be of unsound mind, for the maintenance of such person.

(6) Wherever it is alleged that any person found to be of unsound mind under the provisions of this section is no longer of unsound mind, the Court may on the application of any such person or of any other person, hold an inquiry for the purpose of determining whether such unsoundness of mind has ceased and, if as a result of such inquiry it is found that such unsoundness of mind has ceased, the Court shall order that all previous orders made by it under the provisions of this section in relation to such person or his or her estate are to be set aside on such terms and conditions as may be appropriate.

(7) An inquiry held under the provisions of the last preceding subsection shall be conducted in the same manner as an inquiry held under the provisions of subsection (1) of this section and such other of the foregoing provisions of this section as are appropriate shall apply *mutatis mutandis* to any such inquiry.

Procedure in inquiries held under Parts VI and VII
Form of order and the enforcement of payment thereof.

76. (Repealed by Ordinance No. 2 of 2012)

77.—(1) Any order for the maintenance of any person made under the provisions of this Part of this ordinance shall include provision for—

- (a) the payment of a weekly sum in accordance with the means of the defendant; or
- (b) the provision of such accommodation, food, clothing and other necessities as to the Court seems fit;

and shall, in the case of an order for the maintenance of any child, specify the period during which the order is to remain in force:

Provided that no order for the maintenance of any child shall remain in force after such child attains the age of [16] years.

(2) Any order made under the provisions of this Part of this ordinance may be enforced in accordance with the procedure prescribed for the enforcement of judgments of the Court under the provisions of section 54 of this ordinance.

(Amended by Ordinance No. 2 of 2009)

78. No proceedings taken under any of the provisions of this Part of this ordinance shall be a bar to the prosecution of any person under the provisions of any law creating a criminal offence in respect of the same facts.

Proceedings under this Part not a bar to prosecution.

PART IX—POLICE OFFICERS

79. Every police officer shall, subject to the orders and directions of the Governor—

Duties of police officers.

- (a) be employed in and throughout the Islands for preserving the peace, for the prevention and detection of crime and for the apprehension of offenders against the law;
- (b) in the name of Her Majesty the Queen, conduct prosecutions for offences against the provisions of this or any other ordinance:

Provided that all prosecutions and applications made on behalf of the Council under the provisions of any regulations made under the Local Government Ordinance shall be conducted by a police officer in the name of the Council;

cap. 11

- (c) be charged with the service and execution within the Islands of all summonses, warrants, writs of summons, orders and process of the Magistrate's Court and of the Supreme Court and for that purpose shall have the same powers and authority as may be conferred upon any sheriff or bailiff by any law for the time being in force in the Islands; and
- (d) be on duty at all times and obey all lawful directions in respect of the execution of his or her office given by the Governor, any Magistrate or the Council.

Powers to search and
examine baggage and
goods

- [79A.]**—(1) Subsections (2) and (3) apply to –
- (a) any person who is departing from or arriving in Pitcairn; and
 - (b) the person’s accompanying baggage and any other goods in the person’s possession or under the person’s control.
- (2) The person must –
- (a) upon request by a police officer, make the baggage and other goods available for an examination by a police officer; and
 - (b) comply with any reasonable direction given by a police officer to facilitate an examination as referred to in paragraph (a).
- (3) A police officer, or any person they may call upon for assistance, may search the person if the police officer has reasonable cause to suspect that the person has hidden on or about his or her person –
- (a) an item that is subject to a prohibition or restriction of import or export under any law; or
 - (b) evidence relating to the unlawful import, export, or attempted export of any item under any law.
- (4) Subsection (5) applies to –
- (a) any vessel that is departing from or arriving in Pitcairn; and
 - (b) goods that are on that vessel or are to be loaded on to that vessel; and
 - (c) goods contained in a parcel or package that has been received by the Post Office and is being sent to a destination outside of Pitcairn, whether or not the parcel or package is on a vessel.
- (5) A police officer, or any person they may call upon for assistance, may –
- (a) board and search the vessel for the purpose of facilitating an examination under this section;
 - (b) examine any goods, including by opening any parcel or package when necessary; and
 - (c) give any reasonable direction to facilitate any of the activities in paragraphs (a) and (b).
- (6) The powers of a police officer under this section may only be exercised for the purpose of enforcing any prohibition or restriction of import or export of goods under any law.
- (7) A person who wilfully fails to comply with any requirement or any direction of a police officer under this section is guilty of an offence and liable on conviction to a fine not exceeding \$5,000.
- (8) For the avoidance of doubt, nothing in this section limits any other power of search or examination under any other law.

