
CRIMINAL PROCEDURE ORDINANCE 2016

This is a consolidated version of this legislation i.e. it incorporates all amendments made since the legislation was enacted as set out in the table below. It has been produced by the SBAA as an aid to transparency and easier access to SBA law. However, it is not the official version of SBA legislation and, although every effort has been made to check the document, its accuracy cannot be guaranteed. The official version of legislation is published in the SBA Gazette.

Legislation incorporated in this Consolidation	Ordinance	Date in Force
Criminal Procedure Ordinance 2016	09/2016	01/05/2016
Criminal Procedure (Amendment) Ordinance 2019	09/2019	16/07/2019
Immigration Ordinance 2020	34/2020	12/10/2020

CONTENTS

PART 1

Preliminary

1. Short title
2. Commencement
3. Interpretation
4. Meaning of items subject to legal privilege
5. Representatives
6. Application of Ordinance
7. Application of law and practice of England relating to criminal procedure

PART 2

Overriding objective

8. Overriding objective
9. Court must further overriding objective
10. Duty of persons involved in criminal cases

PART 3

Investigating offences, etc

Investigating officers

11. Investigating officers

Statements

12. Statements
13. Audio recording and visual recording of interviews: code of practice
14. Judges' Rules apply to taking statements

Documents, etc

15. Notice to produce documents

Arrest: general

16. Arrest
17. Search of arrested person

18. Intimate search of arrested person
19. Persons who may be arrested: search of place
20. Power to break out of building, etc
 - Arrest without warrant
21. Arrest without warrant: police officers
22. Arrest without warrant: general
23. Arrest without warrant: disposal of persons arrested
 - Arrest warrants
24. Arrest warrants: issue
25. Arrest warrants: form and duration
26. Arrest warrants: irregularities
27. Arrest warrants: execution
28. Arrest warrants: disposal of person arrested under warrant
29. Arrest warrants: release of person arrested in accordance with warrant
 - Remand in police custody, etc
30. Power to remand in police custody, etc
31. Arrested person's appeal against remand in police custody
32. Prosecution appeal against release of arrested person
 - Search, etc. without warrant
33. Search of persons without warrant
34. Search of places without warrant
35. Search of vehicles without warrant
36. Seizure of items found during search without warrant
37. Search warrants: issue
38. Search warrants: form and duration
39. Search warrants: execution
40. Search warrants: search of person suspected of concealing items at place to be searched
41. Search warrant: discharge of occupier, etc brought before Judge pursuant to warrant
42. Search warrants: seizure of items not mentioned in search warrant
 - Searches: general
43. Entry to closed place: supplementary powers and offence
44. Entry and search of vehicles: supplementary powers and offence
45. Power to seize: information not in hard copy form
46. Disposal of seized items
 - Other police powers not limited
47. Police powers under other enactments, etc not limited

PART 3A
Conditional cautions

- 47A. *Conditional cautions*
- 47B. *The five requirements*
- 47C. *Duty to consult victim*
- 47D. *Financial penalties*

- 47E. *Failure to comply with conditions*
- 47F. *Code of practice: contents and procedure*
- 47G. *Code of Practice: effect*

PART 4
Proceedings

General

- 48. Persons convicted or acquitted not to be tried again for same offence
- 49. Civil remedy not suspended, etc
- 50. Attorney-General and Legal Adviser may commence, etc criminal proceedings
- 51. Nolle prosequi
- 52. Limitation period for certain offences
- 53. Court's power to regulate proceedings
- 54. Notices, etc left at address for service treated as received

Commencing proceedings, etc

- 55. Criminal proceedings must be commenced by charge sheet
- 56. Charge sheet: form
- 57. Charge sheet: supplementary
- 58. Joinder of counts in charge sheet, etc
- 59. Joinder of persons in charge sheet, etc
- 60. Manner in which parties to offences may be charged

Compelling defendant to attend

- 61. Summons, etc to compel defendant to attend
- 62. Form and content of summons
- 63. Service of summons

Case management, etc

- 64. Adjournment and remand in custody, etc
- 65. Court must actively manage cases
- 66. Court's case management powers
- 67. Case preparation and progression
- 68. Duty of parties
- 69. Trial preparation
- 70. Applications to vary directions or adjourn, etc hearings
- 71. Non-appearance of defendant or prosecution

Compelling witnesses to attend

- 72. Witness summons, etc
- 73. Persons present in court may be compelled as witness
- 74. Witness must attend adjourned hearing
- 75. Witness failing to attend: offence
- 76. Summoning prisoner, etc as witness

Plea

- 77. Pleading to charge
- 78. Objection to charge sheet
- 79. Plea by defendant
- 80. Special plea: previous conviction, acquittal, etc
- 81. Pleading to charge of previous conviction
- 82. Appearance and plea by corporate body

Trial

83. Presence of defendant during trial
84. Witnesses must leave court during trial
85. Hearing of case
86. Procedure at trial of two or more defendants
87. Cross-examination of defendant by co-defendant
88. Defendant to be acquitted or convicted

Examination of witnesses

89. Power to call or recall witnesses
90. Evidence of witness to be on oath or affirmation
91. Order of examination of witnesses
92. Cross-examination of witnesses by co-defendant
93. Recalcitrant witnesses
94. Witnesses unable to speak

Serious offences

95. Serious offences: disclosure of prosecution evidence
96. Serious offences: additional witnesses

Other provisions relating to evidence

97. Taking evidence by commission
98. Interpretation of evidence for defendant
99. View of locus
100. Record of proceedings

Mentally-disordered defendants

101. Defendants incapable of following proceedings by reason of mental disorder
102. Acquittal on grounds of insanity
103. Powers of court, etc to deal with persons incapable of following proceedings by reason of mental disorder or acquitted on grounds of insanity

Alteration or quashing of charge

104. Alteration of defective charge sheet
105. Procedure on alteration of charge sheet
106. Proof of part of charge or of offence not contained in charge sheet, etc
107. Quashing of charge

Miscellaneous

108. Decisions where court consists of more than one Judge
109. Motion in arrest of judgment
110. Variance between facts proved at trial and charge sheet
111. Withdrawal of charge

Judgment

112. Delivery of judgment
113. Contents of judgment, etc
114. Delivery of judgment by other Judge
115. Copy of judgment for defendants

Sentence

116. Allocutus
117. Sentence
118. Taking outstanding offences into consideration
119. Taking into account previous convictions outside the Areas
120. Defendants detained during Administrator's pleasure: transcript of proceedings, etc to be sent to Administrator
121. Commencement of sentence of imprisonment

PART 5

Execution and recovery of penalties

General

122. Payment of penalty
 123. Examination as to means
 124. Application of part payment of penalty
- Warrants of execution and committal
125. Judge may issue warrant of execution or warrant of committal
 126. Warrant of execution
 127. Warrant of execution: claim on property taken in execution
 128. Warrant of execution: detention, etc after warrant issued
 129. Warrant of committal
 130. Payment after committal
 131. Reduction of term of imprisonment on part payment of penalty
 132. Maximum term of imprisonment in case of committal

PART 6

Appeals

General

133. No appeals except as provided for
134. Resident Judge's Court not to be reversed on appeal on point of form unless matter raised at trial, etc

Defence appeals

135. Appeal from Resident Judge's Court against conviction or sentence
136. No appeal against conviction after guilty plea except where no offence disclosed in charge sheet
137. No appeal against imprisonment in certain cases
138. Form of application for permission to appeal

Prosecution appeals

139. Appeal from Resident Judge's Court against acquittal or sentence
140. Appeal against acquittal: Senior Judge may issue arrest warrant, etc

Procedure, etc

141. Senior Judge may grant or refuse permission to appeal
142. Fixing date for hearing appeal
143. Abandonment of appeal, etc
144. Procedure on hearing appeal
145. Senior Judges' Court must determine appeal only on grounds of appeal
146. Powers of Senior Judges' Court: defence appeal
147. Powers of Senior Judges' Court: prosecution appeal

- 148. Powers of Senior Judges' Court on appeal: supplementary
- 149. Powers of Senior Judges' Court on appeal: sentence, etc

Questions of law

- 150. Question of law reserved for opinion of Senior Judges' Court
- Cases stated
- 151. Statement of case by Judge for opinion of Senior Judges' Court

PART 7

Bail

Grant of bail

- 152. Grant of bail
- 153. Right to bail in certain cases
- 154. Application for bail by defendant who appeals to Senior Judges' Court
- 155. Considerations for court when deciding whether or not to grant bail
- 156. Release of person in custody on grant of bail
- 157. Absconding by person on bail: offence

Variation of bail terms, etc

- 158. Court may require security to be increased, etc
- 159. Person on bail about to leave the Areas
- 160. Application to vary, etc bail conditions

Appeals against withholding or grant of bail

- 161. Defence appeal against withholding of bail
- 162. Prosecution appeal against grant of bail

Bail bonds

- 163. Bail bond
- 164. Discharge of surety
- 165. Death of surety before bail bond ordered to be paid
- 166. Court may order bail bond to be paid

Other security

- 167. Forfeiture of other security

PART 8

Costs

- 168. Prosecution costs: costs of public prosecutions
- 169. Prosecution costs: payment by defendant
- 170. Defence costs: award of costs to defendant
- 171. Witness expenses
- 172. Costs: improper or unreasonable acts and omissions
- 173. Costs against legal representatives: wasted costs
- 174. Costs on appeal
- 175. Orders for costs

PART 9

Return of property, etc

- 176. Disposal of property in possession of police
- 177. Restitution of property
- 178. Restoration of possession of immovable property

PART 10

Miscellaneous

- 179. Recognisances: certain provisions of Part 7 apply to recognisances
- 180. Provision for persons subject to service law, etc
- 181. Attorney-General and Legal Adviser may delegate exercise of functions
- 182. Rules of court
- 183. Consequential amendments
- 184. Transitional provisions
- 185. Repeals

SCHEDULE 1 — JUDGES' RULES

SCHEDULE 2 — PROVISIONS FOR PERSONS SUBJECT TO SERVICE LAW,
ETC

SCHEDULE 3 — CONSEQUENTIAL AMENDMENTS

PART 1 — Ordinances amended

PART 2 — Public instruments amended

SCHEDULE 4 — TRANSITIONAL PROVISIONS

SCHEDULE 5 — REPEALS AND REVOCATIONS

PART 1 — Ordinances repealed

PART 2 — Public instruments revoked

CRIMINAL PROCEDURE ORDINANCE 2016

An Ordinance to amend and consolidate the law relating to procedure in criminal proceedings and for related matters.

M. Wigston
ADMINISTRATOR

07 March 2016

BE it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

PART 1

Preliminary

Short title

1. This Ordinance may be cited as the Criminal Procedure Ordinance 2016.

Commencement

2. This Ordinance comes into force on 1 May 2016.

Interpretation

3. In this Ordinance, unless otherwise stated or the context makes it clear that something different is meant—

“conditional caution” has the meaning given in section 47A; (a)

“court” means the Resident Judge’s Court or the Senior Judges’ Court (whichever has jurisdiction);

“enactment” means an enactment of the Areas and includes any of the following insofar as it extends to the Areas—

- (a) an Act of the United Kingdom Parliament;
- (b) an instrument made under such an Act;
- (c) an Order of Her Majesty in Council;

“intimate search” means a search which consists of the physical examination of any of a person’s body orifices other than the mouth;

“investigating officer” has the meaning given in section 11 (investigating officers);

*“item” means a thing, article, material, substance, document**(b)**, animal (dead or alive) or body;*

(a) Definition inserted by Ordinance 09/2019 – came into force on 16 July 2019

(b) “Document” is defined in Schedule 1 to the Interpretation Ordinance (Ordinance 8/2012).

“items subject to legal privilege” has the meaning given in section 4 (meaning of items subject to legal privilege);

“Judge” means a member of the Resident Judge’s Court or, as the case may be, of the Senior Judges’ Court;

“live link” has the meaning given in section 2A of the Courts (Constitution and Jurisdiction) Ordinance 2007(a);

“offence” means an offence under an enactment;

“officer in charge of a police station” includes, when the officer in charge of a police station is absent from the station building or is unable for any reason to perform his or her duties, the police officer present at the station building who is next in seniority or who, in the absence of the officer in charge, performs the duties of the officer in charge;

“overriding objective” must be construed in accordance with section 8 (overriding objective);

“penalty” means—

- (a) a fine;
- (b) a bail bond or recognisance that is forfeited or ordered to be paid;
- (c) a sum ordered to be paid in criminal proceedings by way of compensation, damages, costs or otherwise;
- (d) the costs of execution for the recovery of the items referred to in paragraphs (a), (b) and (c);

“place” includes—

- (a) a building or part of a building;
- (b) a vehicle; and
- (c) any other place whatsoever (whether open or closed);

“police station” includes a mobile police station;

“prescribed” means prescribed in rules made under section 182 (rules of court);

“Registrar” includes Senior Registrar(b);

“vehicle” includes a vessel, aircraft, animal, cycle and any other vehicle (whether motorised or not) used to convey goods or persons;

“vessel”(c) includes a hovercraft.

Meaning of items subject to legal privilege

4.—(1) Subject to subsection (2), in this Ordinance, “items subject to legal privilege” means any of the following, when they are in the possession of a person who is entitled to possession of them—

- (a) communications between a professional legal adviser and the adviser’s client or any person representing the client made in connection with the giving of legal advice to the client;
- (b) communications made in connection with or in contemplation of legal proceedings and for the purpose of such proceedings between—
 - (i) a professional legal adviser and the adviser’s client or any person representing the client; or
 - (ii) a professional legal adviser, the adviser’s client or any person representing the client and any other person; and
- (c) items enclosed with or referred to in such communications and made—

(a) Ordinance 5/2007. Section 2A was inserted by Ordinance 2/2014.

(b) “Senior Registrar” is defined in Schedule 1 to the Interpretation Ordinance 2012 as amended by Ordinance 22/2014.

(c) “Vessel” is defined in Schedule 1 to the Interpretation Ordinance 2012.

- (i) in connection with the giving of legal advice; or
- (ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings.

(2) Items held with the intention of furthering a criminal purpose are not items subject to legal privilege.

Representatives

5. Unless the context makes it clear that something different is meant, anything that a party may or must do under this Ordinance may be done—

- (a) by a legal representative on the party's behalf;
- (b) where the defendant is a corporate body, by a person with the authority of the corporate body;
- (c) where the defendant is under the age of 18 years or is a person whose understanding of what the case involves is limited, with the help of a parent, guardian or other suitable adult.

Application of Ordinance

6. This Ordinance applies to—

- (a) offences committed before and after it comes into force;
- (b) criminal proceedings commenced before and after it comes into force;
- (c) criminal proceedings in the Resident Judge's Court and the Senior Judges' Court.

Application of law and practice of England relating to criminal procedure

7. As regards matters of criminal procedure for which there is no special provision in this Ordinance or any other enactment, a court must, in criminal proceedings, apply the law, and rules of practice, relating to criminal procedure for the time being in force in England.

PART 2

Overriding objective

Overriding objective

8.—(1) The overriding objective is that criminal cases be dealt with justly.

(2) Dealing with criminal cases justly includes—

- (a) acquitting the innocent and convicting the guilty;
- (b) dealing with the prosecution and the defence fairly;
- (c) recognising the rights of a defendant, particularly rights under Article 6 of the European Convention on Human Rights;
- (d) respecting the interests of witnesses and victims and keeping them informed of the progress of the case;
- (e) dealing with the case efficiently and expeditiously;
- (f) ensuring that appropriate information is available to the court when bail and sentence are considered; and
- (g) dealing with the case in ways that take into account—
 - (i) the gravity of the offence alleged;
 - (ii) the complexity of what is in issue;

- (iii) the severity of the consequences for the defendant and others affected; and
- (iv) the needs of other cases.

Court must further overriding objective

- 9.** The court must further the overriding objective, in particular when—
- (a) exercising a power given to it by an enactment (including this Ordinance);
 - (b) making a practice direction;
 - (c) interpreting a rule or a practice direction.

Duty of persons involved in criminal cases

- 10.** Every person involved in any way with a criminal case must—
- (a) prepare and conduct the case in accordance with the overriding objective;
 - (b) comply with this Ordinance, other enactments relating to criminal procedure, practice directions and directions made by the court;
 - (c) at once inform the court and all parties of any failure (whether or not the person is responsible for that failure) to take any procedural step required if the failure might hinder the court in furthering the overriding objective.

PART 3

Investigating offences, etc

Investigating officers

Investigating officers

- 11.—**(1) A police officer^(a) may investigate into the commission of any offence.
- (2) The Administrator may in writing authorise any person, by name or office, to investigate into the commission of any one or more offences.
- (3) In this Ordinance, “investigating officer” means—
- (a) a police officer;
 - (b) a person authorised under subsection (2).

Statements

Statements

- 12.—**(1) If an investigating officer has reasonable grounds for believing that a person is acquainted with the facts or circumstances of an offence that the officer is investigating, the officer may require the person to attend, at such reasonable time and place as the officer may direct, to be interviewed and that a statement be taken in relation to that offence.
- (2) An investigating officer may record a statement made by a person interviewed in writing; and the statement must be read over to the person who must then be asked to sign it.
- (3) If the person refuses to sign the statement, the investigating officer must make a note of the refusal and the reason for the refusal, if ascertained, at the foot of the statement and the officer must then sign the statement.

(a) “Police officer” is defined in Schedule 1 to the Interpretation Ordinance 2012 as amended by Ordinance 22/2014.

(4) If a statement made in accordance with this section is proved to have been made voluntarily, the statement is admissible in evidence in criminal proceedings against the person making the statement.

(5) A person who, without reasonable excuse, refuses to attend as required under subsection (1) commits an offence and is liable on conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding €5,000 or to both.

(6) It is for the person to adduce evidence that the person had a reasonable excuse for the failure to attend as required.

(7) (See paragraph 3 (statements made under Police and Criminal Evidence Act 1984(a)) of Schedule 2 (provision for persons subject to service law, etc), which makes additional provision for statements to be admissible in evidence in criminal proceedings).

Audio recording and visual recording of interviews: code of practice

13.—(1) The Administrator may issue a code of practice about the audio recording or the visual recording (or both) of interviews conducted by investigating officers.

(2) Where an interview is recorded—

- (a) the investigating officer must have regard to any relevant code of practice; and
- (b) if the interview is conducted in accordance with the code of practice, the transcript of any statement made by the person interviewed must be treated, for the purposes of section 12(2) (statements), as having been put into writing by an investigating officer.

(3) The Administrator may from time to time—

- (a) revise the whole or any part of a code of practice; and
- (b) issue the revised code of practice.

(4) A code of practice (including a revised code of practice) does not come into operation until—

- (a) it is published; and
- (b) the Administrator, by order made as a public instrument, provides for it to come into operation.

(5) An order under subsection (4)(b) may include transitional or saving provisions.

(6) A failure on the part of an investigating officer to comply with any provision of a code of practice does not of itself render the officer liable to any criminal or civil proceedings.

(7) A code of practice is admissible in evidence in criminal or civil proceedings; and if a provision of a code of practice appears to the court or tribunal conducting the proceedings to be relevant to any question arising in the proceedings, it must be taken into account in determining the question.

Judges' Rules apply to taking statements

14.—(1) The rules(b) (the “Judges’ Rules”) approved by the Judges of the Queen’s Bench Division of the High Court of England and Wales relating to the taking of statements by police officers that were in force on 31 December 1985 apply to the taking of statements in the Areas by investigating officers as they applied to the taking of statements by police officers in England and Wales.

(2) Subsection (1)—

- (a) does not limit section 7 (application of law and practice of England relating to criminal procedure);
- (b) is subject to—

(a) 1984 c. 60 (UK).

(b) [1964] 1 W.L.R. 152.

- (i) section 12 (statements);
 - (ii) any code of practice issued under section 13 (tape-recording and visual recording of interviews: code of practice);
 - (iii) Schedule 2 (provisions for persons subject to service law, etc); and
 - (iv) any other enactment.
- (3) The Judges' Rules are set out in Schedule 1 (Judges' Rules).

Documents, etc

Notice to produce documents

15.—(1) Subject to subsection (2), if an investigating officer thinks that the production of a document^(a) is necessary or desirable for the purposes of investigating an offence, the officer may issue a notice in writing to the person in whose possession, or under whose control, the document is, or is believed to be, requiring the person to produce the document at such reasonable time and place as may be specified in the notice.

(2) Subsection (1) does not apply to a document for the production of which a warrant of the Administrator is required by this Ordinance or any other enactment.

(3) A person who is required to produce a document by a notice under subsection (1) must be treated as complying with the notice if the person causes the document to be produced instead of attending personally to produce the document.

(4) A person who, without reasonable excuse, fails to produce a document as required by a notice under subsection (1) commits an offence and is liable on conviction to imprisonment for a term not exceeding 3 years or a fine not exceeding €15,000 or to both.

(5) It is for the person to adduce evidence that the person had a reasonable excuse for the failure to produce a document as required.

(6) A reference in this section to the production of a document includes a reference to the production of—

- (a) a hard copy of information recorded otherwise than in hard copy form;
- (b) information in a form from which a hard copy can be readily obtained.

(7) For the purposes of this section—

- (a) information is recorded in hard copy form if it is recorded in a paper copy or similar form capable of being read (and references to a hard copy have a corresponding meaning);
- (b) information can be read only if—
 - (i) it can be read with the naked eye; or
 - (ii) to the extent that it consists of images (for example, photographs, pictures, maps, plans or drawings), it can be seen with the naked eye.

(8) Nothing in this section requires a person to produce—

- (a) a document that incriminates the person;
- (b) items subject to legal privilege.

(a) "Document" is defined in Schedule 1 to the Interpretation Ordinance 2012 (Ordinance 8/2012).

Arrest: general

Arrest

16.—(1) In making an arrest, the police officer or other person making the arrest must touch or confine the body of the person to be arrested unless the person submits to custody by word or action.

(2) If the person to be arrested forcibly resists arrest or attempts to evade arrest, the police officer or other person making the arrest may use all means necessary to make the arrest, but must not use more force than is reasonable in the circumstances.

(3) The police officer or other person making an arrest must inform the arrested person of the reason for the arrest at the time of the arrest or as soon as practicable after the arrest.

Search of arrested person

17.—(1) This section applies where—

- (a) a person is arrested by a police officer; or
- (b) a person is arrested by any other person and delivered into the custody of a police officer.

(2) A police officer may, using no more force than is reasonable in the circumstances, search the arrested person and seize any of the following—

- (a) any item that the officer has reasonable grounds for suspecting to be evidence relating to an offence (whether committed by the arrested person or any other person);
- (b) any weapon or any other item that might be used to cause physical injury;
- (c) any item that might be used to assist an escape from lawful custody, to hinder the investigation of an offence (whether committed by the arrested person or any other person) or to interfere with evidence.

(3) Subject to subsection (4), the search must be carried out by a police officer of the same sex as the arrested person.

(4) Subsection (3) does not apply where—

- (a) a police officer thinks that an immediate search is necessary for the purpose of preventing harm to any person (including the arrested person); and
- (b) a police officer of the same sex as the arrested person is not immediately available to carry out the search.

