
**OFFENDERS REMOVAL AND DETENTION
(PROCEDURE) RULES 2016**

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**OFFENDERS REMOVAL AND DETENTION
(PROCEDURE) RULES 2016**

In exercise of the power in section 34 of the Offenders Removal and Detention Ordinance 2016(a) the Administrator, after consulting the Presiding Judge, makes the following Rules—

Citation

1. These Rules may be cited as the Offenders Removal and Detention (Procedure) Rules 2016.

Commencement

2. These Rules come into force on the day the Chief Officer appoints for Part 2 of the principal Ordinance to come into force.

Interpretation

3. In these Rules—

“defendant” means a person arrested under a certified warrant;

“presenting officer” means an advocate of the office of the Attorney General and Legal Adviser; and

“principal Ordinance” means the Offenders Removal and Detention Ordinance 2016;

Application and forms

4.—(1) These Rules apply to proceedings in the Resident Judge’s Court under Part 2 of the principal Ordinance.

(2) The forms in the Schedule are to be used in connection with the proceedings with such modification as the circumstances of a case may require.

Exercise of Resident Judge’s Court’s powers

5.—(1) The general rule is that the Resident Judge’s Court must exercise its powers at a hearing in public, but that is subject to any power it has to—

- (a) impose reporting restrictions;
- (b) withhold information from the public; or
- (c) order a hearing in private.

(2) The general rule is that the court must exercise its powers in the defendant's presence, but it may do so in the defendant's absence where—

- (a) the court discharges the defendant; or
- (b) the defendant is represented and the defendant's presence is impracticable by reason of his or her—
 - (i) ill health; or

(a) Ordinance 19/2016.

- (ii) disorderly conduct.
- (3) The court may exercise its power to adjourn—
 - (a) if either party asks, or on its own initiative; and
 - (b) in particular—
 - (i) to allow there to be obtained information that the court requires;
 - (ii) following arrest under section 8 (arrest without certified warrant) of the principal Ordinance, pending production of the certified warrant, if the court extends time for its production;
 - (iii) if the court is informed that the defendant is serving a custodial sentence in the Areas;
 - (iv) if it appears to the court that the defendant is not fit to be removed, unless the court discharges the defendant for that reason.
- (4) The court must exercise its power to adjourn if informed that—
 - (a) any part of the conduct alleged to constitute the removal offence occurred in the Areas and the Attorney General and Legal Adviser has certified under section 14(3) of the principal Ordinance that a prosecution decision has not been made; or
 - (b) there are on-going criminal proceedings in the Areas against the defendant.
- (5) The general rule is that, before exercising a power to adjourn, the court must give each party an opportunity to make representations, unless that party is absent deliberately.
- (6) For the purpose of this rule—
 - (a) criminal proceedings are on-going if the judgment is not final; and
 - (b) the judgment is final where it is enforceable and appeal rights have been exhausted, or the time limit for an appeal has expired and no appeal has been brought.

Duties of Senior Registrar

6. The Senior Registrar must, as soon as practicable, notify the following persons of the court's decision to remove or discharge the defendant—
- (a) the defendant;
 - (b) the authorised officer; and
 - (c) the presenting officer.

Hearing after arrest

- 7.—(1) This rule applies where the defendant is first brought before the court for an initial hearing under—
- (a) section 7 (initial hearing; person arrested under certified warrant); or
 - (b) section 9 (initial hearing; person arrested without certified warrant).
- (2) The presenting officer must—
- (a) file a copy of the certified warrant at court at or before the hearing; or
 - (b) apply for an extension of time within which to serve that warrant.
- (3) An application under paragraph (2)(b) must—
- (a) explain why the requirement to serve the certified warrant at once could not reasonably be complied with; and
 - (b) include—
 - (i) any written material in support of that explanation; and
 - (ii) representations about grant of bail pending service of the certified warrant.

(4) When the presenting officer files the certified warrant, in the following sequence the court must—

- (a) decide whether the defendant is the person in respect of whom the warrant was issued;
- (b) explain, in terms the defendant can understand (with help, if necessary)—
 - (i) the allegation made in the warrant; and
 - (ii) that the defendant may consent to removal, and how that may be done and with what effect;
- (c) where the defendant does not consent to removal, proceed immediately with the removal hearing or, if, the court decides it is in the interests of justice, adjourn the proceedings and fix a date for the removal hearing as soon as is practicable;
- (d) consider any ancillary application, including any application about remand in custody pending the removal hearing; and
- (e) give any direction as is appropriate to the needs of the case about the introduction of evidence at the removal hearing.