79B.—(1) The following goods are liable to forfeiture:

- (a) All goods that are unlawfully imported;
- (b) All goods that are unlawfully exported; and
- (c) All goods that any person or persons have attempted unlawfully to export.

Forfeiture and seizure
of goods

(2) A police officer carrying out an examination or search under s 79A, or causing such a search to be carried out, may seize —

- (a) any goods liable to forfeiture; or
- (b) any item found if he or she has reasonable grounds to believe that the item is liable to forfeiture; or
- (c) any item found if he or she has reasonable grounds to believe that the item is evidence relating to the unlawful import, export, or attempted export of any item under any law.

(3) For the avoidance of doubt, nothing in this section limits any other power of seizure under any other law.]

(Inserted by Ordinance No. 1 of 2018)

PART X—OFFENCES

80.—(1) Any person who—

- (a) within or in the vicinity of any room in which the Court is sitting, is insulting towards or shows disrespect in speech or manner to the Magistrate, any assessor, the Registrar or a police officer;
- (b) wilfully refuses or neglects to appear before the Court when summoned to do so;
- (c) having attended the Court for the purpose of giving evidence in any case before it, remains in the room on which the Court is sitting after having been asked to leave such room;
- (d) causes any obstruction or disturbance in the course of the hearing of any case before the Court;
- (e) commits any other act of intentional disrespect to any case before the Court or to any officer of the Court,

Contempt of Court.

is guilty of an offence and liable to a fine not exceeding one hundred dollars or to imprisonment for a period not exceeding twelve days or to both such fine and imprisonment.

(2) Any person who enters the room in which the Court is sitting carrying firearms whether concealed or not shall be guilty of an offence and liable to a fine not exceeding one hundred dollars or to imprisonment for a period not exceeding twelve days or to both such fine and imprisonment.

(3) Any person who, having appeared before the Court and,

being called upon to give evidence, refuses to take the oath or affirmation or, having taken the oath or affirmation, refuses without reasonable excuse to answer any question lawfully put to him or her or to produce any document, shall be guilty of an offence and shall be liable in addition to any period of imprisonment imposed under the provisions of subsection (3) of section 14 of this ordinance, to a fine not exceeding one hundred dollars or to imprisonment for a period not exceeding twelve days or to both such fine and imprisonment.

Witness intimidation.

80A.—(1) Any person who intentionally intimidates or threatens another person knowing or believing that other person to be assisting in the investigation of an offence, or knowing that person to be a witness or potential witness in any legal proceedings, and intends that the investigation or the course of justice shall be thereby obstructed commits an offence punishable on conviction by imprisonment for a term not exceeding five years.

(2) For the purposes of subsection (1)—

- (i) reference to the investigation of an offence includes any police investigation;
- (ii) “offence” includes any alleged or suspected offence;
- (iii) “legal proceedings” means any civil or criminal cause or intended cause issued or to be issued out of any court of the Islands or other judicial or quasi-judicial tribunal and includes a commission of inquiry;
- (iv) the act of intimidation or threat may be made by any means and may be expressed directly or indirectly through the medium of a third party.

(3) The offence prescribed by subsection (1) shall be justiciable in the Supreme Court notwithstanding that the acts constituting the offence or any of those acts may have taken place outside the territorial limits of the Islands.

Perjury.