(5) If—

- (a) an item is seized from the arrested person under subsection (2), and
- (b) the arrested person is released because there are no reasonable grounds for believing that the person has committed an offence,

the item must be restored to the person, unless there are reasonable grounds for believing that the item may be evidence relating to an offence committed by another person.

(6) This section does not authorise any person to carry out an intimate search (but see section 18 for power to carry out an intimate search of an arrested person).

Intimate search of arrested person

18.—(1) Subject to subsection (2), a police officer of at least the rank of inspector may authorise an intimate search of a person who has been arrested if the officer has reasonable grounds for believing that—

- (a) the person may have concealed on him or her anything that might be used to cause physical injury to the person or others and the person might do so while the person is in custody; or

(b) the person may have a Class A drug concealed on him or her and was in possession of it with the appropriate criminal intent before the person's arrest.

(2) A police officer must not authorise an intimate search of a person for anything unless the officer has reasonable grounds for believing that it cannot be found without the person being intimately searched.

(3) A police officer may give an authorisation under subsection (1) orally or in writing; but if the officer gives it orally, the officer must confirm it in writing as soon as is practicable.

(4) An intimate search that is only a drug offence search must be carried out by a suitably qualified person.

(5) Any other intimate search must be carried out by—

(a) a suitably qualified person; or

(b) if a police officer of at least the rank of inspector thinks that an immediate search is required for the purpose of preventing harm to any person (including the person who is to be searched) and a suitably qualified person is not immediately available, a police officer of the same sex as the arrested person.

(6) Subject to subsection (7), an intimate search must not be carried out except—

(a) at a police station;

(b) at a hospital;

(c) at a medical practitioner's surgery;

(d) at some other place used for medical purposes; or

(e) at some other place designated in a notice for that purpose by the Chief Officer.

(7) An intimate search that is only a drug offence search must not be carried out at a police station.

(8) If an intimate search of a person is carried out, the custody record (which must be completed as soon as is practicable after the search) must state—

(a) which parts of the person's body were searched; and

(b) why they were searched.

(9) If an intimate search is carried out, any of the following may be seized by a police officer—

(a) any item that the officer has reasonable grounds for suspecting to be evidence relating to an offence (whether committed by the arrested person or any other person);

(b) any weapon or any other item that might be used to cause physical injury;

(c) any item that might be used to assist an escape from lawful custody, to hinder the investigation of an offence (whether committed by the arrested person or any other person) or to interfere with evidence.

(10) If—

(a) an item is seized from the arrested person under subsection (9), and

(b) the arrested person is released because there are no reasonable grounds for believing that the person has committed an offence,

the item must be restored to the person, unless there are reasonable grounds for believing that the item may be evidence relating to an offence committed by another person.

(11) In this section—

“appropriate criminal intent” means the intent which forms a necessary element of an offence under—

(a) section 7(3) of the Narcotic Drugs and Psychotropic Substances (Consolidation) Ordinance 2006^(a) (restriction of possession, etc of controlled drugs); or

(a) Ordinance 16/2006. The First Schedule was amended by P.I. 30/11 and 4/2015.

(b) section 92(2) of the Customs Ordinance 2005^(a) (offences in relation to exportation of prohibited or restricted goods);

“Class A drug” has the meaning given in section 3 of the Narcotic Drugs and Psychotropic Substances (Consolidation) Ordinance 2006;

“drug offence search” means an intimate search for a Class A drug that a police officer has authorised under subsection (1)(b);

“medical practitioner” means a person entitled to practise medicine in the Areas by virtue of the Medical Practitioners Ordinance 1964^(b);

“suitably qualified person” means—

- (a) a medical practitioner; or
- (b) a nurse.

Persons who may be arrested: search of place

19.—(1) This section applies where—

- (a) a person (P) has the power to arrest another person (S) (whether or not under an arrest warrant); and
- (b) P has reasonable grounds for suspecting that S has entered or is within a place other than a dwelling (the “place”).

(2) This section also applies where—

- (a) a person (P) has the power to arrest another person (S) under an arrest warrant; and
- (b) P has reasonable grounds for suspecting that S has entered or is within a dwelling (the “place”).

(3) Any person occupying or in charge of the place—

- (a) must, on demand, allow P to enter the place; and
- (b) must afford all reasonable facilities to P to enable P to search the place for S.

(4) A person who fails to comply with subsection (3) commits an offence and is liable on conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding €2,500 or to both.

(5) If P is unable to gain entry to the place in accordance with subsection (3), P may enter and search the place for S; and in order to gain entry, P may break open any outer or inner door or window or otherwise effect entry to the place (whether or not S is occupying or in charge of the place).

(6) (See also section 34, which provide additional powers to search places, section 35, which provides additional powers to search vehicles and section 44, which provides supplementary powers when searching a vehicle).

Power to break out of building, etc

20. A person who has the power to arrest another person (whether or not under an arrest warrant) may break out of any building or other place in order to liberate himself or herself or any other person who, having lawfully entered for the purpose of making an arrest, is detained there.

(a) Ordinance 16/2005. Section 92(2) was amended by Ordinance 5/2010.

(b) Ordinance 10/1964.

Arrest without warrant: police officers

21.—(1) A police officer may, without a warrant, arrest any of the following—

- (a) subject to subsection (4)(a), a person who commits, in the officer's presence, an offence punishable with imprisonment or whom the officer has reasonable grounds for suspecting to be committing such an offence in the officer's presence;
- (b) a person who obstructs the officer in the execution of the officer's duty;
- (c) a person who is attempting to escape or has escaped from lawful custody or whom the officer has reasonable grounds for suspecting to be attempting to escape or to have escaped from lawful custody;
- (d) a deserter from Her Majesty's Armed Forces or a person whom the officer has reasonable grounds for suspecting to be a deserter;
- (e) a person against whom the officer has reasonable grounds for believing an arrest warrant to have been issued;
- (f) a person who has committed an offence punishable with imprisonment, or whom the officer has reasonable grounds for suspecting to have committed such an offence, if the person—
 - (i) refuses to give the person's name;
 - (ii) refuses to give the person's address; or
 - (iii) gives a name or address that the officer suspects to be false;
- (g) a person who, in accordance with any enactment in force for the time being, may be arrested without a warrant, irrespective of whom the enactment confers the power of arrest on.
- (h) *a person who in the officer's presence breaches a condition attached to a conditional caution.* (a)

(2) Subject to subsections (3) and (4)(b), a police officer may, without a warrant, arrest any of the following—

- (a) a person who has committed an offence punishable with imprisonment for a term of two years or more or whom the officer has reasonable grounds for suspecting to have committed such an offence;
- (b) a person who is about to commit an offence or whom the officer has reasonable grounds for suspecting to be about to commit an offence;
- (c) a person if—
 - (i) anything is found in the person's possession that is stolen property or is property that the officer has reasonable grounds for suspecting to be stolen property; and
 - (ii) the person has committed an offence with reference to the property or the officer has reasonable grounds for suspecting the person to have committed such an offence
- (d) a person who is in possession of a thing for which a licence is required and the person fails to produce such a licence when called upon by a police officer to do so.

(3) A police officer may arrest a person without a warrant under subsection (2) only if the officer has reasonable grounds for believing that it is necessary to arrest the person for one or more of the following reasons—

- (a) to enable the name or address of the person to be ascertained, in a case where the person refuses to give the person's name and address or gives a name or address that the officer suspects to be false;

(a) (h) inserted by Ordinance 09/2019 – came into force on 16 July 2019

- (b) to prevent the person—
 - (i) causing physical injury to himself or herself or to any other person;
 - (ii) causing loss or damage to property; or
 - (iii) prejudicing the security or interests of the Areas or the United Kingdom or its armed forces;
 - (c) to allow the prompt and effective investigation of the offence;
 - (d) to prevent any investigation of the offence from being hindered by the disappearance of the person or by the person's absence from the Areas.
- (4) If the enactment creating an offence provides that a person may not be arrested without a warrant in respect of the offence—
- (a) a police officer may nevertheless arrest the person without a warrant under subsection (1)(a), but only if the person—
 - (i) refuses to give the person's name or address; or
 - (ii) gives a name or address that the officer suspects to be false;
 - (b) a police officer may not arrest the person without a warrant under subsection (2).

Arrest without warrant: general

- 22.**—(1) Any person (C) may, without a warrant, arrest any of the following—
- (a) a person who commits, in C's presence, an offence punishable with imprisonment for a term exceeding two years or whom C has reasonable grounds for suspecting to be committing such an offence in C's presence;
 - (b) a person who has committed an offence punishable with imprisonment for a term exceeding two years, or whom C has reasonable grounds for suspecting to have committed such an offence, if—
 - (i) it appears to C that it is not reasonably practicable for a police officer to make the arrest instead of C; and
 - (ii) C has reasonable grounds for believing that it is necessary to arrest the person to prevent the person from escaping before a police officer can assume responsibility for the person;
 - (c) a person who is attempting to escape or has escaped from lawful custody or whom C has reasonable grounds for suspecting to be attempting to escape or to have escaped from lawful custody;
 - (d) a person who is attempting to evade lawful arrest or whom C has reasonable grounds for suspecting to be attempting to evade lawful arrest;
 - (e) a person who may be arrested without a warrant under any enactment in force for the time being.
- (2) The owner of any property, or a person employed by or authorised by the owner, may, without a warrant, arrest a person—
- (a) who commits an offence involving damage to the property in the presence of the owner or, as the case may be, the employee or authorised person; or
 - (b) whom the owner or, as the case may be, the employee or authorised person has reasonable grounds for suspecting to be committing such an offence in the presence of that person.
- (3) A person who arrests another person under this section must, without unnecessary delay—
- (a) deliver the arrested person into the custody of a police officer; or
 - (b) in the absence of a police officer, take the arrested person to the nearest police station.

(4) If a police officer believes that a person arrested under this section may be arrested without a warrant by a police officer under section 21 (arrest without warrant: police officers), the police officer must re-arrest the person.

(5) Subsection (1)(a) and (b) do not apply in relation to an offence under Part 2 of the Racial and Religious Hatred Ordinance 2014(a).

Arrest without warrant: disposal of persons arrested

23.—(1) This section applies where a person who has been arrested without a warrant by a police officer is brought to a police station.

(2) The officer in charge of the police station may cause an investigation of the case to be made.

(3) Subject to the following provisions of this section, the officer in charge of the police station must do one of the following within 24 hours of the arrest—

- (a) cause the person to be brought before a Judge;
- (b) release the person on police bail on condition that the person appear before the court at a specified time and place or to attend at a specified police station at a specified time, unless the person, before the specified time, receives notice from the officer in charge of the police station that the person's appearance or attendance is not required;
- (c) release the person unconditionally.

(4) Where the person has been arrested for an offence which appears to the officer in charge of the police station to be of a serious nature, the officer must cause the person to be brought before a Judge as soon as is practicable and in any event within 24 hours of the arrest.

(5) In any other case, where—

- (a) the officer in charge of the police station decides not to cause an investigation of the case to be made, or
- (b) any such investigation is completed,

the officer must release the person in accordance with subsection (3)(b) or (c).

(6) Before releasing a person on police bail, the officer in charge of the police station may require the person to do either of the following as security for the person's appearance or attendance—

- (a) execute a bail bond, with or without sureties, for a specified amount; or
- (b) deposit a sum of money with the officer, who must give the person a receipt for the sum.

(7) The Fiscal Officer may give directions providing for the accounting for, and the custody and control of sums of, money deposited with police officers under subsection (6)(b).

(8) Directions under subsection (7) may be published in any manner that the Fiscal Officer thinks appropriate.

(9) Sections 163(1) and (2), 164 and 165 (which make provision about bail bonds) apply to bail bonds executed under this section.

(10) Where a person who executes a bail bond or deposits a sum of money in accordance with subsection (6) fails, without reasonable excuse, to appear or attend at the required time or place, the Fiscal Officer may order the sum of money specified in the bail bond to be paid or, as the case may be, order the forfeiture of the sum in question; and sections 166 (court may order bail bond to be paid) and 167 (forfeiture of other security) apply, with any necessary modifications, to an order of the Fiscal Officer under this section as if it were an order of the court under those sections.

(a) Ordinance 30/2014.

Arrest warrants

Arrest warrants: issue

24.—(1) A Judge may issue a warrant (an “arrest warrant”) for the arrest of a person if the Judge is satisfied, by information on oath or affirmation, that—

- (a) there are reasonable grounds for believing that the person has committed an offence;
- (b) the arrest or detention of the person is reasonably necessary to prevent the person committing an offence or escaping following the commission of an offence;
- (c) the person is on bail and has failed to surrender to custody or to comply with any other condition imposed on the grant of bail (see Part 7 (bail));
 - (ca) *there are reasonable grounds for believing that the person has breached a condition attached to a conditional caution;* (a)
- (d) there is a power under this Ordinance or any other enactment to arrest the person without a warrant, but a warrant is nevertheless desirable; or
- (e) a warrant is otherwise necessary for the purposes of this Ordinance or any other enactment.

(2) An arrest warrant authorises the arrest of the person against whom it is issued.

Arrest warrants: form and duration

25.—(1) An arrest warrant must—

- (a) be signed by the Judge issuing it;
- (b) state the date and time of issue;
- (c) state shortly the offence or matter for which it is issued;
- (d) name or otherwise describe the person to be arrested;
- (e) order the police officer or other person to whom the warrant is directed to arrest the person against whom it is issued and bring the person before the court to answer to the statement of offence or matter mentioned in the warrant and to be further dealt with according to law.

(2) Subject to subsection (3), an arrest warrant must be directed to all police officers generally.

(3) If the Judge issuing an arrest warrant is satisfied that—

- (a) the immediate execution of the warrant is necessary, and
- (b) no police officer is immediately available,

the Judge may direct the warrant to any other person or persons, who must execute the warrant.

(4) Where an arrest warrant is directed to more than one person, the warrant may be executed by any one or more of them.

(5) An arrest warrant remains in force until—

- (a) it is executed; or
- (b) it is cancelled by a Judge.

Arrest warrants: irregularities

26.—(1) No irregularity or defect in the substance or form of an arrest warrant, and no variance between the warrant and the charge sheet or between either the warrant or charge sheet and the prosecution evidence, affects the validity of the relevant proceedings.

(a) (ca) inserted by Ordinance 09/2019 – came into force on 16 July 2019

(2) But if the court thinks that any variance referred to in subsection (1) has deceived or misled the defendant, the court may, on the application of the defendant, adjourn the hearing of the case and, in the meantime, remand the defendant in custody or grant bail to the defendant.

Arrest warrants: execution

27.—(1) An arrest warrant may be executed at any time or place on any day (including a Sunday or a public holiday).

(2) An arrest warrant may be executed even though it is not in the possession of the person making the arrest; but if the person arrested so requests, the arrest warrant must be shown to the person arrested as soon as possible after the arrest.

(3) Subject to subsection (4), the person executing an arrest warrant must, before making the arrest, inform the person to be arrested that an arrest warrant has been issued against the person.

(4) Subsection (3) does not apply if there are reasonable grounds for believing that giving the information is likely to occasion escape, resistance or rescue.

Arrest warrants: disposal of person arrested under warrant

28. Except where earlier release is directed under section 29 (arrest warrants: release of person arrested in accordance with warrant), every person arrested under an arrest warrant must be brought before a Judge as soon as practicable, and in any event not later than 24 hours after the arrest.

Arrest warrants: release of person arrested in accordance with warrant

29.—(1) A Judge who issues an arrest warrant may, by endorsement on the warrant, direct that the person against whom the warrant is issued must be released after arrest—

- (a) on depositing a sum of money with the Police Service, or
- (b) on executing a bail bond, with or without sureties,

as security for the arrested person's surrender to custody or appearance at court as specified in the warrant.

(2) The endorsement must specify—

- (a) the sum of money to be deposited with the Police Service or, as the case may be, the amount of the bail bond;
- (b) in the case of a bail bond, the number of sureties (if any) and the amount in which the sureties and the arrested person are respectively to be bound; and
- (c) the court before which the arrested person is to attend and that the arrested person is to appear as such time as is notified by the arresting officer and at any subsequent time as ordered by the court.

(3) An endorsement may be varied at any time by a Judge.

(4) If an arrest warrant contains an endorsement, the officer in charge of the police station to which the person arrested under the warrant is brought must release the arrested person as soon as the arrested person deposits the sum of money or, as the case may be, executes a bail bond in compliance with the endorsement; and the sum of money or bail bond must be sent to the court.

(5) If the endorsement on the arrest warrant requires the arrested person to execute a bail bond with a surety or sureties, the surety or sureties must be approved by the police officer who takes the bail bond.

(6) Sections 164, 165 and 166 (which make provision about bail bonds) apply, with any necessary modifications, to bail bonds executed under this section as they apply to bail bonds executed under Part 7 (bail).

(7) Section 167 (forfeiture of other security) applies, with any necessary modifications, to sums of money deposited with the Police Service under this section as it applies to security given under Part 7.

Remand in police custody, etc

Power to remand in police custody, etc

30.—(1) This section applies where a person who has been arrested (whether or not under a warrant) but not charged with an offence is brought or appears before a Judge.

(2) The Judge may—

- (a) release the arrested person unconditionally; or
- (b) subject to subsection (3), remand the arrested person in police custody for a period, or for a further period or periods, not exceeding 8 days at any one time (the day following the remand being counted as the first day).

(3) A Judge may remand a person in police custody only if satisfied, on the application of a police officer of the rank of inspector or above, that—

- (a) the investigation into the offence for which the person is under arrest has not been completed; and
- (b) there are reasonable grounds for believing that it is necessary to remand the person in custody—
 - (i) to secure or preserve evidence relating to the offence for which the person is under arrest;
 - (ii) to obtain such evidence by questioning the person;
 - (iii) to prevent the person from disappearing or from leaving the Areas;
 - (iv) to prevent the person from interfering with witnesses or otherwise obstructing the course of justice, whether in relation to himself, herself or any other person; or
 - (v) for some other reason that the Judge thinks sufficient.

Arrested person’s appeal against remand in police custody

31.—(1) This section applies where, following an application by the Police Service for a person (the “suspect”) who has not been charged with an offence to be remanded in police custody—

- (a) the suspect is remanded in custody; and
- (b) the suspect wishes to appeal to the Senior Judges’ Court against the remand.

(2) The suspect must serve a notice of appeal on a Registrar.

(3) A notice of appeal may be served only while the suspect is in custody; and if the suspect is released from custody before an appeal under this section is heard, the appeal must be treated as being abandoned.

(4) It is sufficient for the purposes of subsection (2) if the suspect gives the notice of appeal to the officer having charge of the person for transmission to a Registrar.

(5) The notice of appeal must—

- (a) explain why the Senior Judges’ Court should release the suspect;
- (b) explain what further information or legal argument, if any, has become available since the Judge’s decision to remand the suspect in custody; and
- (c) if the suspect wishes the hearing of the appeal to be expedited, explain why the hearing needs to be expedited.

(6) On receipt of the notice of appeal, the Registrar must—

- (a) give a copy to the Police Service as soon as possible; and

- (b) arrange for the Senior Judges' Court to hear the appeal as soon as is practicable.
- (7) If the Police Service wishes to oppose the appeal, it must—
 - (a) notify the suspect and the Registrar as soon as possible; and
 - (b) give the suspect and the Registrar notice of the reasons for opposition.
- (8) The appeal may be heard by a Senior Judge outside the Areas using a live link.
- (9) The appeal is by way of rehearing, and on hearing the appeal the Senior Judges' Court may—
 - (a) remand the suspect in custody for such period not exceeding 8 days as the court thinks appropriate (the day following the remand being counted as the first day); or
 - (b) release the suspect unconditionally.
- (10) Where the application for the suspect to be remanded in custody was not made by or on behalf of the Police Service, a reference in this section to the Police Service must be construed as a reference to the person by or on whose behalf the application was made.

Prosecution appeal against release of arrested person

- 32.**—(1) This section applies where, following an application by the Police Service for a person (the “suspect”) who has not been charged with an offence to be remanded in police custody—
- (a) a Judge orders the suspect to be released unconditionally; and
 - (b) the Police Service wishes to appeal to the Senior Judges' Court against the release.
- (2) The person making the application (the “advocate”) must inform the Judge of the decision to appeal—
- (a) at the end of the hearing during which the suspect's release is ordered; and
 - (b) before the suspect is released.
- (3) If informed in accordance with subsection (2), the Judge must remand the suspect in custody pending determination of the appeal.
- (4) The advocate must, within 4 hours after informing the Judge of the decision to appeal, serve a notice of appeal on—
- (a) a Registrar; and
 - (b) the suspect.
- (5) The notice of appeal must specify—
- (a) the decision under appeal;
 - (b) the reasons given for the release; and
 - (c) the grounds of appeal.
- (6) On receipt of the notice of appeal, the Registrar must arrange for the Senior Judges' Court to hear the appeal as soon as practicable and in any event no later than 8 days after the order to release the suspect.
- (7) The appeal may be heard by a Senior Judge outside the Areas using a live link.
- (8) The appeal is by way of rehearing, and on hearing the appeal the Senior Judges' Court may—
- (a) remand the suspect in custody for such period not exceeding 8 days as the court thinks appropriate (the day following the remand being counted as the first day); or
 - (b) release the suspect unconditionally.
- (9) The advocate may abandon an appeal under this section at any time by serving a notice of abandonment on—
- (a) a Registrar; and
 - (b) the suspect.

(10) The Registrar must give instructions for the suspect to be released as originally ordered by the Judge if—

- (a) the advocate fails to serve a notice of appeal within the time referred to in subsection (4);
- (b) the appeal is not heard within the time referred to in subsection (6); or
- (c) the advocate serves a notice of abandonment under subsection (9).

(11) Where the application for the suspect to be remanded in custody was not made by or on behalf of the Police Service, a reference in this section to the Police Service must be construed as a reference to the person by or on whose behalf the application was made.

Search, etc. without warrant

Search of persons without warrant

33.—(1) A police officer may, without a warrant, stop, detain and search a person if the officer has reasonable grounds for suspecting that—

- (a) the person is committing, or is about to commit, an offence; or
- (b) the person is carrying, conveying or concealing—
 - (i) an item in respect of which an offence is being, is about to be or has recently been, committed; or
 - (ii) an item that it is unlawful for the person to possess.

(2) A police officer may, without a warrant, stop, detain and search a person if the police officer sees a person in possession of a thing for which a licence is required;

(3) Subject to subsection (4), the search must be carried out by a person of the same sex as the person detained.

(4) Subsection (3) does not apply where—

- (a) a police officer thinks that an immediate search is necessary for the purpose of preventing harm to any person (including the person detained); and
- (b) a person of the same sex as the person detained is not immediately available to carry out the search.

(5) This section does not authorise any person to carry out an intimate search (but see section 18 for power to carry out an intimate search of an arrested person).