Removal hearing

8.—(1) This rule applies to a removal hearing.

(2) In the following sequence the court must decide—

- (a) whether a bar to removal applies namely—
 - (i) the rule against double jeopardy; or
 - (ii) forum;
- (b) whether removal would be compatible with the defendant's Convention rights;
- (c) whether it would be unjust or oppressive to remove the defendant because of his or her physical or mental condition;
- (d) after deciding each of (a) to (c) above, before progressing to the next, whether to order the defendant's discharge;

(3) If the court discharges the defendant, the court must consider any ancillary application, including an application about—

- (a) reporting restrictions; or
- (b) costs.

(4) If the court does not discharge the defendant, the court must—

- (a) exercise its power to order the defendant's removal;
- (b) consider any ancillary application, including an application about—
 - (i) remand in custody pending removal; or
 - (ii) costs.

Discharge where certified warrant withdrawn

9.—(1) This rule applies where the authorised officer gives the Senior Registrar notice that the certified warrant has been withdrawn—

- (a) after the start of the initial hearing under rule 7; and
- (b) before the court orders the defendant's removal or discharge.

(2) The court must exercise its power to discharge the defendant.

Introduction of additional evidence

10.—(1) Where a party wants to introduce evidence at a removal hearing, the Evidence Ordinance 2010(a) applies with such adaptations as the court directs.

(2) If the court admits as evidence the statement of a witness—

- (a) each relevant part of the statement must be read or summarised aloud; or
- (b) the court must read the statement and its gist must be summarised aloud.

(3) If a party introduces in evidence a fact admitted by another party, or the parties jointly admit a fact, a written record must be made of the admission.

Defendant's application to be discharged

11.—(1) This rule applies where a defendant wants to be discharged following the expiry of a time limit for removal to the Republic under section 17(1) of the principal Ordinance.

(2) Unless the court otherwise directs, such a defendant must apply in writing and—

- (a) file a copy of the application at court; and
- (b) serve a copy of the application on the presenting officer.

(3) The application must explain the grounds on which it is made.

(4) The Senior Registrar must arrange a hearing as soon as practicable, and in any event no later than the second working day after an application is served.

(a) Ordinance 13/2010.

SCHEDULE

Rule 4(2)

Forms

Form R1	
Certified warrant	
	Certified warrant number /20
1.	<p>Information regarding identity of the person named on the arrest warrant</p> <p>Name:</p> <p>Forenames:</p> <p>Maiden name, where applicable:</p> <p>Aliases, where applicable:</p> <p>Sex:</p> <p>Nationality:</p> <p>Date of birth:</p> <p>Place of birth:</p> <p>Identity or passport number:</p> <p>Residence and/or known address:</p> <p>Distinctive marks/description of person:</p>
2.	<p>Offences</p> <p>The person named at section 1 is alleged to have committed /reasonably suspected of having committed/has been convicted of the following offence(s) (delete as applicable).</p> <p>Number of offences specified on arrest warrant:</p> <p>Nature of the offence(s):</p>

	Description of the circumstances and place(s) in which offence(s) committed:
3.	<p>Consultation with Attorney General and Legal Adviser and the Chief Constable</p> <p>The Attorney General and Legal Adviser and the Chief Constable have been consulted because—</p> <p>(a) part of the conduct constituting the offences described in section 2 is alleged to have taken place in the Areas; or</p> <p>(b) there is an on-going criminal investigation or criminal proceedings in the Areas in respect of the person named in section 1.</p> <p>Yes/Not applicable (delete as appropriate)</p>
4.	<p>Authorising officer</p> <p>Name:</p> <p>Rank:</p> <p>I certify that to the best of my knowledge and belief the arrest warrant issued by the District Court of _____ on _____ is a warrant issued for the arrest of the person named at section 1 and in respect of the offence[s] specified at section 2.</p> <p>Signature:</p> <p>Date and time:</p>
<p style="text-align: center;">The arrest warrant must be attached to this form</p> <p style="text-align: center;">A copy of this form must be given to the person named at section 1 as soon as practicable after his or her arrest</p> <p style="text-align: center;">The certified warrant ceases to have effect if the arrest warrant which is so certified is executed in the Republic of Cyprus</p>	

Withdrawal of certified warrant**No. of certified warrant:****Removal case number:**

1.	<p>Information regarding identity of the person named on the certified warrant</p> <p>Name:</p> <p>Forenames:</p> <p>Maiden name, where applicable:</p> <p>Aliases, where applicable:</p> <p>Sex:</p> <p>Nationality:</p> <p>Date of birth:</p> <p>Place of birth:</p> <p>Identity or passport number:</p> <p>Residence and/or known address:</p>
2.	<p>Authorising officer</p> <p>Name:</p> <p>Rank:</p> <p>I certify that certified warrant number _____ in respect of the person named at section 1 has been withdrawn.</p> <p>Signature:</p> <p>Date and time:</p>

A copy of the certified warrant which is withdrawn must be attached to this form.