81. Any person lawfully sworn or affirmed as a witness in any case before the Court who wilfully makes any statement in evidence material to that case which he or she knows to be false or does not believe to be true, with the intention of deceiving or misleading the Court, shall be guilty of an offence and liable to a fine not exceeding two hundred dollars or to imprisonment for any period not exceeding thirty days or to both such fine and imprisonment.

Escapes and rescues.

82.—(1) Any person who, being in lawful custody either in prison or in the custody of a police officer, escapes from such custody, shall be guilty of an offence and shall be liable to imprisonment for any period not exceeding one hundred days.

(2) Any person who by force rescues or attempts to rescue any other person from lawful custody shall be guilty of an offence and liable to imprisonment for any period not exceeding one hundred days.

83. Any person who—

- (a) assaults, resists or wilfully obstructs a police officer in the due execution of his or her duty or any other person acting in aid of such officer; or
- (b) assaults any person on account of any act done by him or her in the execution of any duty imposed by law,

Assaulting, resisting or obstructing a police officer.

shall be guilty of an offence [triable either **summarily** by the Magistrate's Court and liable to a fine not exceeding two hundred and fifty dollars or to imprisonment for any period not exceeding one hundred days or to both such fine and imprisonment,

or

on information by the Supreme Court and liable to a fine not exceeding one thousand dollars or imprisonment for any term not exceeding five years or to both such fine and imprisonment.]

(Amended by Ordinance No. 7 of 2005)

SCHEDULE

Section 16(1)(a)

OFFENCES TRIABLE ONLY SUMMARILY

1. In this Schedule

“certified by the Public Prosecutor” means certified by the Public Prosecutor, in any particular case, as appropriate to be tried summarily in that case;

reference to any “Act” means an Act of the Parliament of the United Kingdom.

2. The following offences, in addition to those referred to in section 16(1)(b), are triable only summarily.

(Deleted by Ordinance No. 4 of 2005)

- (b) Offences under the following provisions of the Offences Against the Person Act 1861, if certified by the Public Prosecutor—
 - (i) section 16 (threats to kill);
 - (ii) section 20 (inflicting bodily injury, with or without a weapon);
 - (iii) section 38 (assault with intent to resist apprehension); and
 - (iv) section 47 (assault occasioning actual bodily harm).
- (c) An offence under the Prevention of Crime Act 1953 (having an offensive weapon in a public place).
- (d) An offence under section 14 or section 15 of the Sexual Offences Act 1956 (indecent assault), if certified by the Public Prosecutor.
- (e) All offences under the Theft Act 1968 (not otherwise triable only summarily) if certified by the Public Prosecutor except—
 - (i) robbery;
 - (ii) burglary (including aggravated burglary);
 - (iii) assault with intent to rob; and
 - (iv) blackmail.
- (f) Offences under the following provisions of the Criminal Damage Act 1971, if certified by the Public Prosecutor—
 - (i) section 1(1) (destroying or damaging property);
 - (ii) section 1(1) and (3) (arson);
 - (iii) section 2 (threats to destroy or damage property); and
 - (iv) section 3 (possessing anything with intent to destroy or damage property).
- (g) All offences under the Theft Act 1978, if certified by the Public Prosecutor.
- (h) Offences under the following provisions of the Public Order Act 1986, if certified by the Public Prosecutor—
 - (i) section 2 (violent disorder); and
 - (ii) section 3 (affray).
- (i) Aiding, abetting, counselling or procuring the commission of any offence (the “substantive offence”) which—
 - (i) is triable only summarily by virtue of section 16(1)(b); or
 - (ii) is mentioned in this Schedule (other than incitement as mentioned in sub-paragraph (j):
Provided that if the substantive offence is triable summarily by virtue of that mention only if certified by