Search of places without warrant

34.—(1) A police officer may, without a warrant, enter and search a place, including a dwelling—

- (a) if the occupier of the place requests the assistance of the police;
- (b) if any person in the place requests the assistance of the police and the officer has reasonable grounds for believing that an offence is being committed there;
- (c) if the officer has reasonable grounds for believing that it is necessary to do so to rescue a victim of an offence of violence or otherwise to save life or limb; or
- (d) in any case in which the officer may enter and search the place without a warrant in accordance with any enactment in force for the time being.

(2) A police officer may, without a warrant, enter and search a place other than a dwelling—

- (a) in any of the circumstances referred to in subsection (1);
- (b) if the officer has reasonable grounds for believing that an offence punishable with imprisonment for a term of two years or more is being, is about to be or has recently been, committed there; or

- (c) if the officer has reasonable grounds for believing that an instrument with which an offence punishable with imprisonment for a term of two years or more has recently been committed (in the place or elsewhere) may be found there.

(3) (See also sections 19 and 35, which provide additional powers to search places and section 44, which provides supplementary powers when searching a vehicle).

Search of vehicles without warrant

35.—(1) A police officer may, without a warrant, stop, enter and search a vehicle other than a dwelling—

- (a) in any of the circumstances referred to in subsection (1) and (2) of section 34;
- (b) if the officer has reasonable grounds for suspecting that the vehicle is being used in the commission of an offence; or
- (c) if the officer has reasonable grounds for suspecting that any of the following is in, on or about the vehicle—
 - (i) an item in respect of which an offence is being, is about to be or has recently been, committed; or
 - (ii) an item that it is unlawful for any person in the vehicle, vessel or aircraft to possess; or
- (d) if the officer has reasonable grounds for suspecting that an explosive substance, offensive weapon or other instrument of violence is unlawfully in, on or about the vehicle.

(2) In this section—

“explosive substance”—

- (a) means gunpowder, nitro-glycerine, dynamite, gun-cotton, blasting powder, fulminate of mercury or another metal, coloured fires and every other substance, whether similar to those mentioned or not, used or manufactured with a view to produce a practical effect by explosion or a pyrotechnic effect;
- (b) includes fog signals, fireworks, fuses, rockets, percussion caps, detonators, cartridges and ammunition of all descriptions and every adaptation or preparation of any explosive substance as defined;
- (c) includes any apparatus, material or implement or any part thereof, or materials used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with an explosive substance;

“offensive weapon” means an item—

- (a) made or adapted for use for causing injury to persons; or
- (b) intended by the person (P) who has the item for use for causing injury to persons by P or some other person.

(3) (See also section 19, which provides additional powers to search vehicles and section 44, which provides supplementary powers when searching a vehicle).

Seizure of items found during search without warrant

36.—(1) This section applies where—

- (a) an item is found during a search without a warrant under sections 33, 34 or 35; and
- (b) if the search had been carried out under a search warrant, the item might have been seized.

(2) The item may be seized and, if so, must be brought before a Judge to be disposed of in accordance with section 46 (disposal of seized items).

(3) Nothing in this section authorises the seizure of items subject to legal privilege.

Search warrants

Search warrants: issue

37.—(1) A Judge may issue a warrant (a “search warrant”) if the Judge is satisfied, by information on oath or affirmation, that there are reasonable grounds for believing that there is in, on or about any place, including a dwelling—

- (a) an item on or in respect of which an offence has been, or is suspected of having been, committed;
- (b) an item for which there are reasonable grounds for believing is evidence of the commission of an offence; or
- (c) an item for which there are reasonable grounds for believing is intended to be used to commit an offence.

(2) The search warrant authorises the person named in the search warrant—

- (a) to search the place for any item referred to in the warrant (however described) and to seize and bring such item before a Judge to be dealt with according to law; and
- (b) if the Judge so directs in the warrant, to arrest and bring before a Judge—
 - (i) the occupier of the place where the item is found; or
 - (ii) any person in, on or about the place in possession of the item.

(3) Nothing in this section authorises the seizure of items subject to legal privilege.

Search warrants: form and duration

38.—(1) A search warrant must—

- (a) be signed by the Judge issuing it; and
- (b) state the date and time of issue.

(2) Subject to subsection (3), a search warrant must be directed to all police officers generally.

(3) If the Judge issuing a search warrant is satisfied that—

- (a) the immediate execution of the warrant is necessary, and
- (b) no police officer is immediately available,

the Judge may direct the warrant to any other person or persons, who must execute the warrant.

(4) Where a search warrant is directed to more than one person, the warrant may be executed by any one or more of them.

(5) A search warrant remains in force until—

- (a) it is executed; or
- (b) it is cancelled by a Judge.

Search warrants: execution

39.—(1) A search warrant may be executed on any day (including a Sunday or a public holiday).

(2) Subject to subsection (3), a search warrant may be executed only between 5 a.m. and 8 p.m.

(3) If a Judge so authorises (on issuing a search warrant or afterwards), a search warrant may be executed at any other time endorsed on the warrant.

Search warrants: search of person suspected of concealing items at place to be searched

40.—(1) This section applies where a person (S) is in, on or about a place that is liable to be searched under a search warrant.

(2) If the police officer or other person having authority to search has reasonable grounds for suspecting that S is concealing about S's person an item for which a search may be made under the warrant, the officer or other person may search the person for the item and seize it.

(3) Subject to subsection (4), the search must be carried out by a person of the same sex as S.

(4) Subsection (3) does not apply where—

- (a) a police officer (or other person having authority to search) thinks that an immediate search is necessary for the purpose of preventing harm to any person (including S); and
- (b) a police officer (or other person having authority to search) of the same sex as S is not immediately available to carry out the search.

(5) S may be taken to a police station for the purpose of carrying out a search.

(6) Nothing in this section authorises the seizure of items subject to legal privilege.

(7) This section does not authorise any person to carry out an intimate search (but see section 18 for power to carry out an intimate search of an arrested person).

Search warrant: discharge of occupier, etc brought before Judge pursuant to warrant

41.—(1) This section applies where a search warrant authorises the search of a place and—

- (a) in a case where an item referred to in the search warrant is found in the place, the occupier of the place is brought before a Judge pursuant to section 37(2)(b)(i); or
- (b) in a case where an item referred to in the search warrant is found in the possession of a person in, on or about the place, the person is brought before a Judge pursuant to section 37(2)(b)(ii).

(2) If the Judge is satisfied that the occupier or person has not committed an offence, the Judge must discharge the occupier or person without delay.

(3) In any other case, the Judge may deal with the occupier or person in the same way as the Judge may deal with a person under section 30 (power to remand in police custody, etc).

Search warrants: seizure of items not mentioned in search warrant

42.—(1) This section applies if a person searching a place in accordance with a search warrant—

- (a) finds an item not mentioned in the warrant; and
- (b) has reasonable grounds for believing that an offence has been or is intended to be committed in respect of the item.

(2) The person may seize the item and, if so, must bring it before a Judge to be disposed of in accordance with section 46 (disposal of seized items).

(3) Nothing in this section authorises the seizure of items subject to legal privilege.

Searches: general

Entry to closed place: supplementary powers and offence

43.—(1) This section applies where a place that is liable to be searched (whether or not under a warrant) is closed.

(2) Every person occupying or in charge of the place—

- (a) must, on demand, allow the police officer or other person having authority to search, to enter the place; and
- (b) must afford all reasonable facilities to the officer or other person to enable the officer or other person to search the place.

(3) If the police officer or other person is unable to gain entry to the place in accordance with subsection (2), the officer or other person may enter and search the place; and in order to gain entry, the officer or other person may break open any outer or inner door or window or otherwise effect entry to the place.

(4) A person who fails to comply with subsection (2) commits an offence and is liable on conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding €2,500 or to both.

Entry and search of vehicles: supplementary powers and offence

44.—(1) This section applies to a vehicle if a police officer has the power to enter or search it under—

- (a) a search warrant;
- (b) section 19 (persons who may be arrested: search of place);
- (c) section 34 (search of places without warrant);
- (d) section 35 (search of vehicles without warrant).

(2) A police officer may stop and detain a vehicle to which this section applies for the purpose of entering and searching it.

(3) If the police officer who stops and detains a vehicle to which this section applies thinks that it would be impracticable to search the vehicle in the place where it has stopped, the officer may require the vehicle to be moved to the nearest police station, or such other place as the officer directs, to enable the vehicle to be searched.

(4) For the purpose of boarding a vessel or aircraft to which this section applies, a police officer may require the vessel or aircraft (or any other vessel or aircraft) to stop or do anything else that will facilitate the boarding of the vessel or aircraft.

(5) A police officer who has boarded a vessel or aircraft to which this section applies may, for the purpose of disembarking, require the vessel or aircraft (or any other vessel or aircraft) to stop or to do anything else that will enable the officer to disembark from the vessel or aircraft.

(6) If a police officer thinks that it would not be reasonably practicable for the officer to board or search a vessel to which this section applies without detaining the vessel in a port, the officer may—

- (a) take, or arrange for another person to take, the vessel and its crew to the port that appears to the officer to be the nearest convenient port; or
- (b) require the master of the vessel to take it and its crew to that port.

(7) If a vessel is taken to a port in accordance with subsection (6), a police officer may detain it there or require its master to do so in order to facilitate a search.

(8) A person in charge of a vehicle to which this section applies commits an offence if the person—

- (a) refuses to stop the vehicle or allow it to be detained, entered, boarded or searched when required to do so by a police officer under this section or any of sections 19, 34 or 35;
- (b) refuses to comply with a reasonable requirement imposed under this section; or
- (c) otherwise obstructs a police officer in the execution of the officer's duties.

(9) A person convicted of an offence under subsection (8) is liable to imprisonment for a term not exceeding 6 months or a fine not exceeding €2,500 or to both.

(10) In this section, a reference to a police officer includes a reference to another person having authority to enter and search a vehicle under a search warrant or section 19 (persons who may be arrested: search of place).

Power to seize: information not in hard copy form

45.—(1) Where a power to seize an item is conferred by or under this Ordinance or any other enactment, the power includes a power to require the production of, and to seize—

- (a) a hard copy of information recorded otherwise than in hard copy form;
- (b) information in a form from which a hard copy can be readily obtained.

(2) For the purpose of this section—

- (a) information is recorded in hard copy form if it is recorded in a paper copy or similar form capable of being read (and references to a hard copy have a corresponding meaning);
- (b) information can be read only if—
 - (i) it can be read with the naked eye; or
 - (ii) to the extent that it consists of images (for example, photographs, pictures, maps, plans or drawings), it can be seen with the naked eye.

(3) If an item is seized under this section, it must be brought before a Judge to be disposed of in accordance with section 46 (disposal of seized items).

Disposal of seized items

46.—(1) This section applies to an item that is seized and brought before a Judge in accordance with—

- (a) a search warrant;
- (b) section 36 (seizure of items found during search without warrant);
- (c) section 42 (search warrants: seizure of items not mentioned in search warrant);
- (d) section 45 (power to seize: information not in hard copy form).

(2) An item to which this section applies may be retained by any person that the Judge directs; and that person must take reasonable care to preserve the item until the conclusion of any criminal proceedings in respect of the item or to which the item is relevant.

(3) If an item to which this section applies is of a perishable or noxious nature, the Judge may order the item to be disposed of.

(4) If it is unlawful to use or possess an item to which this section applies, the Judge may, in the absence of a reasonable excuse to be proved by the person possessing the item, order that the item be confiscated, defaced or destroyed even though no person is prosecuted in respect of the item.

(5) If the Judge thinks that an item to which this section applies is no longer required for any criminal proceedings, the Judge must, unless authorised or required by this Ordinance or any other enactment to dispose of it otherwise, order that—

- (a) the item (or any part of the item) be restored—
 - (i) to the person who appears to the Judge to be entitled to it; or
 - (ii) if that person is the defendant, to the defendant or another person nominated by the defendant; or
- (b) in a case where the item belongs to the defendant, the item (or any part of the item) be set off against the payment of any costs or compensation that the defendant is required to pay.

(6) (See also section 176 (disposal of property in possession of police)).

Other police powers not limited

Police powers under other enactments, etc not limited

47. Nothing in this Part limits a police officer's powers under any other enactment or rule of law.

PART 3A (a)
Conditional cautions

Conditional cautions

47A.—(1) A person (“the offender”) may be given a conditional caution if each of the five requirements in section 47B is satisfied.

(2) In this Part “conditional caution” means a caution which is given in respect of an offence committed by the offender and which has conditions attached to it with which the offender must comply.

(3) The conditions which may be attached to such a caution must have one or more of the following objects—

- (a) facilitating the rehabilitation of the offender;
- (b) ensuring the offender makes reparation for the offence;
- (c) punishing the offender.

(4) The conditions which may be attached to a conditional caution include a condition that the offender attend at a specified place at a specified time for no more than 20 hours in total.

(5) A conditional caution given to the offender who is a prohibited immigrant aged 18 or over may have conditions that have one or more of the following objects—

- (a) bringing about the departure of the offender from the Areas;
- (b) ensuring that the offender does not return to the Areas for a period of time.

(6) If the offender who is a prohibited immigrant is given a conditional caution with a condition attached to it with an object of ensuring that the offender does not return to the Areas for a period of time, the expiry of that period does not of itself give rise to any right on the part of the offender to return to the Areas.

(7) In this section “prohibited immigrant” has the meaning given in section 5(1) of the Control (Entry, Settlement and Commercial Enterprises) Ordinance 1960(b).

The five requirements

47B.—(1) The first requirement is that the police officer has evidence that the offender has committed an offence.

(2) The second requirement is that the Attorney General and Legal Adviser or a Crown Counsel decides—

- (a) that there is sufficient evidence to charge the offender with the offence, and
- (b) that a conditional caution should be given to the offender in respect of the offence.

(3) The third requirement is that the offender admits committing the offence to the police officer.

(4) The fourth requirement is that the police officer—

- (a) explains the effect of the conditional caution to the offender, and
- (b) warns the offender that failure to comply with any of the conditions attached to the caution may result in prosecution for the offence.

(5) The fifth requirement is that the offender signs a document which contains—

- (a) details of the offence,
- (b) the offender’s admission of having committed the offence,

(a) Part3A inserted by Ordinance 09//2019 – came into force on 16 July 2019

(b) Ordinance 5/1960. Section 5 was amended by Ordinances 4/2001, 13/2009 and 31/2010.

- (c) *the offender's consent to being given the conditional caution, and*
 - (d) *the conditions attached to the caution.*
- (6) *Where the offender is under 18, the explanation and warning mentioned in subsection (4) must be given in the presence of an appropriate adult.*
- (7) *In this section "appropriate adult" in relation to a person (P) under 18 means—*
- (a) *a parent or guardian of P,*
 - (b) *if P is in the care of a local authority or a voluntary organisation, a representative of that authority or organisation,*
 - (c) *a social worker, or*
 - (d) *if no person falling within paragraph (a), (b) or (c) is available, any responsible person aged 18 or over who is not a police officer, or a person employed for, or engaged on, police related matters.*

Duty to consult victim

47C.—(1) *Before deciding what conditions to attach to a conditional caution, the Attorney General and Legal Adviser or a Crown Counsel must make reasonable efforts to obtain the views of the victim (if any) of the offence, and in particular the victim's views as to whether the offender should carry out any of the actions suggested by the Attorney General and Legal Adviser or a Crown Counsel as reparation for the offence.*

(2) *If the victim expresses the view that the offender should carry out a particular action suggested under subsection (1), the Attorney General and Legal Adviser or a Crown Counsel must attach that as a condition unless it seems to the Attorney General and Legal Adviser or a Crown Counsel that it would be inappropriate to do so.*

(3) *Where—*

- (a) *there is more than one victim and they express different views, or*
- (b) *for any other reason subsection (2) does not apply,*

the Attorney General and Legal Adviser or a Crown Counsel must nevertheless take account of any views expressed by the victim (or victims) in deciding what conditions to attach to the conditional caution.

(4) *In this section "victim" means the particular person who appears to the Attorney General and Legal Adviser or a Crown Counsel to have been affected by the offence.*

Financial penalties

47D.—(1) *A financial penalty that the offender pays as a condition (a "financial penalty condition") must not exceed—*

- (a) *one quarter of the amount of the maximum fine for which a person is liable on conviction of the offence, or*
- (b) *the following amount—*
 - (i) *€50 where the offence is a misdemeanour,*
 - (ii) *€100 where the offence is a felony and the offender is under 18, or*
 - (iii) *€150 where the offence is a felony and the offender is aged 18 or over,*

whichever is the lower.

(2) *Where a financial penalty condition is attached to a conditional caution, the condition must specify—*

- (a) *the amount of the penalty, and*
- (b) *how it may be paid.*

(3) *To comply with the condition, the offender must pay the penalty to a police station or to the court in the way specified under subsection (2)(b).*

Failure to comply with conditions

47E.—(1) *If the offender fails, without reasonable excuse, to comply with any of the conditions attached to the conditional caution, criminal proceedings may be commenced against the person for the offence in question.*

(2) *The document mentioned in section 47B(5) is admissible as evidence in such proceedings.*

(3) *Where such proceedings are commenced, the conditional caution is to cease to have effect.*

Code of practice: contents and procedure

47F.—(1) *The Administrator must issue a code of practice in relation to conditional cautions.*

(2) *The code may include provision as to—*

- (a) *the circumstances in which conditional cautions may be given,*
- (b) *the procedure to be followed in connection with the giving of such cautions,*
- (c) *the conditions which may be attached to such cautions and the time for which they may have effect,*
- (d) *the category of police officers who are to give a conditional caution,*
- (e) *the form which such cautions are to take and the manner in which they are to be given and recorded,*
- (f) *the places where such cautions may be given,*
- (g) *the manner in which a financial penalty may be paid,*
- (h) *the monitoring of compliance with conditions attached to such cautions, and*
- (i) *the exercise of the power of arrest in relation to breaching the conditions of such cautions.*

(3) *The Administrator may from time to time—*

- (a) *revise the whole or any part of a code of practice, and*
- (b) *issue the revised code of practice.*

(4) *A code of practice (including a revised code of practice) does not come into force until—*

- (a) *it is published, and*
- (b) *the Administrator brings it into force by order made as a public instrument.*

(5) *The Administrator must obtain the consent of the Attorney General and Legal Adviser before publishing or revising the code of practice.*

(6) *A code of practice is admissible in evidence in criminal or civil proceedings; and if a provision of a code of practice appears to the court or tribunal conducting the proceedings to be relevant to any question arising in the proceedings, it must be taken into account in determining the question.*

Code of Practice: effect

47G.—(1) *A conditional caution may not be given unless a code of practice under section 47F is in force.*

(2) *Any person exercising functions under this Part must have regard to the code of practice.*

PART 4
Proceedings
General

Persons convicted or acquitted not to be tried again for same offence

48. A person who has been tried by a court of competent jurisdiction (including a court of a state or territory other than the Areas) for an offence and convicted or acquitted must not, while the conviction or acquittal remains in force, be tried again on the same facts for the same offence.

Civil remedy not suspended, etc

49. Except as provided in any other enactment, a person's civil remedy against another person in respect of an act or omission is not suspended or otherwise affected by the fact that the act or omission is an offence.

Attorney-General and Legal Adviser may commence, etc criminal proceedings

50. The Attorney-General and Legal Adviser may—

- (a) commence, conduct and continue any criminal proceedings;
- (b) take over the conduct of any criminal proceedings (including for the purpose of entering a *nolle prosequi*).

Nolle prosequi

51.—(1) In any criminal case, at any stage of the proceedings before judgment, the Attorney-General and Legal Adviser may enter a *nolle prosequi*, either by stating in court or by informing the court in writing that the Crown intends that the proceedings are not to continue.

(2) If a *nolle prosequi* is entered, the defendant must without delay—

- (a) be discharged in respect of the charge for which the *nolle prosequi* is entered; and
- (b) be released from custody (unless the defendant is in custody for some other reason).

(3) A discharge under subsection (2)(a) does not operate as a bar to subsequent proceedings against the defendant for the same offence or on account of the same facts.

Limitation period for certain offences

52.—(1) This section applies to an offence if the maximum penalty for the offence is—

- (a) imprisonment for a term of three months or less; or
- (b) a fine of €250 or less.

(2) ~~Subject to subsection (3)~~ *Subject to subsections (3) and (4),* (a) criminal proceedings for an offence to which this section applies must not be commenced more than six months after the day on which the offence is committed.

(3) Subsection (2) does not apply if any other enactment provides for a longer period in which to commence proceedings.

(4) *Where a conditional caution has been given under section 47A for an offence to which this section applies, the limitation period specified in subsection (2) commences the day after the day on which the period for compliance with conditions of the caution ends.* (b)

(a) Text deleted and new text inserted by Ordinance 09/2019 – came into force on 16 July 2019

(b) Subsection (4) inserted by Ordinance 09/2019 – came into force on 16 July 2019

Court's power to regulate proceedings

53. The court may regulate proceedings in any way which appears desirable and is not inconsistent with any enactment (including this Ordinance).

Notices, etc left at address for service treated as received

54.—(1) A notice, summons, order or other written communication under this Ordinance that is left at the address given by a person under this Ordinance must be treated as having been received by the person.

(2) Subsection (1) does not apply—

- (a) to a summons for which provision is made by section 63 (service of summons) or section 123 (examination as to means);
- (b) where any other enactment (including provision in this Ordinance or rules of court) requires something to be served or otherwise communicated in a different manner; or
- (c) where the court orders something to be served or otherwise communicated in a different manner.

Commencing proceedings, etc

Criminal proceedings must be commenced by charge sheet

55. Except as provided in any other enactment, criminal proceedings against a person must be commenced by filing a charge sheet at court.

Charge sheet: form

56. A charge sheet must—

- (a) be in the prescribed form;
- (b) be signed by or on behalf of the person by whom proceedings are commenced;
- (c) state the court in which the proceedings are to take place;
- (d) state the name and description of the defendant as known to the prosecution (which must be sufficient to identify the defendant); and
- (e) state the offence or offences with which the defendant is charged in accordance with section 57 (charge sheet: supplementary).