A copy of this form must be filed at the Resident Judge's Court as soon as practicable and in any event within 24 hours of withdrawal

Form R3	
Notice of consent to removal to the Republic of Cyprus	
No. of certified warrant:	Removal case number:
1.	Name:
2.	Forenames:
3.	Date of birth:
4.	<p>On _____ I was arrested under a certified warrant issued under the Offenders Removal and Detention Ordinance 2016 with a view to my removal to the Republic of Cyprus.</p> <p>I understand that if I do not consent to my removal I have the right to make representations before a judge in the Resident Judge's Court as to the matters on which the court has to decide.</p> <p>I understand that this written consent to my removal is irrevocable.</p> <p>I now give this written consent to my removal.</p>
5.	Signature of defendant:
6.	<p>This written consent was signed by the above-mentioned person in my presence on _____</p> <p>Date:</p> <p>Signature of Judge sitting in the Resident Judge's Court:</p>

Form R4	
Grant of bail	
Removal case number:	
1.	Name:
2.	Forenames:
3.	Date of birth:
4.	<p>The above-named is granted bail with a duty (*delete as appropriate)</p> <p>to surrender to the custody of the Resident Judge's Court if so directed by the court in connection with these removal proceedings*;</p> <p>to surrender to the custody of the Police Service on such date, at such time and place as may be notified to await removal to the Republic of Cyprus*.</p>
5.	<p>The grant of bail is subject to the conditions set out below (delete as appropriate)—</p> <p>(a) to provide security in the sum of € to be deposited with the court</p> <p>(b) to provide surety in the sum of €</p> <p>(c) passport to be retained by the Police Service</p> <p>(d) to live and sleep each night at the following bail address</p> <p>(e) to remain at the bail address between the hours of and</p> <p>(f) during the hours of curfew to present him/herself at the front door to a police officer as required</p> <p>(g) to report to police station each between the hours of and</p> <p>(h)</p> <p>(i)</p> <p>(j)</p>
6.	The person was in custody until a release notice was sent to the prison on

7.	<p>Signature of Judge sitting in the Resident Judge's Court</p> <p>Date:</p>
8.	<p>I [insert name of defendant] undertake to comply with the bail conditions specified above</p> <p>Signature:</p> <p>Date:</p>
9.	<p>9A or 9B, or both, to be completed as appropriate</p>
9A.	<p>Defendant provides security/surety</p> <p>I acknowledge that if I do not comply with the bail conditions the security deposited with the court will be forfeited/I will be liable to pay the specified surety (delete as appropriate).</p> <p>Signature:</p> <p>Date:</p>
9B.	<p>Security/surety provided by a person or persons other than the defendant; each person depositing a security or providing surety must sign acknowledgement</p> <p>I acknowledge that if [insert name of defendant] does not comply with the bail conditions the security deposited with the court will be forfeited/I will be liable to pay the specified surety (delete as appropriate).</p> <p>Name:</p> <p>Signature:</p> <p>Date:</p>
10.	<p>Security in the sum of € deposited with the court</p> <p>Surety provided in the sum of €</p> <p>Signature of Senior Registrar:</p> <p>Date:</p> <p>Time:</p>

Dated this 10 day of August 2016

P.E. Rushbrook,
Deputy Administrator,
Sovereign Base Areas.

EXPLANATORY NOTE

(This note is not part of the Rules)

1. This explanatory note relates to the Offenders Removal and Detention (Procedure) Rules 2016 (the “Rules”). It has been prepared by the office of the Attorney General and Legal Adviser in order to assist the reader of the Rules. It does not form part of the Rules.
2. The Rules make provision for the conduct of proceedings in the Resident Judge’s Court under Part 2 of the Offenders Removal and Detention Ordinance 2016, and provide for the forms to be used in connection with such proceedings.

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