- the Public Prosecutor the offence of aiding, abetting, counselling or procuring it shall be so triable only if it is itself so certified.
- (j) Incitement to commit any offence (the “substantive offence”) which—
- (i) is triable only summarily by virtue of section 16(1)(b); or
 - (ii) is mentioned in this Schedule (other than aiding, abetting, counselling or procuring as mentioned in subparagraph (i):
Provided that if the substantive offence is triable only summarily by virtue of that mention only if certified by the Public Prosecutor, the offence of incitement to commit it shall be so triable only if it is itself so certified.
- (k) The offence, under the Criminal Attempts Act 1981, of attempting to commit another offence (the “substantive offence”) if the substantive offence is one which would, under the law of England as for the time being in force in England and if all the relevant circumstances had occurred in England, be triable either way but which, by virtue of its being specified in this Schedule, is triable in the Islands only summarily:
Provided that if the substantive offence is specified in this Schedule subject to its being certified by the Public Prosecutor the offence of attempting to commit it shall be so triable only if it is itself so certified.

(Second Schedule deleted by Ordinance No. 3 of 2003)

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

**MAGISTRATE'S COURT (FORMS IN CRIMINAL
CASES) RULES**

Made by the Governor in exercise of the powers conferred by paragraph (d) of section 20 of the Judicature (Courts) Ordinance and upon the advice of the Chief Justice.

[22 March 2003]

Arrangement of sections

Section

1. Citation and commencement
 2. Forms in Schedule to be used in criminal cases in Magistrate's Court
 3. Variations may be made in forms if required
 4. Strict compliance with forms not necessary
- Schedule

RULES

1. These rules may be cited as the Magistrate's Court (Forms in Criminal Cases) Rules.

Citation

2. Subject to these rules, the forms prescribed in the Schedule shall be used in criminal proceedings to which they relate in the Magistrate's Court and all matters connected therewith.

Forms in Schedule to be used in criminal cases in Magistrate's Court

3. Such variations may be made in any prescribed form as the circumstances of any particular case may require

Variations may be made in forms if required

4. Strict compliance with the prescribed forms is not necessary and substantial compliance, or such compliance as the particular circumstances of the case allow, is sufficient.

Strict compliance with forms not necessary

SCHEDULE

Rule 2

Form 1

Justice Ordinance

(Section 17)

In the Pitcairn Islands Magistrate’s Court Criminal Case No. of
at 20

CHARGE

(a) of (b)

is charged on the complaint of (c)

with the following offence:—

Statement of Offence

(d)

contrary to (e)

Particulars of Offence

(f)

Dated at this day of 20
Magistrate

- (a) Insert name of accused person
- (b) Insert address of accused person
- (c) Insert name of person making complaint
- (d) Insert a brief statement of offence
- (e) Insert section or regulation number and short title of Ordinance or Regulations under which charge made
- (f) Insert brief particulars of offence in ordinary language

Form 3

Justice Ordinance

(sections 18 and 21(1))

In the Pitcairn Islands Magistrate's Court Criminal Case No. of
at 20

WARRANT OF ARREST

To all police officers authorised to act on behalf of Pitcairn Island
You are hereby commanded to arrest and as soon as practicable, bring

(a) of (b)
before this Court at to answer the following charge(s)

Statement of Offence

(c)
contrary to (d)

Particulars of Offence

(e)
and be dealt with according to law.

Dated at this day of 20
Magistrate

- (a) Insert name of defendant
- (b) Insert address of defendant
- (c) Insert a brief statement of offence
- (d) Insert section or regulation number and short title of Ordinance or Regulations under which charge made
- (e) Insert brief particulars of offence in ordinary language

Form 4

Justice Ordinance

(section 21 (6))

In the Pitcairn Islands Magistrate's Court Criminal Case No. of
 at 20

WARRANT FOR DETENTION OF DEFENDANT

To all police officers authorised to act on behalf of Pitcairn Island

Whereas (a) of (b)

has been brought before me under arrest to answer the following charge(s)

Statement of Offence

(c)

contrary to (d)

Particulars of Offence

(e)

Now therefore you are commanded to take the said (a) safely
 to the Prison and there deliver him/her together with this
 warrant to the warden/superintendent in charge of the said prison who is
 hereby directed to receive the said (a) and keep
 him/her safely there until the day of 20 , at o'clock
 in the noon and then bring him/her before this Court to answer the
 said charge(s) and be dealt with according to law.