Charge sheet: supplementary

57.—(1) The following provisions apply to charge sheets—

- (a) a charge sheet must contain a statement of each offence with which the defendant is charged in a separate paragraph, called a count;
- (b) where a charge sheet contains more than one count, the counts must be numbered consecutively;
- (c) a count must describe the offence shortly in ordinary language, avoiding as far as possible the use of technical terms, and without needing to state all essential elements of the offence;
- (d) a count must contain a reference to the provision of the enactment that creates the offence; and where the offence is created by the joint effect of more than one enactment or is created by one enactment and the penalty is provided in another enactment, the count must contain a reference to all such enactments;
- (e) where a provision creating an offence provides that the offence may be committed—

- (i) by doing or making any one of a number of different acts or omissions in the alternative,
- (ii) by doing or making an act or omission in any one of a number of different capacities or with any one of a number of different intentions in the alternative, or
- (iii) otherwise provides that the offence may be committed in any one of a number of different ways in the alternative,

the count may state the acts, omissions, capacities or other ways of committing the offence in the alternative;

- (f) where a provision creates an offence subject to an exception, exemption, proviso or qualification, it is not necessary for the count to state why the exception, exemption, proviso or qualification does not apply;
- (g) where an offence consists of doing anything with or to any property, unless required for the purpose of describing an offence that depends on any special ownership of property or special value of property, it is not necessary for the count to state that the property belongs to a particular person; and whether or not such a statement is made, it is sufficient for the prosecution to prove such facts as to ownership that show that the defendant committed the offence with which the defendant is charged;
- (h) it is not necessary for a charge sheet to contain any greater certainty of statement as to documents, facts, things, persons, places, time or any other matter than is reasonably sufficient for the purpose of giving the defendant notice thereof;
- (i) facts or document may be scheduled, and copies thereof may be attached, to a charge sheet, if convenient;
- (j) it is not necessary for a count, in stating an intent to defraud, deceive or injure, to state an intent to defraud, deceive or injure a particular person unless the enactment creating the offence provides that an intent to defraud, deceive or injure a particular person is an essential ingredient of the offence;
- (k) where the defendant is charged with a criminal breach of trust, fraudulent appropriation of property, fraudulent falsification of accounts, fraudulent conversion, corruption or abuse of office, it is sufficient for the count to specify the gross sum in respect of which the offence is alleged to have been committed without specifying particular items or exact dates;
- (l) where a previous conviction of an offence is charged, it must be charged at the end of the count by means of a statement that the defendant has been previously convicted of the offence at a certain time and place without stating the particulars of the offence.

(2) A charge sheet is not open to objection as to form or contents if it is framed in accordance with this Ordinance.

(3) An error in stating the offence or the particulars required to be stated in a charge sheet is not at any stage of the proceedings to be treated as non-compliance with this Ordinance unless the court thinks that the defendant was misled by the error.

Joinder of counts in charge sheet, etc

58.—(1) Any number of counts either for the same offence or for different offences may be included in the same charge sheet; and the court may—

- (a) convict or acquit the defendant generally on the whole charge sheet; or
- (b) convict the defendant on one or some of the counts and acquit the defendant on other counts.

(2) Where different counts relate to different facts, the court may at any stage of the proceedings order that the defendant be tried separately on any one or more of the counts.

(3) Where the court convicts the defendant generally on the whole charge sheet—

- (a) the legal effect of the conviction is to convict the defendant on each of the counts contained in the charge sheet; and

- (b) the court may pass sentence on the defendant as if the defendant had been separately convicted on each count.

Joinder of persons in charge sheet, etc

59. Where a person is charged with an offence (the “first offence”), that person and any of the following persons may be charged in the same charge sheet; and they may be tried together unless the court orders that they be tried separately—

- (a) a person charged with the same offence as the first offence;
- (b) a person charged with a different offence that was committed in the course of the same transaction as the first offence;
- (c) a person who, in accordance with any enactment, must be treated as having taken part in the commission of the first offence;
- (d) a person charged with attempting to commit the first offence;
- (e) where the first offence relates to stealing, criminal breach of trust, fraudulent appropriation of property, fraudulent falsification of accounts or fraudulent conversion, a person charged with receiving or taking upon himself or herself the control or disposition of the subject matter of the first offence.

Manner in which parties to offences may be charged

60. A person who is liable under an enactment to be punished as a party to an offence may be charged—

- (a) with committing the offence,
- (b) for being a party to the offence, or
- (c) for directly or indirectly inciting another person to commit the offence,

whether or not another party to the offence has been charged with or convicted of the offence or is amenable to justice.

Compelling defendant to attend

Summons, etc to compel defendant to attend

61.—(1) At any time after the charge sheet is filed, a Judge may—

- (a) issue a summons to compel the defendant to attend before the court; or
- (b) subject to subsection (2), issue an arrest warrant.

(2) An arrest warrant must not be issued—

- (a) except for a special reason to be recorded by the Judge and supported on oath or affirmation; or
- (b) unless the defendant fails to attend before the court in compliance with a summons already issued and proved to have been properly served.

(3) Sections 24 to 29 apply, with all necessary modifications, to an arrest warrant issued under this section.

Form and content of summons

62.—(1) A summons must—

- (a) be in the prescribed form;
- (b) be signed by the Judge issuing it or by an officer of the court;

- (c) subject to subsections (2) to (4), require the defendant to attend before the court at the time and place mentioned in the summons; and
 - (d) state shortly the offence or offences with which the defendant is charged.
- (2) The Judge in the case of any offence, or a Registrar in the case of a prescribed offence, may, by special direction in the summons, dispense with the personal attendance of the defendant and—
- (a) permit the defendant to appear and plead by a legal representative; and
 - (b) where the defendant wishes to plead guilty, permit the defendant to send in a guilty plea with the summons—
 - (i) signed or signified in any manner that the Judge or Registrar thinks is sufficient evidence of a genuine plea, and
 - (ii) if so directed in the summons, witnessed by a person whom the Judge or Registrar thinks to be responsible and impartial,
 in which case, the plea must be treated as a guilty plea for the purpose of the proceedings.
- (3) Despite a special direction in the summons, the Judge may, at any stage of the proceedings, order the defendant to attend before the court in person.
- (4) Where a defendant is prosecuted solely in his or her capacity as director or secretary of a company—
- (a) the defendant may appear and plead by a legal representative; and
 - (b) the personal attendance of the defendant may be dispensed with at every stage of the proceedings except at the substantive hearing of the case.
- (5) The proceedings are not invalid if there is an irregularity, defect or error in the issue, form or substance of a summons.
- (6) In this section, “prescribed offence” means an offence prescribed in an order made as a public instrument by the Presiding Judge.

Service of summons

- 63.**—(1) A summons may be served anywhere in the island of Cyprus by—
- (a) a police officer;
 - (b) an officer of the court; or
 - (c) any other person ordered by the court.
- (2) If the defendant is an individual, the summons may be served—
- (a) by delivering the summons to the defendant personally; or
 - (b) by leaving the summons—
 - (i) at the place at which the defendant resides, with an adult living with the defendant at the place or in charge of the place; or
 - (ii) at the place of the defendant’s business or occupation, with an adult in charge of the place.
- (3) If the defendant is a firm or a corporate body, the summons may be served—
- (a) by leaving the summons at the defendant’s principal place of business; or
 - (b) by delivering it to one of the following—
 - (i) a partner of the defendant;
 - (ii) a director of the defendant;
 - (iii) the secretary of the defendant;
 - (iv) the main agent of the defendant;
 - (v) anyone having control of the business of the defendant at the time of service of the summons.

(4) Despite subsections (1) to (3), a Judge may order that the summons be served by other means.

(5) Service of a summons must be proved either orally by the person effecting service or by affidavit or affirmation of the person.

Case management, etc

Adjournment and remand in custody, etc

64.—(1) A court may adjourn a case before it at any stage of the proceedings.

(2) Upon adjourning the case, the court may—

- (a) in accordance with Part 7 (bail), release the defendant on such terms as it thinks appropriate; or
- (b) remand the defendant in custody.

Court must actively manage cases

65.—(1) Without limiting section 9 (court must further overriding objective), the court must further the overriding objective by actively managing cases.

(2) Actively managing cases includes—

- (a) the early identification of the real issues;
- (b) the early identification of the needs of witnesses;
- (c) achieving certainty as to what must be done, by whom, and when, in particular by the early setting of a timetable for the progress of the case;
- (d) monitoring the progress of the case and compliance with directions;
- (e) ensuring that evidence, whether disputed or not, is presented in the shortest and clearest way;
- (f) discouraging delay, dealing with as many aspects of the case as possible on the same occasion and avoiding unnecessary hearings;
- (g) encouraging the parties to co-operate in the progression of the case; and
- (h) making use of technology.

(3) The court must actively manage a case by giving any direction appropriate to the needs of the case as early as possible.

Court's case management powers

66.—(1) The court may give any direction and take any step to actively manage a case unless the direction or step would be inconsistent with the law (including this Ordinance).

(2) In particular, the court may—

- (a) nominate a Judge to manage the case;
- (b) give a direction on its own initiative or on application by a party;
- (c) ask or allow a party to propose a direction;
- (d) for the purpose of giving directions, receive applications and representations by letter, by telephone or by any other means of electronic communication, and conduct a hearing by such means;
- (e) give a direction—
 - (i) at a hearing, in public or private; or
 - (ii) without a hearing;
- (f) fix, postpone, bring forward, extend, cancel or adjourn a hearing;

- (g) shorten or extend (even after it has expired) a time limit fixed by a direction;
 - (h) require that the issues in the case should be—
 - (i) identified in writing;
 - (ii) determined separately, and decide in what order they will be determined; and
 - (i) specify the consequences of failing to comply with a direction.
- (3) A power to give a direction includes a power to vary or revoke the direction.
- (4) If a party fails to comply with the law (including this Ordinance) or rules of practice relating to criminal procedure, a practice direction or a direction, the court may—
- (a) fix, postpone, bring forward, extend, cancel or adjourn a hearing;
 - (b) exercise its powers to make an order for costs (see Part 8: costs).

Case preparation and progression

- 67.**—(1) At every hearing, if a case cannot be concluded there and then, the court must give directions so that the case may be concluded at the next hearing or as soon as possible after that.
- (2) At every hearing, the court must, where relevant—
- (a) set, follow or revise a timetable for the progress of the case;
 - (b) in giving directions, ensure continuity in relation to the court and to the parties’ representatives where that is appropriate and practicable;
 - (c) where a direction has not been complied with, find out why, identify who is responsible and take appropriate action.

Duty of parties

- 68.** Every party and legal representative of a party must—
- (a) actively assist the court in fulfilling its duty to further the overriding objective by actively managing cases (see section 65 (court must actively manage cases));
 - (b) apply for a direction if needed to further the overriding objective.

Trial preparation

- 69.**—(1) This section applies to a party’s preparation for trial (including appeals).
- (2) In complying with the duty in section 68 (duty of parties), every party and legal representative of a party must—
- (a) comply with the directions given by the court;
 - (b) take every reasonable step to ensure that the party’s witnesses will attend when needed;
 - (c) make appropriate arrangements to present any written or other material; and
 - (d) promptly inform the court and the other parties of anything that may—
 - (i) affect the date or duration of the trial;
 - (ii) significantly affect the progress of the case in any other way.
- (3) The court may require a party to give a certificate of readiness.

Applications to vary directions or adjourn, etc hearings

- 70.**—(1) This section applies when a party applies—
- (a) to vary a direction (including a time limit by which a direction must be complied with);
 - (b) to postpone, bring forward, extend, cancel or adjourn a hearing.
- (2) The party must—

- (a) apply as soon as practicable after the party becomes aware of the grounds for making the application;
- (b) give as much notice to the other parties as the nature and urgency of the application permits.

Non-appearance of defendant or prosecution

71.—(1) If a defendant whose personal attendance has not been dispensed with under section 62(2) (form and content of summons) or whose absence is not otherwise permitted by the court fails to appear at court at the time appointed for the hearing of the case, the court may, on proof of service of the summons on the defendant—

- (a) proceed in the defendant’s absence;
- (b) adjourn the case to another day on such terms as the court thinks appropriate and the Judge may issue an arrest warrant against the defendant.

(2) If, at the time appointed for the hearing of the case, the defendant appears at court but the prosecution fails to appear, the court may—

- (a) acquit the defendant;
- (b) discharge the defendant; or
- (c) adjourn the case to another day on such terms as the court thinks appropriate.

(3) A discharge under subsection (2)(b) does not operate as a bar to subsequent proceedings against the defendant for the same offence or on account of the same facts.

(4) Sections 24 to 29 (arrest warrants) apply, with all necessary modifications, to an arrest warrant issued under this section.

Compelling witnesses to attend

Witness summons, etc

72.—(1) If a Judge is satisfied that a person is likely to give material evidence for the prosecution or for the defence, the Judge may—

- (a) issue a summons to compel the person to attend before the court at the time and place specified in the summons—
 - (i) to give evidence in relation to the case;
 - (ii) to bring any item specified in the summons and any other item relating to the case that may be in the witness’s possession, power or control; or
- (b) subject to subsection (2), issue an arrest warrant.

(2) An arrest warrant must not be issued—

- (a) except for a special reason to be recorded by the Judge and supported on oath or affirmation; or
- (b) unless the witness fails to attend before the court in compliance with a summons already issued and proved to have been properly served.

(3) In the case of a private prosecution, a witness to whom a summons is addressed is not bound to attend unless the witness’s reasonable travelling and subsistence expenses are—

- (a) tendered to the witness; or
- (b) deposited with the Registrar, a note thereof being made on the summons.

(4) Section 63 (service of summons) applies, with all necessary modifications, to the service of a summons issued under this section.

(5) Sections 24 to 29 apply, with all necessary modifications, to an arrest warrant issued under this section.

Persons present in court may be compelled as witness

73. A person who is present in court and is compellable as a witness (whether or not a party in the proceedings) may be—

- (a) compelled by the court to give evidence in relation to the case and to bring any item relating to the case that may be in the person's possession, power or control, and
- (b) punished for any refusal to obey the order of the court,

in the same manner, and subject to the same rules, as if the person had been summoned to attend under section 72 (witness summons, etc).

Witness must attend adjourned hearing

74.—(1) A witness who is present when the hearing of a case is adjourned is, without further notice, bound to attend at the time and place to which the case is adjourned.

(2) A witness who fails to attend as required by subsection (1) may be dealt with in the same manner as if the witness had failed to attend before the court in compliance with a summons to attend.

Witness failing to attend: offence

75.—(1) A person summoned to attend as a witness commits an offence if the person, without reasonable excuse—

- (a) fails to attend in compliance with a summons;
- (b) having attended, departs without the permission of the court; or
- (c) having been properly notified of the time and place of an adjourned hearing, fails to attend the adjourned hearing.

(2) It is for the person to adduce evidence that the person had a reasonable excuse for the failure to attend, or as the case may be, departure without permission.

(3) A person convicted of an offence under subsection (1)—

- (a) is liable to imprisonment for a term not exceeding two months or a fine not exceeding €250 or to both; and
- (b) may be ordered to pay all costs occasioned by the person's failure to attend or, as the case may be, departure without permission.

(4) A person may not be prosecuted for an offence under subsection (1) except by order of the court made during the hearing of the case for which the evidence of the witness is required.

Summoning prisoner, etc as witness

76.—(1) This section applies where a person held in a prison or institution or otherwise held in custody is required to give evidence as a witness.

(2) A Judge may make an order requiring the person in charge of the witness to bring the witness in proper custody before the court at the time and place specified in the order.

(3) On receipt of an order under subsection (2), the person in charge of the witness must—

- (a) comply with the order; and
- (b) provide for the proper custody of the witness during the witness's absence from the prison, institution or place in which the witness is held.

Pleading to charge

77.—(1) This section applies when a defendant’s plea is taken.

(2) The Judge or an officer of the court must read the charge sheet to the defendant and may, if necessary, explain the matter and contents of the charge sheet to the defendant.

(3) The defendant must be called upon to plead in relation to each count.

(4) If the defendant asks for a copy of the charge sheet before pleading, the court must give a copy to the defendant.

(5) If the defendant asks for further time before pleading, the court may allow such further time, and on such terms, as it thinks appropriate.

(6) Unless the court otherwise orders, the defendant must be unfettered in court.

Objection to charge sheet

78. An objection to a charge sheet for a formal defect on the face of the charge sheet must be taken immediately after the charge sheet has been read to the defendant and before the defendant pleads to the charge sheet, but not later.

Plea by defendant

79.—(1) When the defendant is called upon to plead, the defendant may plead—

- (a) guilty;
- (b) not guilty; or
- (c) a special plea referred to in section 80 (special plea: previous conviction, acquittal, etc).

(2) The defendant’s plea must be recorded by the court.

(3) If the defendant pleads guilty and the court is satisfied that the defendant understands the nature of the plea, the court must proceed as if the defendant had been convicted by the judgment of the court.

(4) If the defendant pleads not guilty, the court must proceed to hear the case.

(5) If the defendant—

- (a) refuses to plead,
- (b) does not answer directly,
- (c) is unable to plead by reason of a physical infirmity, or
- (d) pleads guilty, but the court is not satisfied that the defendant understands the nature of the plea,

the court must record that fact and treat the defendant as having pleaded not guilty.

Special plea: previous conviction, acquittal, etc

80.—(1) The defendant may plead any of the following special pleas—

- (a) the court does not have jurisdiction to try the defendant;
- (b) the defendant was previously convicted by a court of competent jurisdiction (including a court of a state or territory other than the Areas) on the same facts for the same offence;
- (c) the defendant was previously acquitted by a court of competent jurisdiction (including a court of a state or territory other than the Areas) on the same facts for the same offence;
- (d) the defendant has obtained a pardon for the offence from the Crown.

(2) If a special plea is pleaded and is denied to be true in fact, the court must try the question of whether the plea is true in fact or not.

(3) If the court finds that the special plea is false in fact, the court must call upon the defendant to plead to the charge.

(4) If the court finds that the special plea is true in fact, the court must discharge the defendant.

Pleading to charge of previous conviction

81.—(1) This section applies where the defendant is charged with an offence, an element of which is that the defendant has previously been convicted of an offence.

(2) When called upon to plead, the defendant is not required to plead to any statement charging the defendant with having previously been convicted of an offence except as set out in subsection (3).

(3) If the defendant pleads guilty to, or at the end of the trial is found guilty on, the rest of the count containing the statement—

- (a) the defendant must be asked if the defendant has been previously convicted as alleged;
- (b) if the defendant admits the previous conviction, the court may proceed to convict the defendant;
- (c) if the defendant denies the previous conviction, refuses to answer or does not answer directly, the court must inquire into the previous conviction before proceeding to convict or acquit the defendant accordingly.

Appearance and plea by corporate body

82.—(1) This section applies where the defendant is a corporate body.

(2) The corporate body may appear and plead to a charge by its representative entering a plea in writing.

(3) If the corporate body either does not appear by its representative or, although appearing by its representative, fails to enter a plea, the court must cause a plea of not guilty to be entered and the trial must proceed accordingly.

(4) In this section, “representative”, in relation to a corporate body, means a person duly appointed by the body for the purpose of doing anything that the representative is authorised to do under this section.

(5) It is not necessary for a representative to be appointed under the seal of the corporate body.

(6) A statement in writing purporting to be signed by the managing director of the corporate body or by any person, by whatever name called, who is, or is one of the persons who are, responsible for the management of the affairs of the body to the effect that the person named in the statement has been appointed as the representative of the body for the purposes of this section is admissible without further proof as *prima facie* evidence that the person has been so appointed.

Trial

Presence of defendant during trial

83.—(1) The court must require the defendant to be present at trial unless the court—

- (a) orders the removal of the defendant under subsection (3); or
- (b) permits the defendant to be absent from the court under subsection (4) or otherwise dispenses with the personal attendance of the defendant.

(2) Unless the court otherwise orders, the defendant must be unfettered in court.

(3) A defendant is entitled to be present at trial; but if the defendant does not behave properly, the court may—

- (a) order that the defendant be removed and detained in custody;
- (b) proceed with the trial in the defendant’s absence; and

(c) make such provision as it thinks appropriate for the defendant to be kept informed of the proceedings and for the making of the defendant's defence.

(4) The court may permit the defendant to be absent from the court during the whole or any part of the trial on such terms as it thinks appropriate.

Witnesses must leave court during trial

84.—(1) If the defendant pleads not guilty, subject to subsection (2), the court must order the witnesses to leave the court until called to give evidence.

(2) The court may permit expert witnesses to remain in court.

(3) The proceedings are not invalid if the court fails to comply with subsection (1).

Hearing of case

85.—(1) After the witnesses have left the court in accordance with section 84 (witnesses must leave court during trial), the court must proceed to hear the case in accordance with the following provisions.

(2) The prosecution must call the witnesses and adduce any other evidence in support of the prosecution case.

(3) At the close of the prosecution case—

(a) if the defence submits that a *prima facie* case has not been made out against the defendant such as to require the defendant to make a defence and the court sustains the submission, or

(b) if the court, of its own motion, thinks that a *prima facie* case as mentioned in paragraph (a) has not been made out,

the court must acquit the defendant.

(4) Except where the court acquits the defendant in accordance with subsection (3), at the close of the prosecution case, the court must—

(a) call upon the defendant to make a defence;

(b) inform the defendant that the defendant may—

(i) make a statement, without being sworn as a witness, in which case the defendant is not liable to be cross-examined or give evidence in the witness box; or

(ii) give evidence in the witness box after being sworn as a witness, in which case the defendant is liable to be cross-examined as a witness.

(5) If the defendant wishes to make a statement or give evidence in accordance with subsection (4)(b), the defendant must do so before the defence calls witnesses and adduces other evidence in the defendant's defence.

(6) If the defence adduces new material in the defendant's defence that the prosecution could not have foreseen—

(a) the court may adjourn the case; and

(b) the prosecution may, with the permission of the court, adduce evidence to rebut the new material.

(7) Subject to subsection (8), at every trial the prosecution and the defence may open their case and, at the conclusion of the trial, the party who last called a witness may address the court and the other party may then address the court in reply.

(8) Where the Attorney-General and Legal Adviser, a Crown Counsel or an advocate instructed by the Attorney-General and Legal Adviser appears for the prosecution, such a person has a right of reply in all cases.

Procedure at trial of two or more defendants

86. Where two or more defendants are being tried together, the court may regulate the procedure to be followed in any way that appears desirable and that is not inconsistent with the law (including this Ordinance).

Cross-examination of defendant by co-defendant

87. Where, during the joint trial of two or more defendants, a defendant gives evidence under section 85(4)(b)(ii) (hearing of case)—

- (a) the co-defendant may cross-examine the defendant; and
- (b) the cross-examination must take place before cross-examination by the prosecution.

Defendant to be acquitted or convicted

88.—(1) At the conclusion of the trial, the court must consider the whole case and deliver judgment and, for this purpose, may adjourn the proceedings.

(2) The court must—

- (a) convict the defendant;
- (b) acquit the defendant; or
- (c) acquit the defendant on grounds of insanity (see section 102 (acquittal on grounds of insanity)).

(3) If the court convicts the defendant, the court must, after complying with section 116 (allocutus), proceed to consider what sentence to pass in accordance with the law.

(4) If the court acquits the defendant under subsection (2)(b), the defendant must immediately be discharged from custody (unless the defendant is in custody for some other reason).

(5) (Section 103 provides for the court's powers where a defendant is acquitted on grounds of insanity).

Examination of witnesses

Power to call or recall witnesses

89. The court may, at any stage of the proceedings—

- (a) call any person as a witness; or
- (b) recall and further examine any person already examined.

Evidence of witness to be on oath or affirmation

90.—(1) Subject to subsections (2) and (4), a witness must be examined on oath; and the court may administer the oath that is customarily administered to persons of the religion of the witness.

(2) A witness who objects to taking an oath may make an affirmation by solemnly promising and declaring that the evidence to be given by the witness to the court shall be the truth, the whole truth and nothing but the truth.

(3) Where a witness makes an affirmation, the affirmation has the same force and effect as if the witness had taken an oath.

(4) A person under the age of 14 years who appears as a witness is to be examined without taking an oath or affirmation.

Order of examination of witnesses

91.—(1) A witness must—

- (a) first, be examined in chief by the party calling the witness;
- (b) then, if another party wishes, be cross-examined by the other party;
- (c) then, if the party calling the witness wishes, be re-examined by that party.

(2) The examination-in-chief and the cross-examination must relate to relevant facts; but the cross-examination need not be confined to the facts to which the witness testified in the examination-in-chief.

(3) Except with the permission of the court, the re-examination must be directed to an explanation of the matters referred to in the cross-examination.

(4) If a new matter is, with the permission of the court, introduced in re-examination, the other party may further cross-examine on that matter.

(5) Where a legal representative appears for a party, the examination-in-chief, cross-examination and re-examination must be conducted by the representative.

Cross-examination of witnesses by co-defendant

92.—(1) This section applies where two or more defendants are being tried together.

(2) Each defendant may cross-examine a witness called by the prosecution before the witness is re-examined.

(3) Where a witness is called by a defendant—

- (a) the witness may be cross-examined by a co-defendant; and
- (b) the cross-examination must take place before cross-examination by the prosecution.

Recalcitrant witnesses

93.—(1) This section applies to—

- (a) a person who appears before the court as a witness either in compliance with a summons or by virtue of an arrest warrant;
- (b) a person who is present in court and is required by the court to give evidence as a witness.

(2) If a person to whom this section applies—

- (a) refuses to take an oath or make an affirmation,
- (b) having taken an oath or made an affirmation, refuses to answer a question put to the person, or
- (c) without reasonable excuse, fails to produce an item that the person is required to produce,

the court may, by warrant, commit the person to imprisonment for a term specified in the warrant unless the person consents before the expiry of the term to do what is required of the person.

(3) If the person, upon being brought before the court, again refuses to do what is required of him or her, the court may again, if it thinks it appropriate, by warrant, commit the person to imprisonment for a term, and so again from time to time, until the person consents to do what is required of him or her.

(4) A person who is committed to imprisonment under this section by the Resident Judge's Court may appeal to the Senior Judges' Court; and the provisions of Part 6 (appeals) relating to appeals to the Senior Judges' Court by persons convicted by the Resident Judge's Court apply, with all necessary modifications, to an appeal under this subsection.

(5) Nothing in this section—

- (a) affects the liability of a person committed to imprisonment under this section to any other punishment or proceeding for failing to do what is required of the person; or
- (b) prevents the court from disposing of the case in the meantime in accordance with any other sufficient evidence.

Witnesses unable to speak

94.—(1) A witness who is unable to speak may take the oath or affirm and may give evidence in any manner in which the witness is intelligible, such as by writing or by signs; but the writing must be made, and the signs made, in open court.

(2) Evidence given in accordance with subsection (1) must be treated as oral evidence.

Serious offences

Serious offences: disclosure of prosecution evidence

95.—(1) At least 30 days before the trial of a defendant for a serious offence, the prosecution must serve on the defendant and file with the court—

- (a) a list of the names of the witnesses that the prosecution intends to call; and
- (b) a summary of the evidence that it is intended that each witness will give.

(2) The court may, at any stage of the proceedings, with the consent of the defendant—

- (a) reduce the period of 30 days referred to in subsection (1) (in which case the prosecution complies with that subsection if it does so within the reduced time period);
- (b) dispense with subsection (1) in respect of one or more witnesses and order that the dispensation be subject to such conditions as the court thinks appropriate to ensure that the defendant has a fair trial.

(3) Where the court makes such dispensation it may nevertheless, at any time before hearing the evidence of the witness, order that a summary of the evidence that it is intended that the witness will give be served on the defendant within such period as the court thinks appropriate.

(4) In this section, “serious offence” means an offence, the maximum penalty for which is imprisonment for a term of five years or more (including imprisonment for life).

Serious offences: additional witnesses

96.—(1) Subject to subsections (2) and (4) and to section 85(6), the prosecution may not call a witness to give evidence at the trial of a defendant for a serious offence unless—

- (a) section 95(1)(b) (serious offences: disclosure of prosecution evidence) was complied with in respect of the witness; or
- (b) the court has dispensed with that requirement in respect of the witness in accordance with section 95(2)(b).

(2) Subsection (1) does not apply to the following witnesses—

- (a) a co-defendant who has already been acquitted or convicted;
- (b) a witness whose evidence is of a formal nature;
- (c) a witness if—
 - (i) the prosecution became aware of the witness’s evidence, or the witness became available, after the date on which section 95(1) was required to be complied with; and
 - (ii) notice that the prosecution intends to call the witness to give evidence has been served on the defendant and filed with the court;
- (d) a witness if the prosecution became aware of the witness’s evidence, or the witness became available, on the day on which the witness is called;
- (e) a witness called to rebut new material adduced in the defendant’s defence that the prosecution could not reasonably have foreseen (see section 85(6)).

(3) If the prosecution—

- (a) gives notice that it intends to call a witness to which subsection (1) does not apply, and

- (b) has not served on the defendant or filed with the court a summary of the evidence that it is intended that the witness will give,

the court may order the prosecution to do so, and may adjourn or postpone the trial for that purpose.

(4) If the prosecution gives notice that it intends to call a witness in respect of whom section 95(1)(b) has not been complied with, the court may—

- (a) despite subsection (1), allow the witness to be called, if it is in the interests of justice to do so;
- (b) adjourn the trial to enable section 95(1)(b) to be complied with in respect of the witness.

(5) In this section “serious offence” has the same meaning as in section 95 (serious offences: disclosure of prosecution evidence).

Other provisions relating to evidence

Taking evidence by commission

97.—(1) A court may make an order for evidence to be taken on oath or affirmation by a witness or other person before an officer of the court or other person or persons at any place in or outside the Areas.

(2) The court may order evidence taken in accordance with subsection (1) to be filed in court and may allow the prosecution or the defence to produce the evidence on such terms as the court orders.

Interpretation of evidence for defendant

98.—(1) Subject to subsection (2), where evidence is given in a language that the defendant does not understand and the defendant is present in person, the evidence must be interpreted for the defendant in open court in a language that the defendant understands.

(2) Where the defendant is represented by a legal representative, interpretation may, with the consent of the representative and the approval of the court, be dispensed with.

(3) Where documents are put in for the purposes of formal proof, the court may require such of the documents as the court thinks necessary to be interpreted.

(4) The court may test the ability of the interpreter in such manner as it thinks appropriate and may administer to the interpreter such oath or affirmation as the court thinks appropriate that the interpreter will well and truly carry out the interpretation.

View of locus

99.—(1) The court may view a place, person or thing connected with proceedings.

(2) Unless the court otherwise orders, the defendant must be present at the view.

(3) The court may give such directions relating to the view as it thinks appropriate.

Record of proceedings

100.—(1) The court must arrange for proceedings and evidence to be recorded—

- (a) in writing;
- (b) by means of shorthand notes; or
- (c) by mechanical, electronic or other means.

(2) A person may request the court to provide—

- (a) a written record made in accordance with subsection (1)(a); or

- (b) a transcript of any notes or recordings which have been made in accordance with subsection (1)(b) or (c).
- (3) On receipt of a request, the court may—
 - (a) make arrangements for a transcript requested to be made and supplied to the person making the request; or
 - (b) refuse the request if it considers that there is good reason to do so.
- (4) The court may require the person making the request to pay, in advance, the reasonable costs for the supply of a transcript.
- (5) The following must be treated as a record of the court—
 - (a) any written record made in accordance with paragraph (1)(a);
 - (b) where one is made, any transcript made of notes or recordings which have been made in accordance with paragraph (1)(b) or (c), which contains a statement made by the individual who made the transcript, that the transcript has been transcribed from the material supplied by the court to the best of that individual's ability.
- (6) A copy of the record of the court, signed and certified as a true copy of the record of the court by a Registrar, must, without further proof, be admitted as evidence of the proceedings and of the statements made by witnesses.
- (7) Nothing in this section prevents a person from applying to the court to have the record of the court amended on the basis that it contains a material inaccuracy.

Mentally-disordered defendants

Defendants incapable of following proceedings by reason of mental disorder

101.—(1) This section applies where, on a person being called upon to plead or at any time thereafter until the conclusion of the trial, the question arises (at the instance of the defence or otherwise) whether the defendant is incapable of following the proceedings by reason of a mental disorder.

(2) Subject to subsection (3), the court must direct such inquiry as it thinks appropriate with a view to ascertaining whether the defendant is incapable of following the proceedings by reason of a mental disorder.

(3) If, having regard to the nature of the alleged mental disorder, the court thinks that it is expedient to do so and in the interest of the defendant, the court may postpone directing an inquiry under subsection (2) until any time up to the opening of the case for the defence; and, if the defendant is before that time acquitted of the charge (or each of the charges) on which the defendant is being tried, no such inquiry is to be directed.

(4) Subject to subsection (7), if, after an inquiry under subsection (2), the court is satisfied that the defendant is incapable of following the proceedings by reason of a mental disorder—

- (a) the trial must not proceed (or continue);
- (b) the court must determine whether it is satisfied, in respect of each offence—
 - (i) beyond reasonable doubt, that the defendant did the act or made the omission charged against the defendant as the offence; and
 - (ii) on the balance of probabilities, that there are no grounds for acquitting the defendant;
- (c) if the court is satisfied as to the matters referred to in paragraph (b)(i) and (ii), it must make a finding that the defendant did the act or made the omission charged; and
- (d) if the court is not satisfied as to the matters referred to in paragraph (b)(i) and (ii), it must acquit the accused of the offence as if the trial had proceeded to a conclusion in respect of the offence.

(5) A determination under subsection (4)(b) may be made—

- (a) on the evidence (if any) already given in the trial; and

- (b) on such evidence as may be adduced or further adduced by the prosecution or adduced by a person appointed by the court to put the case for the defence.

(6) Where, in relation to a defendant acquitted under subsection (4)(d), the court is satisfied—

- (a) as to the matter referred to in subsection (4)(b)(i), and
- (b) that the defendant was not criminally responsible for the act or omission charged against the defendant as the offence on the grounds set out in section 12 of the Criminal Code^(a) (insanity) at the time of doing the act or making the omission,

the court must state whether the acquittal is on that ground (see section 102 (acquittal on grounds of insanity)).

(7) Before proceeding in accordance with subsection (4)(a) to (d), the court may adjourn the proceedings for such period or further period or periods (together not exceeding 4 months in total) as it thinks appropriate; but if, after the adjournment and such further inquiry as the court may direct, the court is still satisfied that the defendant is incapable of following the proceedings by reason of a mental disorder, the court must proceed in accordance with subsection (4)(a) to (d).

Acquittal on grounds of insanity

102.—(1) This section applies where—

- (a) an act or omission is charged against a person as an offence;
- (b) on the trial of the defendant, evidence is given that the defendant was not criminally responsible for the act or omission on the grounds set out in section 12 of the Criminal Code (insanity); and
- (c) the court is satisfied that the defendant—
 - (i) did the act or made the omission charged; but
 - (ii) was not criminally responsible for the act or omission on the grounds set out in section 12 of the Criminal Code (insanity).

(2) The court must—

- (a) make a finding that the defendant did the act or made the omission charged; and
- (b) acquit the defendant on grounds of insanity.

Powers of court, etc to deal with persons incapable of following proceedings by reason of mental disorder or acquitted on grounds of insanity

103.—(1) This section applies where the court—

- (a) being satisfied that the defendant is incapable of following the proceedings by reason of a mental disorder, makes a finding under section 101(4)(c) that the defendant did the act or made the omission charged; or
- (b) acquits the defendant on grounds of insanity under section 102(2)(b).

(2) The court must make one of the following orders—

- (a) an order discharging the defendant;
- (b) an order that the defendant be detained during the Administrator's pleasure.

(3) For the purposes of making an order under subsection (2), the court may—

- (a) direct such inquiry as to the defendant's mental health as it thinks appropriate;
- (b) order the defendant to be detained in custody or in a mental hospital, or criminal mental hospital, appointed under the Mental Patients Ordinance^(a) pending the outcome of the inquiry.

^(a) Cap. 154, Laws of Cyprus, 1959 ed. Legislation of the former colony of Cyprus has effect in the Areas by virtue of article 5 of the Sovereign Base Areas of Akrotiri and Dhekelia Order in Council 1960 (S.I. 1960 No. 1369, amended by S.I. 1966 No. 1415). Schedule 2 to the Interpretation Ordinance 2012 provides for the interpretation of such legislation

(4) Where the court orders a person to be detained during the Administrator's pleasure, the Administrator may, from time to time, give such directions as the Administrator thinks appropriate as to the custody of the person.

(5) An order under subsection (2)(a) discharging the defendant does not, except in the case of a defendant acquitted on grounds of insanity, operate as a bar to subsequent proceedings against the defendant for the same offence or on account of the same facts.

Alteration or quashing of charge

Alteration of defective charge sheet

104.—(1) If at any stage of the proceedings the court thinks that the charge sheet is defective either in substance or form, the court may make such order for the alteration of the charge sheet (either by amending the charge sheet or by substituting or adding a new count) as the court thinks necessary in the circumstances of the case.

(2) Where a charge sheet is altered under subsection (1)—

- (a) a note of the order for alteration must be made on the charge sheet;
- (b) the prosecution must file an updated charge sheet which reflects the alteration made; and
- (c) for the purpose of all proceedings, the charge sheet must be treated as having been filed in the altered form.

Procedure on alteration of charge sheet

105.—(1) Where a charge sheet is altered under section 104 (alteration of defective charge sheet), the court must at once call upon the defendant to—

- (a) plead to the altered charge sheet; and
- (b) state whether the defendant is ready to be tried on the altered charge sheet.

(2) If the defendant states that the defendant is not ready to be tried, the court must consider the defendant's reasons.

(3) If the court thinks that proceeding immediately with the trial is likely to prejudice the defence or the prosecution, the court must—

- (a) adjourn the trial for such period as the court thinks necessary; or
- (b) order a new trial.

(4) If the court thinks that proceeding immediately with the trial is not likely to prejudice the defence or the prosecution, the court may proceed immediately with the trial.

(5) Where a charge sheet is altered after a trial has begun, the evidence already given during the trial may be used without being re-heard; but the court must permit the parties to recall or re-summon a witness and examine or cross-examine the witness in relation to the alteration.

Proof of part of charge or of offence not contained in charge sheet, etc

106.—(1) If part only of the charge against the defendant is proved and the part so proved constitutes an offence, the defendant may be convicted of the offence that the defendant is proved to have committed without the need to alter the charge sheet.

(2) Where the defendant is charged with committing an offence, the defendant may be convicted of attempting to commit the offence without the need to alter the charge sheet.

(a) Cap. 252, Laws of Cyprus, 1959 ed. Legislation of the former colony of Cyprus has effect in the Areas by virtue of article 5 of the Sovereign Base Areas of Akrotiri and Dhekelia Order in Council 1960 (UK) (S.I. 1960 No. 1369, amended by S.I. 1966 No. 1415). Schedule 2 to the Interpretation Ordinance 2012 provides for the interpretation of such legislation. For the appointment of mental hospitals under the Mental Patients Ordinance, see the Mental Hospitals (Appointment) Proclamation 2013 (Public instrument 39/2013).

(3) If the defendant is proved to have done an act with the intent of committing an offence with which the defendant is charged and it is an offence (the “relevant offence”) to do that act with that intent, the defendant may be convicted of the relevant offence without the need to alter the charge sheet.

(4) Where at the conclusion of a trial the court is satisfied that—

- (a) it is proved that the defendant committed an offence that is not contained in the charge sheet,
- (b) the defendant cannot be convicted of the offence without the charge sheet being altered, and
- (c) if convicted of the offence, the defendant would not be liable to a greater penalty than if convicted on the unaltered charge sheet,

the court may, if it thinks that the defence would not be prejudiced thereby, order that a count be added to the charge sheet charging the defendant with the offence.

(5) If a count is added under subsection (4), the court must give judgment as if the count had been contained in the original charge sheet filed.

Quashing of charge

107.—(1) If a charge sheet does not state, and cannot, without injustice, be made to state, an offence, the charge must be quashed either on a motion made before the defendant pleads or on a motion made in arrest of judgment (see section 109).

(2) The defendant must give a written statement of a motion referred to in subsection (1) to the Registrar; and the statement must be entered on the record.

(3) The quashing of a charge under this section does not operate as a bar to subsequent proceedings against the defendant on account of the same facts.

Miscellaneous

Decisions where court consists of more than one Judge

108.—(1) This section applies where a court consists of more than one Judge.

(2) In deciding whether to acquit or convict a defendant, the defendant must be acquitted unless a majority of the court finds the defendant guilty.

(3) In deciding what sentence to pass, if there is an equality of votes, the president of the court has an additional or casting vote.

Motion in arrest of judgment

109.—(1) The defendant may, at any time before sentence, whether on a guilty plea or otherwise, move a motion in arrest of judgment on the ground that the charge sheet does not, after any alteration that the court is willing to and has the power to make, state an offence that the court has jurisdiction to try.

(2) The court may hear and determine the motion at the same sitting or adjourn the proceedings.

(3) If the court decides in favour of the defendant, it must discharge the defendant in respect of the charge.

(4) A discharge under subsection (3) does not operate as a bar to subsequent proceedings against the defendant for the same offence or on account of the same facts.

Variance between facts proved at trial and charge sheet

110.—(1) Any variance between the facts proved at trial and the statement of the offence in the charge sheet does not affect the validity of the proceedings.

(2) If, on the application of the defendant, the court thinks that the variance has misled the defendant and prejudiced the defence, the court may adjourn the trial and permit a witness to be recalled and such questions to be put to the witness that, by reason of the terms of the charge sheet, may have been omitted.

Withdrawal of charge

111.—(1) The court may, at any time before judgment, permit the prosecution to withdraw the charge if the prosecution satisfies the court that there are sufficient grounds to do so.

(2) If the charge is withdrawn, the court must—

- (a) where the defendant has pleaded to the charge, acquit the defendant;
- (b) where the defendant has not pleaded to the charge, discharge the defendant.

(3) A discharge under subsection (2)(b) does not operate as a bar to subsequent proceedings against the defendant for the same offence or on account of the same facts.

Judgment

Delivery of judgment

112.—(1) Judgment in a case must be delivered in open court, or the substance of the judgment must be explained in open court, either immediately after the end of the trial or at some subsequent time, notice of which must be given to the parties.

(2) If the defendant is in custody, the defendant must be brought before the court to hear judgment delivered.

(3) If the defendant is not in custody, the defendant must be required to attend before the court to hear judgment delivered, except where—

- (a) the court determines the case in the defendant's absence in accordance with section 71 (non-appearance of defendant or prosecution) or section 83 (presence of defendant during trial);
- (b) the court has dispensed with personal attendance of the defendant during the trial and the sentence is only a fine; or
- (c) the defendant is acquitted.

(4) A judgment is not invalid by reason only of—

- (a) the absence of a party or a legal representative on the day notified for delivery of the judgment; or
- (b) an omission to give, or a defect in giving, notice of that day.

(5) This section is subject to section 27 of the Courts (Constitution and Jurisdiction) Ordinance 2007 (which provides for the exercise of certain judicial functions from outside the Areas).

Contents of judgment, etc

113.—(1) A judgment must be recorded in writing and must be dated and signed at the time of delivery by the Judge or, where the court consists of more than one Judge, by the president of the court or, at the direction of the president of the court, by any other member of the court.

(2) In a case where an appeal lies, a judgment must contain the point or points for determination, the decision thereon and the reasons for the decision.

(3) Where a judgment is signed in accordance with subsection (1), it must not be altered or reviewed by the court except to correct a clerical error.

Delivery of judgment by other Judge

114. Where a Judge who has tried a case is prevented by illness or other unavoidable cause from delivering judgment, the judgment may, if in writing and signed by the Judge, be delivered in open court by another Judge.

Copy of judgment for defendants

115. If a party to the proceedings applies for a copy of the judgment, a copy must be given to the party free of charge as soon as possible.

Sentence

Allocutus

116.—(1) This section applies where—

- (a) the defendant pleads guilty; or
- (b) the court finds the defendant guilty.

(2) The court must ask the defendant whether the defendant has anything to say why sentence should not be passed according to law.

(3) The proceedings are not invalid if the court fails to comply with subsection (2).

Sentence

117.—(1) This section applies where—

- (a) after hearing what the defendant has to say under section 116 (allocutus), the court nevertheless thinks that sentence should be passed on the defendant; or
- (b) the court asks the defendant if the defendant has anything to say under section 116, but the defendant says nothing.

(2) The court may proceed to pass sentence on the defendant according to law or may adjourn the proceedings for that purpose.

Taking outstanding offences into consideration

118.—(1) This section applies where the defendant is convicted of an offence following a public prosecution.

(2) Subject to subsection (3), the court in determining and passing sentence for the offence may, with the consent of the prosecution and the defendant, take into consideration any other outstanding offence that the defendant admits to committing.

(3) If proceedings are pending in respect of an outstanding offence and the pending prosecution is not a public prosecution, the court must, before taking into consideration the outstanding offence, first be satisfied that the prosecutor in the pending proceedings consents.

(4) Where the court takes an outstanding offence into consideration under subsection (2)—

- (a) the court must cause an entry to that effect to be made on the record; and
- (b) unless the conviction is set aside, the defendant may not be charged with or tried for the outstanding offence.

Taking into account previous convictions outside the Areas

119.—(1) This section applies where—

- (a) a person has previously been convicted of an offence by a court of a state or territory outside the Areas;

- (b) the act or omission constituting the offence, if done or omitted to be done in the Areas, would constitute an offence under the law of the Areas; and
- (c) the conviction is final.

(2) The court may, at any stage of the proceedings, take into account the previous conviction in the same way, to the same extent and for the same purposes (including for the purpose of sentencing a defendant) that the court may take into account a previous conviction of a court of the Areas.

(3) Before doing so, the court must have the following information—

- (a) the full name and the date and place of birth of the convicted person;
- (b) the date of the conviction, the name and place of the convicting court and the date on which the conviction became final;
- (c) information relating to the offence (including, in particular, the date on which the offence was committed, its name or legal definition and the relevant law under which it was committed);
- (d) information relating to the conviction (including, in particular, the sentence, any additional sanctions or security measures and any subsequent judgment varying sentence).

Defendants detained during Administrator’s pleasure: transcript of proceedings, etc to be sent to Administrator

120. Where a defendant is ordered to be detained during the Administrator’s pleasure, the court must send to the Administrator—

- (a) a transcript of the proceedings or the judgment of the court; and
- (b) a written report containing any recommendations or observations on the case that the court thinks appropriate to make.

Commencement of sentence of imprisonment

121.—(1) This section applies where a defendant is sentenced to a term of imprisonment.

(2) The term takes effect—

- (a) if the defendant is in court or in custody when sentence is passed, from the beginning of the day on which the sentence is passed;
- (b) in any other case, unless the court otherwise orders, from the beginning of the day after the day on which the defendant is next brought before the court.