Dated at this day of 20

Magistrate

- (a) Insert name of defendant
- (b) Insert address of defendant
- (c) Insert a brief statement of offence
- (d) Insert section or regulation number and short title of Ordinance
 or Regulations under which charge made
- (e) Insert brief particulars of offence in ordinary language

Form 5

Justice Ordinance

(section 23)

In the Pitcairn Islands Magistrate's Court Criminal Case No. of
at 20

SEARCH WARRANT

To all police officers authorised to act on behalf of Pitcairn Island

Whereas I am satisfied by evidence on oath that there is reasonable cause to believe that certain property, namely (a)

(in respect of which an offence has been committed)

or (b)

(which is necessary to the conduct of an investigation into an offence) is in a certain (c)

at (d)

of (e)

Now therefore you are hereby authorised forthwith with proper assistance to enter the said (c) by force if necessary, and there search for the property above-mentioned and, if anything searched for be found or any other thing which there is reasonable cause to suspect to have been stolen or unlawfully obtained be found, to seize it and bring it before this Court to be dealt with according to law.

Dated at this day of 20

Magistrate

- (a) Describe article or thing
- (b) Delete which is not applicable
- (c) Insert building, ship, vehicle, receptacle or place as is appropriate
- (d) Situation of building etc.
- (e) Name of owner, occupier or person in charge of the building etc.

Form 6

Justice Ordinance

(section 24)

In the Pitcairn Islands Magistrate’s Court Criminal Case No. of
at 20

BAIL RECOGNIZANCE

On the day of 20 ,
(a) of (b)

as principal (c)

of (d) as surety and (e)
of (f)

as surety severally acknowledged themselves to owe to Her Majesty the Queen the several sums following, that is to say:

the said (a) the sum of dollars;

the said (c) the sum of dollars; and

the said (e) the sum of dollars.

to be paid by them if the said (a)

shall fail in the Condition hereunder written :—

CONDITION

The Condition of this recognizance is that if the said (a) shall personally appear on the day of 20 at o’clock in the noon at this Court to answer a charge(s) of (g)

and shall continue to attend from day to day at each adjournment of the said Court and not to depart therefrom without leave this recognizance shall be void.

(h)
Principal

(i)
Surety

(j)
Surety

.....
Magistrate

- (a) Insert name of defendant
- (b) Insert address of defendant
- (c) Insert name of first surety (if any)
- (d) Insert address of first surety (if any)
- (e) Insert name of second surety (if any)
- (f) Insert address of second surety (if any)
- (g) Insert statement of offence s on the charge
- (h) Defendant to sign as principal
- (i) Surety to sign
- (j) Surety to sign

Form 7

Justice Ordinance

(section 9)

In the Pitcairn Islands Magistrate's Court Criminal Case No. of
at 20

SUMMONS TO ASSESSOR

To (a) of (b)

Whereas a charge has been made on the complaint of (c)

that (d) of (e)

did commit the following offence(s)

Statement of Offence

(f)

contrary to (g)

Particulars of Offence

(h)

And whereas your name has been selected by lot for inclusion in the list of assessors for the hearing of that case you are therefore commanded to attend at this Court on the day of 20 at the hour of o'clock in the noon and to continue to attend from day to day at each adjournment of the Court and not to depart therefrom without leave of the Court until the hearing of the said charge has been completed or you have been previously discharged by the Court.