(3) Unless the court otherwise orders—

- (a) the term must be reduced by any period spent by the defendant in custody in connection with the offence to which the sentence relates; and
- (b) if the defendant is already sentenced to a term of imprisonment (the “existing term”), the term begins after the expiry of the existing term.

PART 5

Execution and recovery of penalties

General

Payment of penalty

122.—(1) Subject to subsection (2), when the court orders a penalty to be paid, the court may order the penalty to be paid—

- (a) immediately;

- (b) at a subsequent time; or
- (c) in instalments.

(2) If the penalty does not exceed €250, the court must order the penalty to be paid immediately unless the court otherwise orders and gives reasons in the order.

(3) On ordering a person to pay a penalty, the court may order that the whole or part of any of the following money should be applied towards payment of the penalty—

- (a) any money taken from the person when the person was apprehended;
- (b) any money deposited by the person with the court as security for the person's surrender to custody or appearance at court under Part 7 (bail).

Examination as to means

123.—(1) A person who is ordered to pay a penalty may be examined on oath or affirmation by the court as to the person's means.

(2) The examination may take place at the time when the order is made or at any subsequent time before the penalty is paid.

(3) For the purpose of examining a person as to the person's means, a Judge may—

- (a) issue a summons to compel the person to attend before the court at the time and place specified in the summons;
- (b) subject to subsection (5), issue an arrest warrant.

(4) A summons under subsection (3)(a)—

- (a) must be in the prescribed form; and
- (b) may be served—
 - (i) in any of the ways referred to in section 63 (service of summons);
 - (ii) by sending it to the person by ordinary post in a letter addressed to the person at the person's last known or usual place of residence; or
 - (iii) if the person is a member of Her Majesty's Armed Forces, a member of the civilian component or a dependant whose British Forces Post Office address is known, by sending it to the person by ordinary post in a letter addressed to the person at that address.

(5) An arrest warrant must not be issued—

- (a) except for a special reason to be recorded by the Judge and supported on oath or affirmation; or
- (b) unless the person fails to attend before the court in compliance with a summons already issued and proved to have been properly served.

(6) Sections 24 to 29 apply, with all necessary modifications, to an arrest warrant issued under this section.

(7) In this section, "civilian component" and "dependant" have the meanings given in Section 1 of Annex C to the Treaty of Establishment, except that for the purposes of interpreting those terms, the definition of "force" in that section should be read as if the words "when in the territory of the Republic of Cyprus" were omitted.

Application of part payment of penalty

124. Where a sum is received or taken in part payment of a penalty that a person is ordered to pay, the sum must be applied towards payment of the penalty in the following order—

- (a) any compensation or damages that the person is ordered to pay;
- (b) the costs of executing any warrant of execution;
- (c) any costs of the proceedings that the person is ordered to pay;

- (d) the fine or any other amount payable into public funds.

Warrants of execution and committal

Judge may issue warrant of execution or warrant of committal

125.—(1) This section applies where—

- (a) a person is ordered to pay a penalty immediately; or
- (b) a person defaults in paying a penalty that the person is ordered to pay.

(2) A Judge may issue either or both of the following—

- (a) a warrant of execution;
- (b) a warrant of committal.

Warrant of execution

126.—(1) This section applies where a warrant of execution is issued.

(2) The warrant must specify—

- (a) the amount of the penalty in respect of which it is issued (including the costs of execution); and
- (b) the person ordered to pay the penalty.

(3) Subject to subsections (4) to (6), a penalty specified in a warrant of execution may be enforced as if it were a judgment debt in civil proceedings.

(4) The provisions of, or made under, the Civil Procedure Ordinance^(a) which relate to judgment debts apply to a penalty specified in a warrant of execution—

- (a) with the exception of Part 8 (execution by imprisonment) of that Ordinance;
- (b) subject to the provisions of this Ordinance; and
- (c) with any other necessary modifications.

(5) The penalty must not be levied against the person's immovable property unless it appears that the person's movable property is not sufficient.

(6) If the penalty is paid to the officer executing the warrant, the officer must cease to execute the warrant.

(7) The warrant may specify the term of imprisonment for which the person may be committed in default of payment of the penalty (which must comply with section 132 (maximum term of imprisonment in case of committal)).

Warrant of execution: claim on property taken in execution

127.—(1) This section applies where a person other than the person ordered to pay a penalty claims to be entitled to, or to have an interest in, the whole or part of any property taken in execution of a warrant of execution.

(2) The person may, at any time before sale of the property, apply to the court to determine the entitlement to, or interest in, the property in accordance with the relevant provisions of or under the Civil Procedure Ordinance.

^(a) Cap. 6, Laws of Cyprus, 1959 ed. Legislation of the former colony of Cyprus has effect in the Areas by virtue of article 5 of the Sovereign Base Areas of Akrotiri and Dhekelia Order in Council 1960 (S.I. 1960 No. 1369, amended by S.I. 1966 No. 1415). Schedule 2 to the Interpretation Ordinance 2012 provides for the interpretation of such legislation

Warrant of execution: detention, etc after warrant issued

128.—(1) This section applies where a warrant of execution is issued for the levy of a penalty that a person is ordered to pay.

(2) The court may—

- (a) allow the person to go at large;
- (b) order that the person be detained in custody until the penalty is paid or levied; or
- (c) if the person gives sufficient security by way of recognisance or otherwise that the person will appear before the court at any time when required to do so, release the person.

(3) If a person fails to appear before the court when required to do so in accordance with subsection (2)(c), the court may order that the recognisance or other security be forfeited.

Warrant of committal

129.—(1) This section applies where a warrant of committal is issued.

(2) The warrant must specify—

- (a) the amount of the penalty in respect of which it is issued (including the costs of executing the warrant);
- (b) the person ordered to pay the penalty; and
- (c) the term of imprisonment to which the person is liable in default of payment of the penalty (which term must comply with section 132 (maximum term of imprisonment in case of committal)).

(3) The warrant authorises the arrest and imprisonment of the person for the term specified unless the penalty is paid before the expiry of the term.

(4) A person who serves a term of imprisonment in accordance with the warrant ceases to be liable in respect of the penalty.

(5) Where a penalty includes an order to pay compensation to a person, subsection (4) does not limit or remove any right of that person to make a claim for damages in civil proceedings against a person who has served a term of imprisonment under a warrant of committal (see section 29(2A) of the Courts (Constitution and Jurisdiction) Ordinance 2007)(a).

Payment after committal

130. If a person committed to a term of imprisonment under this Part pays, or causes to be paid, to the officer in charge of the place of imprisonment the penalty specified in the warrant of committal, the officer must release the person (unless the person is in custody for some other reason).

Reduction of term of imprisonment on part payment of penalty

131.—(1) This section applies where a sum is received in part payment of a penalty due under a warrant of execution or a warrant of committal (see section 124, which relates to the application of sums received in part payment of penalties).

(2) The term of imprisonment must be reduced by the number of days bearing as nearly as possible the same proportion to the total number of days of imprisonment for which the person was committed as the sum paid in part satisfaction of the penalty bears to the total sum due.

(3) The officer in charge of the place of imprisonment in which the person is detained must—

- (a) release the person on the day on which the reduced term of imprisonment ends;
- (b) endorse the warrant accordingly; and

(a) Ordinance 5/2007. Section 29(2A) was inserted by Ordinance 6/2016.

(c) as soon as practicable, inform the court of the action taken for the court to make such order or record as the court thinks appropriate.

(4) For the purpose of calculating the number of days by which a term of imprisonment must be reduced, the day on which the term of imprisonment began must not be taken into account.

Maximum term of imprisonment in case of committal

132. Where a person is committed to a term of imprisonment under this Part in respect of a penalty that does not exceed the amount set out in column 1 of the table, the term of imprisonment must not exceed the period set out in the corresponding entry in column 2.

(1) Penalty	(2) Period
€500	5 days
€1,000	10 days
€2,000	20 days
€3,000	1 month
€10,000	3 months
€25,000	6 months
More than €25,000	1 year

PART 6

Appeals

General

No appeals except as provided for

133. An appeal may not be brought in criminal proceedings except as provided by this Ordinance or any other enactment.

Resident Judge's Court not to be reversed on appeal on point of form unless matter raised at trial, etc

134.—(1) Subject to subsection (2), the Senior Judges' Court must not, on an appeal, reverse or alter a judgment, finding, sentence or order of the Resident Judge's Court on the ground of an objection to—

- (a) the charge sheet, a summons or a warrant, unless the matter was raised before the Resident Judge's Court;
- (b) a defect (whether of substance or form) in the charge sheet, a summons or a warrant, unless the matter was raised before the Resident Judge's Court; or
- (c) a variance between the charge sheet, a summons or a warrant and the evidence adduced, unless—
 - (i) the matter was raised before the Resident Judge's Court; and
 - (ii) the court did not adjourn the hearing, even though the variance misled or deceived the appellant.

(2) If the appellant was not represented by a legal representative before the Resident Judge's Court, the Senior Judges' Court may allow an objection referred to in subsection (1) to be raised.

Defence appeals

Appeal from Resident Judge's Court against conviction or sentence

135.—(1) This section applies where a defendant is convicted of an offence by the Resident Judge's Court.

(2) The defendant may, with the permission of a Senior Judge, appeal to the Senior Judges' Court against the conviction—

- (a) on any ground of appeal that involves a question of law, a question of fact, or a question of mixed law and fact; or
- (b) on any other ground that the Senior Judge thinks sufficient.

(3) Subject to subsection (4), the defendant may, with the permission of a Senior Judge, appeal to the Senior Judges' Court against the sentence.

(4) A defendant may not appeal against a sentence—

- (a) if the sentence is fixed by law and the court has no power to impose a different sentence; or
- (b) if the sentence is a fine of less than €150.

(5) A defendant who wishes to appeal under subsection (2) or (3) must file an application for permission to appeal within 10 days after the date on which sentence is passed.

(6) The time within which an application for permission to appeal must be filed may be extended by a Senior Judge (even after the period specified in subsection (5) has expired).

(7) If the defendant is in custody, the defendant must be treated as complying with subsection (5) if, within the period specified in that subsection, the defendant gives the application for permission to appeal to the officer in charge of the defendant for transmission to a Registrar.

(8) This section is subject to—

- (a) section 136 (no appeal against conviction after guilty plea except where no offence disclosed in charge sheet);
- (b) section 137 (no appeal against imprisonment in certain cases).

No appeal against conviction after guilty plea except where no offence disclosed in charge sheet

136.—(1) A defendant convicted by the Resident Judge's Court on a guilty plea may not apply for permission to appeal against the conviction unless the ground for the appeal is that the facts alleged in the charge sheet to which the defendant pleaded guilty did not disclose an offence.

(2) This section does not prevent a defendant convicted by the Resident Judge's Court on a guilty plea from appealing against the sentence.

No appeal against imprisonment in certain cases

137. A defendant may not appeal, or apply for permission to appeal, against a sentence of imprisonment imposed by a court for failure to comply with an order to do any of the following—

- (a) to pay a penalty or other money;
- (b) to find a surety;
- (c) to enter into a recognisance;
- (d) to give a security.

Form of application for permission to appeal

138.—(1) An application for permission to appeal under section 135 must—

- (a) be in the prescribed form;
 - (b) be signed by the applicant;
 - (c) set out in full the grounds on which the appeal is based; and
 - (d) give an address for service in the island of Cyprus where all notices, summonses, orders and other written communications may be left for the applicant.
- (2) An application for permission to appeal is not valid unless subsection (1) is complied with.

Prosecution appeals

Appeal from Resident Judge’s Court against acquittal or sentence

139.—(1) An appeal under this section may be brought only by, or with the consent of, the Attorney-General and Legal Adviser.

(2) Where the Resident Judge’s Court acquits a defendant, an appeal to the Senior Judges’ Court may be brought on one or more of the following grounds—

- (a) there was no evidence on which the court could reasonably find a fact or facts necessary to support the acquittal;
- (b) evidence was wrongly admitted or excluded;
- (c) the law was wrongly applied to the facts;
- (d) there was a procedural irregularity.

(3) Where the Resident Judge’s Court convicts a defendant, an appeal to the Senior Judges’ Court against the sentence may be brought on the ground that the sentence is insufficient.

(4) An appeal must be commenced by filing a notice of appeal within 14 days after the date of the acquittal or, as the case may be, the date on which sentence is passed.

(5) The notice of appeal must—

- (a) be in the prescribed form;
- (b) be signed by the Attorney-General and Legal Adviser or by a person authorised by the Attorney-General and Legal Adviser;
- (c) set out in full the grounds on which the appeal is based.

Appeal against acquittal: Senior Judge may issue arrest warrant, etc

140.—(1) This section applies where an appeal is brought under section 139 by, or with the consent of, the Attorney-General and Legal Adviser against an acquittal or sentence.

(2) On the application of the appellant, a Senior Judge may issue an arrest warrant ordering that the respondent be brought before the Senior Judges’ Court.

(3) When the respondent is brought before the Senior Judges’ Court, the court may—

- (a) release the respondent unconditionally;
- (b) grant bail on such terms as it thinks appropriate (see Part 7 (bail)); or
- (c) remand the respondent in custody pending the determination of the appeal or for such other period as the court thinks appropriate.

(4) A hearing under subsection (3) may be heard by a Senior Judge outside the Areas using a live link.

(5) There is no appeal against a decision of the Senior Judges’ Court to grant or refuse (or refuse to vary) bail.

(6) Subsection (5) does not prevent a person applying for bail, or to vary bail, following a change of circumstances.

(7) Sections 24 to 29 (arrest warrants) apply, with all necessary modifications, to an arrest warrant issued under this section.

Procedure, etc

Senior Judge may grant or refuse permission to appeal

141.—(1) This section applies where a defendant applies for permission to appeal to the Senior Judges' Court under section 135 against conviction or sentence.

(2) Subject to subsection (4), a Senior Judge may—

- (a) without a hearing, grant permission to appeal—
 - (i) on one or more of the grounds of appeal set out in the application; or
 - (ii) in the case of an appeal against conviction, on the ground that the conviction is unsafe; and if that ground is not set out in the application, the Senior Judge must state the reasons for granting permission on that ground;
- (b) without a hearing, refuse permission to appeal; or
- (c) fix a date for an *ex parte* hearing for the applicant to show cause why permission to appeal should be granted (and, following the hearing, grant or refuse permission to appeal).

(3) If permission to appeal is refused without a hearing, the applicant may, within 10 days after being notified of the refusal, request the court to fix a date for an *ex parte* hearing for the application to be determined in accordance with subsection (2)(c).

(4) An application for permission to appeal must not be determined by a Senior Judge who (as a member of the Resident Judge's Court) was the trial judge or one of the trial judges.

(5) An *ex parte* hearing under subsection (2)(c) may be heard by a Senior Judge outside the Areas using a live link.

(6) Subject to subsection (3), a decision of a Senior Judge on an application for permission to appeal is final.

Fixing date for hearing appeal

142.—(1) This section applies where—

- (a) an application for permission to appeal is filed under section 135 and a Senior Judge grants permission to appeal under section 141; or
- (b) a notice of appeal is filed under section 139.

(2) The Senior Judges' Court must—

- (a) fix a date for the hearing of the appeal;
- (b) give notice of the hearing—
 - (i) in the case of a private prosecution, to the prosecutor or the prosecutor's legal representative; or
 - (ii) in any other case, to the Attorney-General and Legal Adviser; and
- (c) give notice of the hearing to the defendant.

(3) A notice under subsection (2)(c) may be served by—

- (a) giving the notice to the defendant;
- (b) leaving the notice at the defendant's address for service given in the application for permission to appeal; or
- (c) any other means agreed by the defendant or ordered by a Senior Judge.

(4) Service of the notice may be effected by a police officer, an officer of the court or any other person directed by a Senior Judge; and a certificate of service signed by the officer or person is evidence of service.

Abandonment of appeal, etc

143.—(1) A person who files an application for permission to appeal or a notice of appeal or who is granted permission to appeal may abandon the application or appeal at any time by filing a notice of abandonment.

(2) If a notice of abandonment is filed, the application or appeal must be treated as having been dismissed.

Procedure on hearing appeal

144.—(1) This section applies when an appeal is heard by the Senior Judges' Court.

(2) The appellant must be heard first in support of the appeal and then the respondent against the appeal.

(3) If the appellant does not appear at the hearing, the court must consider the appeal and may make such order on the appeal as it thinks appropriate.

(4) If the respondent does not appear at the hearing, the court must not make any order to the respondent's prejudice unless the court is satisfied that the respondent had notice of the date fixed for the hearing.

(5) An appellant or respondent, even though in custody, is entitled to be present at the appeal.

Senior Judges' Court must determine appeal only on grounds of appeal

145.—(1) Subject to subsection (2), the Senior Judges' Court must hear and determine an appeal only on the grounds set out in the notice of appeal or the order granting permission to appeal.

(2) Subsection (1) does not apply in the case of an appeal against conviction if, on hearing the appeal, the Senior Judges' Court thinks that the conviction is unsafe.

Powers of Senior Judges' Court: defence appeal

146.—(1) This section applies where an appeal is brought by a defendant under section 135 against conviction or sentence.

(2) On appeal against conviction, the Senior Judges' Court must—

(a) if the court thinks that the conviction is unsafe—

(i) allow the appeal and set aside the conviction;

(ii) instead of allowing or dismissing the appeal, set aside the conviction, substitute a conviction for any other offence that the defendant might have been convicted of on the evidence adduced and pass sentence accordingly; or

(iii) allow the appeal, set aside the conviction and order a re-trial; or

(b) in any other case, dismiss the appeal.

(3) On an appeal against sentence, the Senior Judges' Court may—

(a) dismiss the appeal; or

(b) increase, reduce or modify the sentence.

Powers of Senior Judges' Court: prosecution appeal

147.—(1) This section applies where an appeal is brought under section 139 against an acquittal or the insufficiency of the sentence by, or with the consent of, the Attorney-General and Legal Adviser.

- (2) On an appeal against an acquittal, the Senior Judges' Court may—
- (a) allow the appeal, set aside the acquittal and—
 - (i) convict the defendant of any offence that the defendant might have been convicted of on the evidence adduced and pass sentence accordingly; or
 - (ii) order a re-trial; or
 - (b) dismiss the appeal.
- (3) On an appeal against the insufficiency of the sentence, the Senior Judges' Court may—
- (a) increase the sentence; or
 - (b) dismiss the appeal.

Powers of Senior Judges' Court on appeal: supplementary

148.—(1) The Senior Judges' Court has the following powers when deciding an appeal.

(2) The Senior Judges' Court may order the Resident Judge's Court to produce any information or item that the Senior Judges' Court thinks is necessary to determine the appeal.

(3) The Senior Judges' Court may order the Resident Judge's Court to hear further evidence either generally or on a particular point.

(4) The Senior Judges' Court may itself hear further evidence (and reserve judgment until further evidence has been heard).

(5) Where the Senior Judges' Court thinks that—

- (a) the Resident Judge's Court excluded evidence that should not have been excluded, and
- (b) the exclusion of the evidence affected a material finding of fact made by the Resident Judge's Court,

the Senior Judges' Court may admit the evidence and make any finding of fact that the court thinks should have been made by the Resident Judge's Court if the evidence had not been excluded.

(6) Where the Senior Judges' Court thinks that the Resident Judge's Court admitted evidence that should not have been admitted, the Senior Judges' Court may make any finding of fact that the court thinks should have been made by the Resident Judge's Court if the evidence had not been admitted.

Powers of Senior Judges' Court on appeal: sentence, etc

149.—(1) Except as otherwise provided, the Senior Judges' Court may on an appeal make such orders and directions as it thinks appropriate in relation to—

- (a) further proceedings;
- (b) the custody of the defendant;
- (c) granting bail to the defendant (see Part 7 (bail)); and
- (d) suspending payment of any penalty.

(2) Unless the Senior Judges' Court otherwise orders, the period during which the defendant is in custody pending the hearing of an appeal counts as part of the term of imprisonment to which the defendant is liable.

(3) If a conviction is quashed—

- (a) the defendant must be released without delay (unless the defendant is also in custody for some other reason); and
- (b) any penalty imposed in relation to the conviction, if already paid, must be refunded (to the extent that the penalty exceeds any other penalty owed by the defendant).

Questions of law

Question of law reserved for opinion of Senior Judges' Court

- 150.**—(1) At any stage of the proceedings, the Resident Judge's Court—
- (a) may reserve a question of law for the opinion of the Senior Judges' Court; and
 - (b) on the application of the Attorney-General and Legal Adviser, must do so.
- (2) Where a question of law is reserved for the opinion of the Senior Judges' Court—
- (a) the Judge must make a record of the question of law and the circumstances in which it arose and give a copy to the Registrar; and
 - (b) the Senior Judges' Court must consider and determine the question of law.
- (3) If the Resident Judge's Court has convicted the defendant, the Senior Judges' Court may—
- (a) affirm the conviction;
 - (b) set aside the conviction and acquit the defendant; or
 - (c) set aside the judgment and give such judgment that the Senior Judges' Court thinks ought to have been given.
- (4) If the Resident Judge's Court has not delivered judgment, the Senior Judges' Court must remit the case to the Resident Judge's Court with the opinion of the Senior Judges' Court on the question of law.

Cases stated

Statement of case by Judge for opinion of Senior Judges' Court

- 151.**—(1) This section applies where a party to proceedings or the Attorney-General and Legal Adviser is dissatisfied with a decision of the Resident Judge's Court as—
- (a) wrong in law; or
 - (b) in excess of jurisdiction or of the powers of the Judge.
- (2) The party or the Attorney-General and Legal Adviser may apply to the Judge who made the decision to state a case setting out the facts and the grounds of the decision for the opinion of the Senior Judges' Court.
- (3) An application under subsection (2) must be made—
- (a) if the application is made by the Attorney-General and Legal Adviser, within 14 days after the decision;
 - (b) in any other case, within 10 days after the decision.
- (4) Subject to subsection (5), if the Judge thinks that an application under subsection (2) is frivolous, the Judge may refuse to state a case, and, if the applicant so requires, must give the applicant a certificate stating that the application has been refused.
- (5) The Judge must not refuse to state a case if the application is made by the Attorney-General and Legal Adviser.
- (6) Where a Judge refuses to state a case—
- (a) the party who applied for the case to be stated may apply, with an affidavit or affirmation of facts, to the Senior Judges' Court for a mandatory order requiring the Judge to state a case; and
 - (b) on such an application being made, the Senior Judges' Court may make a mandatory order requiring the Judge to state a case.
- (7) An application under subsection (6)(a)—

- (a) may be determined by a Senior Judge;
 - (b) unless the Senior Judges' Court otherwise orders, must be determined without a hearing; and
 - (c) if a hearing is ordered, may be heard by a Senior Judge outside the Areas using a live link.
- (8) A case stated must be—
- (a) in the prescribed form;
 - (b) signed by the Judge stating the case; and
 - (c) given to the Registrar within 14 days after the date of the application for the case to be stated or, as the case may be, of the mandatory order under subsection (6)(b).
- (9) The Senior Judges' Court must consider and determine the question arising on the case stated and may do one or more of the following—
- (a) set aside, affirm or amend the decision in respect of which the case has been stated;
 - (b) remit the matter to the Judge with the opinion of the Senior Judges' Court on the case stated;
 - (c) if the case stated relates to an acquittal, itself convict and pass sentence;
 - (d) remit the case back to the Judge for amendment, in which event the case must be amended accordingly and judgment delivered after amendment;
 - (e) make any other order that the Senior Judges' Court thinks appropriate.
- (10) A person who applies for a case to be stated in respect of a decision of the Resident Judge's Court loses any right to appeal (or to apply for permission to appeal) against the decision to the Senior Judges' Court.