Dated at this day of 20

Magistrate

- | | |
|---------------------------------|---|
| (a) Insert name of assessor | (f) Insert statement of offence as in the charge |
| (b) Insert address of assessor | (g) Insert number of section or regulation and short title of Ordinance or Regulations under which charge made as in the charge |
| (c) Insert name of complainant | |
| (d) Insert name of defendant | (h) Insert the particulars of offence as in the charge |
| (e) Insert address of defendant | |

Form 8

Justice Ordinance

(sections 14 (1) and 14A(1))

In the Pitcairn Islands Magistrate's Court Criminal Case No. of
at 20

SUMMONS TO WITNESS

To (a) of (b)

Whereas a charge has been made on the complaint of (c)

that (d) of (e)

did commit the following offence(s)

Statement of Offence

(f)

contrary to (g)

Particulars of Offence

(h)

and it appearing to me that you are likely to give or produce material evidence on behalf of (i) and will not voluntarily appear for that purpose you are therefore commanded to appear before this Court at on the day of 20 at the hour of o'clock in the noon or such other time and/or place as may be notified to you in writing by the Registrar to testify what you know in the matter and to bring with you and produce thereat (j)

Dated at this day of 20

Magistrate

- | | |
|--|---|
| (a) Insert name of witness | (g) Insert number of section or regulation and short title of the the Ordinance or Regulations under which charge made as in the charge |
| (b) Insert address of witness | (h) Insert the particulars of offence as in the charge |
| (c) Insert name of complainant | (i) Insert "complainant" or "defendant" as is appropriate |
| (d) Insert name of defendant | (j) Give descriptions of any documents that the witness is required to produce |
| (e) Insert address of defendant | |
| (f) Insert statement of address as in the charge | |

Form 9

Justice Ordinance

(section 14 (2))

In the Pitcairn Islands Magistrate's Court Criminal Case No. of
 at 20

WARRANT FOR ARREST OF WITNESS

To all police officers authorised to act on behalf of Pitcairn Island

Whereas (a) of (b)

has not appeared in answer to a summons requiring his/her attendance at
 this Court at on the day of 20 to give evidence
 on behalf of (c)

You are therefore commanded to arrest and bring the said (a)

before me at o'clock in the noon on the day
 of 20 to be dealt with according to law.

Dated at this day of 20

Magistrate

- (a) Insert name of witness
- (b) Insert address of witness
- (c) Insert "complainant" or "defendant" as is appropriate

Form 10

Justice Ordinance

(section 14 (3))

In the Pitcairn Islands Magistrate’s Court Criminal Case No. of
at 20

WARRANT TO COMMIT WITNESS

To all police officers authorised to act on behalf of Pitcairn Island

Whereas (a) of (b)

having this day refused without reasonable cause to the satisfaction of this Court to

(*) be examined on oath (or solemn affirmation) as a witness at the hearing of a charge against (c)

(*) being duly sworn (or affirmed) as a witness at the hearing of a charge against (c) to answer certain questions lawfully put to him/her

You the said police officers are therefore commanded to take the said (a) safely to the Prison and there deliver him/her together with this warrant to the warder or superintendent in charge of the said prison who is hereby directed to receive the said (a) and keep him/her safely there for a period of days unless he/she sooner consents to do what is required and then to bring him/her before this Court.

Dated at this day of 20 Magistrate

- (a) Insert name of witness
- (b) Insert address of witness
- (*) Delete whichever is inappropriate
- (c) Insert name of defendant

Form 11

Justice Ordinance

(section 66)

In the Pitcairn Islands Magistrate’s Court Criminal Case No. of
at 20

RECOGNIZANCE TO APPEAR AND GIVE EVIDENCE AT TRIAL BEFORE THE SUPREME COURT

Each of us the undermentioned persons acknowledges for himself/herself that he/she owes to Her Majesty the Queen the sum of dollars, payment thereof to be enforced against him/her by due process of law if he/she fails to comply with the condition hereunder written:

CONDITION

The Condition of this recognizance in respect of each of the undermentioned persons is that he/she appear at the Supreme Court at (a) at such time and on such day as may be notified to him/her in writing by the Registrar or by the Registrar of the Supreme Court to give evidence upon the trial of a charge or information to be preferred against (b) and appear at every time and place to which during the course of the proceedings the said trial may be from time to time adjourned, unless the said Court otherwise orders in the meantime; AND also appear and give evidence, if required by any such notice, at any further examination concerning the charge against the said (b) which may be held by direction of the Prosecutor then this recognizance shall be void but otherwise shall remain in full force.