PART 7

Bail

Grant of bail

Grant of bail

152.—(1) Subject to the subsections (6) and (7), a court may at any stage of the proceedings grant bail to a person charged with, or convicted of, an offence.

(2) A person on bail must surrender to the custody of the court at the time and place from time to time appointed.

(3) The court may require a person to whom it is intended to grant bail—

- (a) to execute a bail bond (with or without sureties); or
- (b) give other security for the person's surrender to custody (for example, by depositing a sum of money with the court).

(4) The court may impose conditions on the grant of bail (to be complied with before or after the person is released); and if the court imposes conditions, the person to whom bail is granted must comply with every condition.

(5) Without limiting subsection (4), conditions may be imposed to secure that the person on bail—

- (a) surrenders to custody;
- (b) does not commit an offence while on bail;
- (c) does not interfere with witnesses or otherwise obstruct the course of justice (whether in relation to himself or herself or to any other person);

- (d) makes himself or herself available for the purpose of enabling inquiries or a report to be made to assist the court in dealing with the person for the offence.
- (6) Bail may not be granted to a person who has been convicted of a relevant offence.
- (7) A person charged with a relevant offence may not be granted bail except by order of a Senior Judge.
- (8) If a person appears before the Resident Judge's Court charged with a relevant offence, unless a Senior Judge is sitting as a member of the court, the court must remand the person in custody to be brought before a Senior Judge to make a decision about bail.
- (9) The Senior Judge may hear the matter from outside the Areas using a live link.
- (10) No appeal may be brought under section 161 (defence appeal against withholding of bail) or 162 (prosecution appeal against grant of bail) against a decision of a Senior Judge under subsection (8).
- (11) Subsection (10) does not prevent a person applying for bail, or to vary bail, following a change of circumstances.
- (12) In this section, "relevant offence" means an offence for which the mandatory penalty is imprisonment for life.
- (13) (Section 153 (right to bail in certain cases) provides for a right to bail in certain cases).

Right to bail in certain cases

153.—(1) This section applies to a defendant who is charged with an offence (but has not been convicted of the offence).

(2) Subject to subsections (3) to (9) and to section 152(8), a defendant to whom this section applies must be granted bail if, in the course of or in connection with proceedings for the offence—

- (a) the defendant appears or is brought before a court;
- (b) the defendant applies to a court for bail (or to vary bail);
- (c) the defendant appeals under section 161 against a decision to withhold bail from the defendant; or
- (d) the prosecution appeals under section 162 against a decision to grant bail to the defendant.

(3) The defendant need not be granted bail if the court thinks that there are substantial grounds for believing that the defendant, if released on bail (whether or not conditions are imposed on the grant of bail), would—

- (a) fail to surrender to custody;
- (b) commit an offence while on bail; or
- (c) interfere with witnesses or otherwise obstruct the course of justice (whether in relation to himself or herself or to any other person).

(4) The defendant need not be granted bail if the defendant was on bail in criminal proceedings on the date of the offence.

(5) The defendant need not be granted bail if, having been released on bail in or in connection with the proceedings for the offence, the defendant has been arrested for failing to surrender to custody or for failing to comply with a condition imposed on the grant of bail.

(6) The defendant need not be granted bail if the court thinks that the defendant should be kept in custody for the defendant's own protection or welfare.

(7) The defendant need not be granted bail if the court thinks that it has not been practicable to obtain sufficient information for the purpose of taking decisions under this Part due to lack of time since the institution of proceedings against the defendant.

(8) Where the defendant's case is adjourned for inquiries or a report, the defendant need not be granted bail if the court thinks that it would be impracticable to complete the inquiries or make the report without keeping the defendant in custody.

(9) The defendant need not be granted bail if the defendant is in custody pursuant to the sentence of a court.

Application for bail by defendant who appeals to Senior Judges' Court

154.—(1) Subject to subsection (2), this section applies where a defendant convicted of an offence by the Resident Judge's Court files an application for permission to appeal against the conviction or sentence to the Senior Judges' Court.

(2) This section does not apply where the defendant is convicted of an offence for which the mandatory penalty is imprisonment for life (see section 152(6) which provides that bail may not be granted to a person who has been convicted of such an offence).

(3) An application for bail (or to vary bail)—

(a) must be made to the Senior Judges' Court; and

(b) may be heard by a Senior Judge outside the Areas using a live link.

(4) There is no appeal against a decision of the Senior Judges' Court to grant or refuse (or refuse to vary) bail.

(5) Subsection (4) does not prevent a person applying for bail, or to vary bail, following a change of circumstances.

(6) (Section 140 (appeal against acquittal: Senior Judge may issue arrest warrant, etc) makes provision for bail in the case of a prosecution appeal against acquittal or sentence).

Considerations for court when deciding whether or not to grant bail

155. In deciding whether or not to grant bail to a person (including on an appeal under section 161 or 162), the court must have regard to any considerations that appear relevant, such as, for example—

(a) the nature and seriousness of the offence (and the probable method of dealing with the person for it, if convicted);

(b) the character, antecedents, associations and community ties of the person;

(c) the person's record as respects the fulfilment of obligations under previous grants of bail in criminal proceedings;

(d) the strength of the evidence of the person's having committed the offence;

(e) in the case of a person convicted of an offence by the Resident Judge's Court who files an application for permission to appeal to the Senior Judges' Court, the period that is likely to elapse before the application or appeal will be heard.

Release of person in custody on grant of bail

156.—(1) Where the court grants bail to a person, the person must be released as soon as—

(a) any bail bond or other security required by the court has been executed or given; and

(b) every condition that must be complied with before the person is released has been complied with.

(2) If the person is in custody, once the requirements in subsection (1) are satisfied, the court must issue a warrant of deliverance requiring the officer in charge of the person to release the person without delay.

(3) Nothing in this section nor in any warrant of deliverance requires the release of a person who is liable to be detained in custody for some matter other than that in respect of which bail is granted.

(4) This section is subject to section 162 (prosecution appeal against grant of bail).

Absconding by person on bail: offence

157.—(1) A person who is on bail commits an offence if the person fails, without reasonable excuse, to surrender to custody at the time and place from time to time appointed.

(2) A person who is on bail commits an offence if the person—

- (a) fails to surrender to custody at the appointed time and place but has a reasonable excuse for the failure; and
- (b) fails to surrender to custody at the appointed place as soon after the appointed time as is reasonably practicable.

(3) It is for the person on bail to adduce evidence that there was a reasonable excuse for the failure to surrender to custody.

(4) A person convicted of an offence under subsection (1) or (2) is liable to imprisonment for a term not exceeding 2 years or a fine not exceeding €10,000 or to both.

Variation of bail terms, etc

Court may require security to be increased, etc

158.—(1) This section applies where, after a person is granted bail, a Judge is satisfied, on the application of the prosecution, that—

- (a) in a case where a person is granted bail without executing a bail bond or giving other security for the person's surrender to custody, the person should be required to execute a bail bond or give other security for the person's surrender to custody;
- (b) the amount of the bail bond should be increased;
- (c) the surety or sureties have become insufficient; or
- (d) the amount of any other security given should be increased.

(2) The Judge may issue an arrest warrant ordering the person on bail to be brought before the court.

(3) On the person being brought before the court, the court may require the person to do any of the following—

- (a) execute a bail bond or give other security for the person's surrender to custody;
- (b) execute a new bail bond for a larger amount;
- (c) find sufficient sureties;
- (d) increase the security given;

(4) If the person fails to comply with a requirement under subsection (3), the court may remand the person in custody.

(5) Sections 24 to 29 (arrest warrants) apply, with all necessary modifications, to an arrest warrant issued under this section.

Person on bail about to leave the Areas

159.—(1) Where a Judge is satisfied by evidence on oath or affirmation that a person on bail is about to leave the Areas, the Judge may issue an arrest warrant ordering the person to be brought before the court.

(2) On the person being brought before the court, the court may—

- (a) remand the person in custody; or
- (b) grant further bail to the person in accordance with this Part.

(3) Sections 24 to 29 apply, with all necessary modifications, to an arrest warrant issued under this section.

Application to vary, etc bail conditions

160. Where a court grants bail to a person (whether or not conditions are imposed on the grant of bail), the court may, on the application of the person or the prosecution, vary the conditions imposed on the grant of bail by—

- (a) amending one or more of the existing conditions;
- (b) cancelling one or more of the existing conditions;
- (c) imposing one or more conditions (whether or not there are any existing conditions).

Appeals against withholding or grant of bail

Defence appeal against withholding of bail

161.—(1) This section applies where—

- (a) the Resident Judge’s Court has withheld bail from a person (the “defendant”) charged with, or convicted of, an offence; and
- (b) the defendant wishes to appeal to the Senior Judges’ Court against the withholding of bail.

(2) The defendant must, within 10 days after the date of the decision to withhold bail, serve a notice of appeal on—

- (a) the Registrar; and
- (b) the prosecutor.

(3) A notice of appeal may be served only while the defendant is in custody; and if the defendant is granted bail or otherwise released from custody before an appeal under this section is heard, the appeal must be treated as being abandoned.

(4) It is sufficient for the purposes of subsection (2) for a defendant in custody to deliver the notice of appeal to the officer having charge of the defendant for transmission to the Registrar and the prosecutor.

(5) The notice of appeal must—

- (a) specify each offence that the defendant is charged with or convicted of;
- (b) explain why the Senior Judges’ Court should not withhold bail;
- (c) explain what further information or legal argument, if any, has become available since the decision of the Resident Judge’s Court;
- (d) propose the terms of any suggested conditions of bail; and
- (e) if the defendant wishes the hearing of the appeal to be expedited, explain why the hearing needs to be expedited.

(6) A prosecutor who opposes the appeal must—

- (a) notify the defendant and the Registrar as soon as possible; and
- (b) serve on the defendant and the Registrar notice of the reasons for opposition.

(7) On receipt of the notice of appeal, the Registrar must arrange for the Senior Judges’ Court to hear the appeal as soon as practicable.

(8) The appeal may be heard by a Senior Judge outside the Areas using a live link.

(9) The appeal is by way of rehearing, and the Senior Judges’ Court must grant or withhold bail in accordance with this Part.

(10) The Senior Judges’ Court may extend the time limit referred to in subsection (2).

Prosecution appeal against grant of bail

162.—(1) This section applies where—

- (a) the Resident Judge’s Court grants bail to a person (the “defendant”) charged with, or convicted of, an offence punishable with imprisonment; and
- (b) the Attorney-General and Legal Adviser wishes to appeal to the Senior Judges’ Court against the grant of bail.

(2) The prosecutor must inform the Resident Judge’s Court of the decision to appeal—

- (a) at the end of the hearing during which the Resident Judge’s Court granted bail; and
- (b) before the defendant is released on bail.

(3) If informed in accordance with subsection (2), the Resident Judge’s Court must remand the defendant in custody pending determination of the appeal.

(4) The prosecutor must, within 4 hours after informing the Resident Judge’s Court of the decision to appeal, serve a notice of appeal on—

- (a) the Registrar; and
- (b) the defendant.

(5) The notice of appeal must specify—

- (a) each offence that the defendant is charged with or convicted of;
- (b) the decision under appeal;
- (c) the reasons given for the grant of bail; and
- (d) the grounds of appeal.

(6) On receipt of the notice of appeal, the Registrar must arrange for the Senior Judges’ Court to hear the appeal as soon as practicable.

(7) The appeal may be heard by a Senior Judge outside the Areas using a live link.

(8) The appeal is by way of rehearing, and the Senior Judges’ Court must grant or withhold bail in accordance with this Part.

(9) The prosecutor may abandon an appeal to the Senior Judges’ Court at any time by serving a notice of abandonment on—

- (a) the defendant; and
- (b) the Registrar.

(10) The Registrar must give instructions for the defendant to be released on the bail granted by the Resident Judge’s Court if—

- (a) the prosecutor fails to serve a notice of appeal within the time referred to in subsection (4); or
- (b) the prosecutor serves a notice of abandonment under subsection (9).

Bail bonds

Bail bond

163.—(1) A bail bond—

- (a) must be in the prescribed form; and
- (b) must contain an acknowledgment on the part of the person executing the bond that the person owes the sum of money specified in the bond to the Crown.

(2) If the person executing the bail bond surrenders to custody, and continues to surrender to custody, at the time and place from time to time appointed, the bail bond is discharged, and the acknowledgment referred to in subsection (1)(b) becomes void.

(3) The court may require a bail bond to be executed with or without sureties.

(4) Where a person is required to execute a bail bond (with or without sureties), the court may permit the person to deposit a sum of money fixed by the court with the Fiscal Officer instead of executing the bond.

Discharge of surety

164.—(1) Where a person executes a bail bond with a surety, the surety may, at any time, apply to the court to discharge the bail bond so far as it relates to the applicant.

(2) If an application under subsection (1) is made, unless the person who executed the bail bond voluntarily appears before the court, the Judge must issue an arrest warrant ordering that person to be brought before the court.

(3) When that person appears before the court (whether voluntarily or pursuant to an arrest warrant), the court—

- (a) must order the bail bond to be discharged so far as it relates to the applicant; and
- (b) may require the person who executed the bail bond to find a new surety and, if the person fails to do so, may remand the person in custody.

(4) Sections 24 to 29 (arrest warrants) apply, with all necessary modifications, to an arrest warrant issued under this section.

Death of surety before bail bond ordered to be paid

165.—(1) This section applies where—

- (a) a person executes a bail bond with a surety; and
- (b) the surety dies before the court orders under section 166 (court may order bail bond to be paid) that the sum of money specified in the bond be paid.

(2) The surety's estate has no liability in respect of the bond.

(3) The court may require the person who executed the bail bond to find a new surety and, if the person fails to do so, may issue an arrest warrant ordering that person to be brought before the court and remand the person in custody.

(4) Sections 24 to 29 (arrest warrants) apply, with all necessary modifications, to an arrest warrant issued under this section.

Court may order bail bond to be paid

166.—(1) This section applies if a person (the “defendant”) to whom bail is granted and who has executed a bail bond fails to surrender to custody at the time and place from time to time appointed.

(2) The court may—

- (a) endorse the bond with a statement of the failure;
- (b) order the sum of money specified in the bond to be paid; and
- (c) notify the defendant and any surety of the order.

(3) A defendant or surety notified of the order under subsection (2) must pay the sum of money specified in the bond to the court within six days after the date of notification.

(4) If a defendant or surety notified in accordance with subsection (3) fails to pay the sum of money specified in the bond, or does not provide a reasonable excuse for the failure, within six days after the date of notification, the sum of money specified in the bond may be recovered from the defendant or surety in the same way as a penalty under this Ordinance.

(5) The court may remit any part of the sum specified in the bond and may enforce payment in relation to part only.

Other security

Forfeiture of other security

167.—(1) This section applies where—

- (a) a person gives security under section 152(3) for the person's surrender to custody other than by executing a bail bond;
- (b) the person fails to surrender to custody at the time and place from time to time appointed; and
- (c) the person does not provide a reasonable excuse for the failure.

(2) The court may order that the security be forfeited in whole or in part.

(3) Despite an order under subsection (2), if the court is subsequently satisfied, on an application made by the person giving the security, that the person did, after all, have a reasonable excuse for the person's failure to surrender to custody, the court may—

- (a) cancel the forfeiture; or
- (b) declare that the forfeiture extends to part only of the security.

(4) A security that has been ordered to be forfeited by a court must, to the extent that the security forfeited consists of money, be paid into public funds.

PART 8

Costs

Prosecution costs: costs of public prosecutions

168. Except as otherwise ordered by the court in accordance with this Part, the costs of bringing a public prosecution (including a public officer's costs of bringing or defending an appeal) must be paid from public funds.

Prosecution costs: payment by defendant

169.—(1) If a defendant is convicted, the court may order the defendant to pay the costs of the prosecution.

(2) In the case of a public prosecution, costs ordered under subsection (1) must be paid into public funds.

Defence costs: award of costs to defendant

170. If a defendant is acquitted, the court may order the defendant's costs to be paid—

- (a) in the case of a public prosecution, from public funds;
- (b) in any other case, by the person who brought the charge or any other person whom the court thinks responsible for procuring the charge.

Witness expenses

171. The court may, at any stage of the proceedings, order that the expenses of a prosecution or defence witness (including compensation for trouble and loss of time) be paid from public funds in accordance with prescribed rates.

Costs: improper or unreasonable acts and omissions

172.—(1) The court may, at any stage of the proceedings and after hearing representations, order a party to pay the whole or part of any costs incurred by another party as a result of an improper or unreasonable act or omission by, or on behalf of, the first-mentioned party.

(2) Costs awarded against the prosecutor in a public prosecution must be paid from public funds.

Costs against legal representatives: wasted costs

173.—(1) The court may, at any stage of the proceedings and after hearing representations, disallow, or order a legal representative to pay, the whole or part of any costs incurred by a party—

- (a) as a result of an improper, unreasonable or negligent act or omission on the part of the representative; or
- (b) that, in the light of such an act or omission occurring after the costs were incurred, the court considers it is unreasonable to expect that party to pay.

(2) Costs awarded against a legal representative appearing for the prosecutor in a public prosecution must be paid from public funds.

Costs on appeal

174.—(1) Subject to subsection (2), the Senior Judges' Court may, in proceedings under Part 6 (appeals), order costs to be paid by or to the parties as the court thinks appropriate.

(2) An order for costs may not be made against the Attorney-General and Legal Adviser.

Orders for costs

175.—(1) An order for costs must be made out by an officer of the court and given to the person entitled to costs.

(2) An order for costs may be recovered in the same way as a penalty may be recovered under this Ordinance.

PART 9

Return of property, etc

Disposal of property in possession of police

176.—(1) This section applies where property has come into the possession of the Police Service in connection with criminal proceedings.

(2) A court may, on the application of a police officer or a person who claims the property—

- (a) order that the property be delivered to the person appearing to the court to be the owner; or
- (b) if the owner cannot be ascertained, make any other order in relation to the property that the court thinks appropriate.

(3) If an order under subsection (2) is made, a person may bring proceedings against the person in possession of the property by virtue of the order for the recovery of the property; but unless proceedings are brought within six months after the date on which the order is made, the right to bring the proceedings is lost.

Restitution of property

177.—(1) This section applies where a defendant is convicted of an offence by which another person is deprived of property.

(2) Subject to subsection (3), the court may order that the property, or any part of it, be restored to the person who appears to be the owner—

- (a) without payment; or
- (b) on payment by the owner to the person in whose possession the property is of a sum of money specified in the order.

(3) An order under subsection (2) may not be made in respect of the following—

- (a) any valuable security that has been paid or discharged in good faith by a person liable to pay or discharge it;
- (b) a negotiable instrument received by transfer or delivery in good faith by a person for just and valuable consideration without notice, or reasonable cause to suspect, that it was stolen or otherwise unlawfully taken;
- (c) goods or documents of title entrusted to, or under the control of, by documents of title or otherwise, a trustee, banker, merchant, attorney, factor, broker or other agent convicted as such of an offence in respect of the goods or documents of title;
- (d) movable property purchased in good faith—
 - (i) in an open market, from a person dealing in property of the same kind; or
 - (ii) in a shop where property of the same kind is usually sold, from the person usually in charge of the shop.

Restoration of possession of immovable property

178.—(1) This section applies where—

- (a) a defendant is convicted of an offence involving unlawful force; and
- (b) the court thinks that, by such force, another person has been dispossessed of immovable property.

(2) The court may order that possession of the immovable property be restored to the other person.

(3) An order under subsection (2) does not prejudice any right or interest to or in the immovable property that any person (including the defendant) may be able to establish in a civil action.

PART 10

Miscellaneous

Recognisances: certain provisions of Part 7 apply to recognisances

179.—(1) The provisions referred to in subsection (2) apply, with any necessary modifications, to recognisances entered into by a person—

- (a) for any purpose under this Ordinance,
- (b) for keeping the peace and for being of good behaviour,
- (c) conditional on the person appearing and receiving judgment at some future sitting of the court, or
- (d) when called upon for any other matter under any other enactment,

as those provisions apply to bonds executed by a person to whom bail is granted as security for the person's surrender to custody at the time and place from time to time appointed.

(2) The provisions are—

- (a) section 156 (release of person in custody on grant of bail);
- (b) section 158 (court may require security to be increased, etc);
- (c) section 159 (person on bail about to leave the Areas);
- (d) section 163 (bail bond);
- (e) section 164 (discharge of surety);
- (f) section 165 (death of surety before bail bond ordered to be paid);
- (g) section 166 (court may order bail bond to be paid).

(3) In the case of the forfeiture of a recognisance conditional on the person appearing and receiving judgment at some future sitting of the court, nothing in section 166 prevents the court from passing any other sentence that the court thinks appropriate and is able to pass.

Provision for persons subject to service law, etc

180. Schedule 2 (provisions for persons subject to service law, etc) has effect.

Attorney-General and Legal Adviser may delegate exercise of functions

181.—(1) Subject to subsection (2), the Attorney-General and Legal Adviser may in writing or by notice in the Gazette delegate to a Crown Counsel the exercise of a function conferred on the Attorney-General and Legal Adviser by this Ordinance.

(2) A decision under section 139 to appeal against an acquittal, or to consent to such an appeal being brought, must be made by the Attorney-General and Legal Adviser personally.

Rules of court

182.—(1) The Administrator may, after consulting the Presiding Judge, make rules of court as a public instrument for the better carrying out of the purposes of this Ordinance.

(2) Without limiting subsection (1), rules of court may prescribe—

- (a) matters of procedure or process relating to any criminal proceedings;
- (b) all matters that may or are required to be prescribed by this Ordinance;
- (c) forms to be used for any matter or proceedings under this Ordinance;
- (d) fees payable in respect of any matter or proceedings under this Ordinance.

Consequential amendments

183. Schedule 3 (consequential amendments) has effect.

Transitional provisions

184. Schedule 4 (transitional provisions) has effect.

Repeals

185.—(1) The Ordinances set out in Part 1 of Schedule 5 are repealed.

(2) The public instruments set out in Part 2 of Schedule 5 are revoked.