(c)

Taken before me at this day of 20

Magistrate

- (a) Insert place of sitting of Supreme Court.
- (b) Insert name of accused person
- (c) Here name of each witness to be inserted and each witness to sign

Form 12

Justice Ordinance

(section 65)

In the Pitcairn Islands Magistrate's Court Criminal Case No. of
at 20

BAIL RECOGNIZANCE ON COMMITTAL FOR TRIAL

On the day of 20
(a) of (b) as principal
(c) of (d) as surety
and (e) of (f) as surety
severally acknowledged themselves to owe to Her Majesty the Queen the
several sums following, that is to say
the said (a) the sum of dollars;
the said (b) the sum of dollars; and
the said (e) the sum of dollars,
to be paid by them if the said (a)
shall fail in the Condition hereunder written :—

CONDITION

The condition of this recognizance is that whereas the above-bounden
principal was this day charged before me and committed for trial to the
Supreme Court at (g) if the said
(a) shall personally appear before the Supreme Court
at such time and on such day as may be notified to him/her in writing by
the Registrar of this Court or by the Registrar of the Supreme Court and
there and then surrender himself/herself into custody of police at that Court
and plead to and take his/her trial in respect of a charge or information in
respect of the offence of (h) and not depart the said Court
without leave then the said recognizance shall be void but otherwise shall
remain in full force.

- (i)
- (j)
- (k)

Magistrate

- | | |
|--|--|
| (a) Insert name of accused person | (g) Insert place of sitting of Supreme Court |
| (b) Insert address of accused person | (h) Insert statement of offence and section under which charge made as in the charge |
| (c) Insert name of first surety (if any) | (i) Accused person to sign here |
| (d) Insert address of first surety (if any) | (j) First surety (if any) to sign here |
| (e) Insert name of second surety (if any) | (k) Second surety (if any) to sign here |
| (f) Insert address of second surety (if any) | |

Form 13

Justice Ordinance

(section 65)

In the Pitcairn Islands Magistrate's Court Criminal Case No. of
at 20

WARRANT OF COMMITMENT FOR TRIAL

To all police officers authorised to act on behalf of Pitcairn Island

Whereas (a) of (b)

was this day charged before me with the following offence:—

Statement of Offence

(c)

contrary to (d)

Particulars of Offence

(e)

and was duly committed for trial to the Supreme Court

You are therefore commanded to take the said (a) and
safely convey him/her to the Prison and there deliver him/
her to the warder/superintendent in charge of the said prison and keep him/
her safely there until he/she shall thence be delivered in due course of law.

Dated at this day of 20

Magistrate

- (a) Insert name of accused person
- (b) Insert address of accused person
- (c) Insert statement of offence as in the charge
- (d) Insert the number of the section or regulation and the short title of the ordinance or regulations under which the charge is made
- (e) Insert the particulars of offence as in the charge

Form 14

Justice Ordinance

(section 59A)

**REQUEST BY DEFENDANT TO ENTER PLEA PRIOR TO
PRELIMINARY HEARING**

In the Pitcairn Islands Magistrate’s Court Criminal Case No. of
at 20

I (a) being represented by counsel, hereby
request that I be brought before the Court to plead guilty to the offence
of (b)

with which I am charged, pursuant to section 59A of the Justice Ordinance
(cap 3).

My counsel is (c)

Dated at the day of 20

.....
Signature of defendant

.....
Witnessed by counsel

- (a) Insert name of defendant
- (b) Insert brief statement of offence charged
- (c) Insert name of defendant’s counsel