SCHEDULE 1

(Section 14)

JUDGES' RULES

These rules do not affect the principles:

- (a) that citizens have a duty to help a police officer to discover and apprehend offenders;
- (b) that police officers, otherwise than by arrest, cannot compel any person against his will to come to or remain in any police station;
- (c) that every person at any stage of an investigation should be able to communicate and to consult privately with a solicitor. This is so even if he is in custody provided that in such a case no unreasonable delay or hindrance is caused to the processes of investigation or the administration of justice by his doing so;
- (d) that when a police officer who is making inquiries of any person about an offence has enough evidence to prefer a charge against that person for the offence, he should without delay cause that person to be charged or informed that he may be prosecuted for the offence;
- (e) that it is a fundamental condition of the admissibility of evidence against any person, equally of any oral answer given by that person to a question put by a police officer and of any statement made by that person, that it shall have been voluntary, in the sense that it has not been obtained from him by fear of prejudice or hope of advantage, exercised or held out by a person in authority, or by oppression.

The principle set out in paragraph (e) above is overriding and applicable in all cases. Within that principle the following rules are put forward as a guide to police officers conducting investigations. Non-conformity with these rules may render answers and statements liable to be excluded from evidence in subsequent criminal proceedings.

RULES

I. When a police officer is trying to discover whether, or by whom, an offence has been committed, he is entitled to question any person, whether suspected or not, from whom he thinks that useful information may be obtained. This is so whether or not the person in question has been taken into custody so long as he has not been charged with the offence or informed that he may be prosecuted for it.

II. As soon as a police officer has evidence which would afford reasonable grounds for suspecting that a person has committed an offence, he shall caution that person or cause him to be cautioned before putting to him any questions, or further questions, relating to that offence.

The caution shall be in the following terms:

“You are not obliged to say anything unless you wish to do so but what you say may be put into writing and given in evidence.”

When after being cautioned a person is being questioned, or elects to make a statement, a record shall be kept of the time and place at which any such questioning or statement began and ended and of the persons present.

III.

- (a) Where a person is charged with or informed that he may be prosecuted for an offence he shall be cautioned in the following terms:

“Do you wish to say anything? You are not obliged to say anything unless you wish to do so but whatever you say will be taken down in writing and may be given in evidence.”

- (b) It is only in exceptional cases that questions relating to the offence should be put to the accused person after he has been charged or informed that he may be prosecuted. Such questions may be put where they are necessary for the purpose of preventing or minimising harm or loss to some other person or to the public or for clearing up an ambiguity in a previous answer or statement.

Before any such questions are put the accused should be cautioned in these terms:

“I wish to put some questions to you about the offence with which you have been charged (or about the offence for which you may be prosecuted). You are not obliged to answer any of these questions, but if you do the questions and answers will be taken down in writing and may be given in evidence.”

Any questions put and answers given relating to the offence must be contemporaneously recorded in full and the record signed by that person or if he refuses by the interrogating officer.

- (c) When such a person is being questioned, or elects to make a statement, a record shall be kept of the time and place at which any questioning or statement began and ended and of the persons present.

IV. All written statements made after caution shall be taken in the following manner:

- (a) If a person says that he wants to make a statement he shall be told that it is intended to make a written record of what he says. He shall always be asked whether he wishes to write down himself what he wants to say; if he says that he cannot write or that he would like someone to write it for him, a police officer may offer to write the statement for him. If he accepts the offer the police officer shall, before starting, ask the person making the statement to sign, or make his mark to, the following:

“I,, wish to make a statement. I want someone to write down what I say. I have been told that I need not say anything unless I wish to do so and that whatever I say may be given in evidence.”

- (b) Any person writing his own statement shall be allowed to do so without any prompting as distinct from indicating to him what matters are material.
- (c) The person making the statement, if he is going to write it himself, shall be asked to write out and sign before writing what he wants to say, the following:

“I make this statement of my own free will. I have been told that I need not say anything unless I wish to do so and that whatever I say may be given in evidence.”

- (d) Whenever a police officer writes the statement, he shall take down the exact words spoken by the person making the statement, without putting any questions other than such as may be needed to make the statement coherent, intelligible and relevant to the material matters: he shall not prompt him.
- (e) When the writing of a statement by a police officer is finished the person making it shall be asked to read it and to make any corrections, alterations or additions he wishes. When he has finished reading it he shall be asked to write and sign or make his mark on the following certificate at the end of the statement:

“I have read the above statement and I have been told that I can correct, alter or add anything I wish. This statement is true. I have made it of my own free will.”

- (f) If the person who has made a statement refuses to read it or to write the above mentioned certificate at the end of it or to sign it, the senior police officer present shall record on the statement itself and in the presence of the person making it, what has happened. If the person making the statement cannot read, or refuses to read it, the officer who has taken it down shall read it over to him and ask him whether he would like to correct, alter or add anything and to put his signature or make his mark at the end. The police officer shall then certify on the statement itself what he has done.

V. If at any time after a person has been charged with, or has been informed that he may be prosecuted for an offence a police officer wishes to bring to the notice of that person any written statement made by another person who in respect of the same offence has also been charged or informed that he may be prosecuted, he shall hand to that person a true copy of such written statement, but nothing shall be said or done to invite any reply or comment. If that person says that he would like to make a statement in reply, or starts to say something, he shall at once be cautioned or further cautioned as prescribed by rule III(a) .

VI. Persons other than police officers charged with the duty of investigating offences or charging offenders shall, so far as may be practicable, comply with these rules.

SCHEDULE 2

(Section 180)

PROVISIONS FOR PERSONS SUBJECT TO SERVICE LAW, ETC

Interpretation

1. In this Schedule—

“civilian subject to service discipline” has the meaning given in the Armed Forces Act 2006^(a);

“service policeman” has the meaning given in the Armed Forces Act 2006;

“subject to service law” must be construed in accordance with the Armed Forces Act 2006.

Power of court to draw inferences from silence of defendant

2.—(1) This paragraph applies where, in criminal proceedings for an offence brought against a defendant who is subject to service law or is a civilian subject to service discipline, evidence is given that the defendant—

- (a) on being questioned under caution by a service policeman trying to discover whether or by whom the offence was committed, failed to mention a relevant fact; or
- (b) in the case of a defendant who is subject to service law, on being informed by a service policeman that the defendant will be reported for the offence, failed to mention a relevant fact.

(2) In this paragraph, a “relevant fact” means a fact which—

- (a) is relied on by the defendant in his or her defence in the proceedings; and
- (b) in the circumstances existing at the time, the defendant could reasonably have been expected to mention when so questioned or informed.

(3) The court, in determining whether there is a case to answer or whether the defendant is guilty of the offence, may draw such inferences from the failure as appear proper.

(4) Evidence tending to establish the failure may be given before or after evidence tending to establish the relevant fact or as otherwise directed by the court.

(5) This paragraph does not—

- (a) prejudice the admissibility in evidence of the silence or other reaction of the defendant in the face of anything said in the defendant’s presence relating to the conduct in respect of which the defendant is charged, in so far as such evidence would be admissible apart from this paragraph;
- (b) preclude the drawing of an inference from any such silence or other reaction of the defendant that could properly be drawn apart from this paragraph.

Statements made under Police and Criminal Evidence Act 1984

3. If a statement made to a service policeman by a person subject to service law or a civilian subject to service discipline is proved to have been made voluntarily in accordance with the Police and Criminal Evidence Act 1984^(b) (as applied to the armed forces by order made from time to time under section 113 of that Act), the statement is admissible in evidence in criminal proceedings against the person making the statement.

(a) 2006 c. 52 (UK).

(b) 1984 c. 60 (UK).

SCHEDULE 3

(Section 183)

CONSEQUENTIAL AMENDMENTS

PART 1

Ordinances amended

Contempt of Court Ordinance 2008 amended

1.—(1) The Contempt of Court Ordinance 2008(a) is amended as follows.

(2) For paragraph 8 of the Schedule (times when proceedings are active) for “if an order is made under section 70 (insanity of accused) Criminal Procedure Ordinance” substitute “if the court is satisfied, in accordance with section 101 (defendants incapable of following proceedings by reason of mental disorder) of the Criminal Procedure Ordinance 2016(b), that the defendant is incapable of following the proceedings by reason of a mental disorder”.

~~Control (Entry, Settlement and Commercial Enterprises) Ordinance 1960 amended~~

~~**2.**—(1) The Control (Entry, Settlement and Commercial Enterprises) Ordinance(c) is amended as follows:~~

~~(2) After section 24 (legal proceedings) insert—~~

~~**“Control officer’s powers of arrest**~~

~~**25.** Where a control officer exercises a power of arrest, sections 16 (arrest) and 17 (search of arrested person) of the Criminal Procedure Ordinance 2016(d) apply as if any reference in those provisions to a police officer were a reference to a control officer.”. (e)~~

Control of Violence in Sports Grounds Ordinance 2009 amended

3.—(1) The Control of Violence in Sports Grounds Ordinance 2009(f) is amended as follows.

(2) In section 5 (closed-circuit monitoring system) in subsection (1)(b) for “, subject to the provisions of section 6 of the Criminal Procedure Ordinance,” substitute “in accordance with section 15 of the Criminal Procedure Ordinance 2016 (notice to produce documents)(g)”.

(3) In section 53(h) (offences by bodies corporate and unincorporated) in subsection (4) for “section 72 of the Criminal Procedure Ordinance” substitute “section 82 of the Criminal Procedure Ordinance 2016 (appearance and plea by corporate body)(i)”.

Criminal Legal Services Ordinance 2005 amended

4.—(1) The Criminal Legal Services Ordinance 2005(a) is amended as follows.

-
- (a) Ordinance 9/2008.
(b) Ordinance 9/2016.
(c) Ordinance 5/60.
(d) Ordinance 9/2016.
(e) Repealed by Ordinance 34/2020 – came into force on 12 October 2020
(f) Ordinance 10/2009.
(g) Ordinance 9/2016.
(h) Section 53 was substituted by Ordinance 1/2014.
(i) Ordinance 9/2016.

(2) In section 3 (legal aid) in subsection (1) for “section 24 of the Criminal Procedure Ordinance” substitute “section 30 of the Criminal Procedure Ordinance 2016 (power to remand in police custody, etc)(b)”.

(3) In section 4 (advocate appointed by the court) for “Without prejudice to section 64 of the Criminal Procedure Ordinance, where” substitute “Where”.

(4) In section 10 (offences and penalties) in subsection (3) for “Criminal Procedure Ordinance” substitute “Criminal Procedure Ordinance 2016(c)”.

Firearms and Other Weapons Ordinance 2009 amended

5.—(1) The Firearms and Other Weapons Ordinance 2009(d) is amended as follows.

(2) In section 5(e) for subsection (3)(c) substitute—

“(c) has not been found to be incapable of following criminal proceedings by reason of a mental disorder under section 101 of the Criminal Procedure Ordinance 2016 (defendants incapable of following proceedings by reason of mental disorder)(f) or been acquitted on grounds of insanity under section 102 (acquittal on grounds of insanity) of that Ordinance; and”.

(3) In section 12 (gun dealers) for subsection (5)(d) substitute—

“(d) has not been found to be incapable of following criminal proceedings by reason of a mental disorder under section 101 of the Criminal Procedure Ordinance 2016 (defendants incapable of following proceedings by reason of mental disorder)(g) or been acquitted on grounds of insanity under section 102 (acquittal on grounds of insanity) of that Ordinance;”.

Fish Farming Ordinance 2001 amended

6.—(1) The Fish Farming Ordinance 2001(h) is amended as follows.

(2) In section 17 (seized items) in subsection (4)(i) for “section 32 of the Criminal Procedure Ordinance (which relates to detention or disposal of things seized under search warrant)” substitute “section 46 of the Criminal Procedure Ordinance 2016 (disposal of seized items)(j)”.

Fixed Penalty Ordinance 2010 amended

7.—(1) The Fixed Penalty Ordinance 2010(k) is amended as follows.

(2) In section 2 (interpretation) for the definition of “investigating officer” substitute—

““investigating officer” means a person authorised to investigate into the commission of an offence in accordance with section 11(2) of the Criminal Procedure Ordinance 2016 (investigating officers)(l);”.

Immovable Property (Transfer and Mortgage) Ordinance 1966 amended

8.—(1) The Immovable Property (Transfer and Mortgage) Ordinance 1966(a) is amended as follows.

-
- (a) Ordinance 17/2005.
 - (b) Ordinance 9/2016.
 - (c) Ordinance 9/2016.
 - (d) Ordinance 21/09.
 - (e) Section 5 was amended by Ordinance 29/2013.
 - (f) Ordinance 9/2016.
 - (g) Ordinance 9/2016.
 - (h) Ordinance 18/2001.
 - (i) Section 17(4) was added by Ordinance 12/2003.
 - (j) Ordinance 9/2016.
 - (k) Ordinance 25/2010.
 - (l) Ordinance 9/2016.

(2) In paragraph 14 of Part 1 of Schedule 1 (encumbrances) for “sections 120 or 164 of the Criminal Procedure Ordinance” substitute “section 125 of the Criminal Procedure Ordinance 2016 (judge may issue warrant of execution or warrant of committal)(b)”.

Interpretation Ordinance 2012 amended

9.—(1) The Interpretation Ordinance 2012(c) is amended as follows.

(2) In paragraph 2 of Schedule 2 (interpretation of colonial legislation) omit the row in the table which begins “Criminal Procedure Ordinance”.

Mental Patients Ordinance amended

10.—(1) The Mental Patients Ordinance(d) is amended as follows.

(2) In section 2 (interpretation) for the definition of “criminal mental patient” substitute—

““criminal mental patient” means a person whom the court orders to be detained during the Administrator’s pleasure under section 103(2)(b) of the Criminal Procedure Ordinance 2016 (powers of court, etc to deal with persons incapable of following proceedings by reason of mental disorder or acquitted on grounds of insanity)(e);”.

Notification of Sexual Offences Ordinance 2008 amended

11.—(1) The Notification of Sexual Offences Ordinance 2008(f) is amended as follows.

(2) In the Schedule for “section 70 of the Criminal Procedure Ordinance” in each place it appears substitute “section 102 of the Criminal Procedure Ordinance 2016 (acquittal on grounds of insanity)(g)”.

Police Ordinance 2007 amended

12.—(1) The Police Ordinance 2007(h) is amended as follows.

(2) Omit section 22 (power to inspect licences and search means of conveyance).

Probation and Other Non-Custodial Sentences Ordinance 2006 amended

13.—(1) The Probation and Other Non-Custodial Sentences Ordinance 2006(i) is amended as follows.

(2) In section 12 (further provisions relating to probation) for “sections 158 to 164 of the Criminal Procedure Ordinance” substitute “sections 156, 158, 159 and 163 to 166 of the Criminal Procedure Ordinance 2016(j)”.

Protection of Witnesses Ordinance 2005 amended

14.—(1) The Protection of Witnesses Ordinance 2005(k) is amended as follows.

-
- (a) Ordinance 16/1966.
 - (b) Ordinance 9/2016.
 - (c) Ordinance 8/2012.
 - (d) Cap. 252, Laws of Cyprus, 1959 ed. Legislation of the former colony of Cyprus has effect in the Areas by virtue of article 5 of the Sovereign Base Areas of Akrotiri and Dhekelia Order in Council 1960 (S.I. 1960 No. 1369, amended by S.I. 1966 No. 1415). Schedule 2 to the Interpretation Ordinance 2012 provides for the interpretation of such legislation
 - (e) Ordinance 9/2016.
 - (f) Ordinance 17/2008.
 - (g) Ordinance 9/2016.
 - (h) Ordinance 6/2007.
 - (i) Ordinance 14/2006.
 - (j) Ordinance 9/2016.
 - (k) Ordinance 4/2005.

(2) In section 16 (criminal offences) for “under section 176 of the Criminal Procedure Ordinance to make Rules of Court for the better carrying out of that Ordinance” substitute “under section 182 of the Criminal Procedure Ordinance 2016 (rules of court)(a)”.

Violence in the Family Ordinance 2003 amended

15.—(1) The Violence in the Family Ordinance 2003(b) is amended as follows.

(2) In section 6(c) (appointment of family counsellors) in subsection (4) for “section 5(1) of the Criminal Procedure Ordinance” substitute “section 12(1) of the Criminal Procedure Ordinance 2016 (statements)”.

(3) In section 13 (examination of person who has given visually recorded evidence) for “section 55 of the Criminal Procedure Ordinance” substitute “section 90 of the Criminal Procedure Ordinance 2016 (evidence of witness to be on oath or affirmation)(d)”.

(4) In section 15 (warrant, arrest, remand and speedy trial) in subsection (2) for “section 24 of the Criminal Procedure Ordinance” substitute “section 30 of the Criminal Procedure Ordinance 2016 (power to remand in police custody, etc)”.

Water (Integrated Management of Water Resources) Ordinance 2014 amended

16.—(1) The Water (Integrated Management of Water Resources) Ordinance 2014(e) is amended as follows.

(2) In section 112 (offences and penalties) in subsection (5) for “Criminal Procedure Ordinance” substitute “Criminal Procedure Ordinance 2016(f)”.

(3) In section 117 (penalties: further provision) in subsection (2) for “Criminal Procedure Ordinance” substitute “Criminal Procedure Ordinance 2016”.

(4) In section 137 (Criminal Procedure Ordinance) for “Section 88 of the Criminal Procedure Ordinance” substitute “Section 52 of the Criminal Procedure Ordinance 2016 (limitation period for certain offences)”.

PART 2

Public instruments amended

Control of Violence in Sports Grounds (Stewards) Regulations 2014 amended

17.—(1) The Control of Violence in Sports Grounds (Stewards) Regulations 2014(g) are amended as follows.

(2) In regulation 11 in subsection (5) for “section 15 (arrest by private person and owner of property without warrant) of the Criminal Procedure Ordinance” substitute “section 22 of the Criminal Procedure Ordinance 2016 (arrest without warrant: general)(h)”.

(a) Ordinance 9/2016.
(b) Ordinance 21/2003.
(c) Section 6 was amended by Ordinance 21/06.
(d) Ordinance 09/2016.
(e) Ordinance 16/2014.
(f) Ordinance 9/2016.
(g) Public instrument 1/2014.
(h) Ordinance 9/2016.

SCHEDULE 4

(Section 184)

TRANSITIONAL PROVISIONS

Accused insane and incapable of following proceedings: inquiry directed before Ordinance comes into force

1.—(1) This paragraph applies where, before this Ordinance comes into force, the court directs an inquiry under section 70(1) of the Criminal Procedure Ordinance^(a) with a view to ascertaining whether an accused is insane and incapable of following the proceedings.

(2) If the inquiry has not concluded before the day on which this Ordinance comes into force, the inquiry must be treated as having been directed under section 101 of this Ordinance (defendant incapable of following proceedings by reason of mental disorder); and accordingly that section and other relevant provisions of this Ordinance apply.

Appeals brought before Ordinance comes into force: previous law applies

2. Where a person gives notice of appeal, or applies for leave to appeal, under Part 5 of the Criminal Procedure Ordinance before the date on which this Ordinance comes into force, the appeal, or as the case may be application, must be determined as if that Ordinance had not been repealed by this Ordinance.

Previous rules of court continue to have effect

3.—(1) Despite the repeal of the Criminal Procedure Ordinance^(b), rules of court made under that Ordinance which are in force immediately before this Ordinance comes into force, remain in force until and unless they are revoked.

(2) Such rules have effect for matters and proceedings under this Ordinance with such modifications that may be necessary to carry into effect this Ordinance.

(a) Cap. 155, Laws of Cyprus, 1959 ed. Legislation of the former colony of Cyprus has effect in the Areas by virtue of article 5 of the Sovereign Base Areas of Akrotiri and Dhekelia Order in Council 1960 (S.I. 1960 No. 1369, amended by S.I. 1966 No. 1415). Schedule 2 to the Interpretation Ordinance 2012 provides for the interpretation of such legislation.

(b) Cap. 155.

SCHEDULE 5
REPEALS AND REVOCATIONS

(Section 185)

PART 1

Ordinances repealed

1. The Criminal Procedure Ordinance.
2. The Criminal Procedure (Amendment) Ordinance 1960**(a)**.
3. The Criminal Procedure (Amendment) Ordinance 1963 **(b)**.
4. The Criminal Procedure (Amendment) Ordinance 1966**(c)**.
5. The Criminal Procedure (Amendment) Ordinance 1972**(d)**.
6. The Criminal Procedure (Amendment) Ordinance 1973**(e)**.
7. The Criminal Procedure (Amendment) Ordinance 1975**(f)**.
8. The Criminal Procedure (Amendment) Ordinance 1978**(g)**.
9. The Criminal Procedure (Amendment) Ordinance 1979**(h)**.
10. The Criminal Procedure (Amendment) Ordinance 1987**(i)**.
11. The Criminal Procedure (Amendment) Ordinance 1992**(j)**.
12. The Criminal Procedure (Amendment) Ordinance 1996**(k)**.
13. The Criminal Procedure (Amendment) Ordinance 1997**(l)**.
14. The Criminal Procedure (Amendment) Ordinance 1999**(m)**.
15. The Criminal Procedure (Amendment) Ordinance 2003**(n)**.
16. The Criminal Procedure (Amendment) (No. 2) Ordinance 2003**(o)**.
17. The Criminal Procedure (Amendment) Ordinance 2004**(p)**.
18. The Criminal Procedure (Amendment) Ordinance 2010**(q)**.

-
- (a) Ordinance 4/1960.
(b) Ordinance 19/1963.
(c) Ordinance 1/1966.
(d) Ordinance 2/1972.
(e) Ordinance 2/1973.
(f) Ordinance 10/1975.
(g) Ordinance 4/1978.
(h) Ordinance 11/1979.
(i) Ordinance 22/1987.
(j) Ordinance 4/1992.
(k) Ordinance 8/1996.
(l) Ordinance 1/1997.
(m) Ordinance 27/1999.
(n) Ordinance 17/2003.
(o) Ordinance 43/2003.
(p) Ordinance 34/2004.
(q) Ordinance 12/2010.

- 19.** The Criminal Procedure (Amendment) Ordinance 2012**(a)**.
- 20.** The Criminal Procedure (Amendment) Ordinance 2013**(b)**
- 21.** The Criminal Procedure (Customs and Immigration) Ordinance 2013**(c)**.
- 22.** The Criminal Procedure (Amendment) Ordinance 2014**(d)**.

PART 2

Public instruments revoked

- 23.** Public instrument 41 of 2003 (revocation of authorisation under section 4 of the Criminal Procedure Ordinance).
- 24.** The Criminal Procedure (Revocation of Authorisations) Notice 2009**(e)**.

(a) Ordinance 18/2012.
(b) Ordinance 2/2013.
(c) Ordinance 23/2013.
(d) Ordinance 13/2014.
(e) Public instrument 3/2009.

EXPLANATORY NOTE

(This note is not part of the Ordinance)

1. This explanatory note relates to the Criminal Procedure Ordinance 2016 (the “Ordinance”). It has been prepared by the Office of the Attorney-General and Legal Adviser in order to assist the reader of the Ordinance.
2. The Ordinance consolidates and amends the law relating to criminal procedure by repealing and replacing the Criminal Procedure Ordinance (Cap. 155). It is divided into 10 Parts:
 - Part 1 (preliminary)
 - Part 2 (overriding objective)
 - Part 3 (investigating offences, etc)
 - Part 4 (proceedings)
 - Part 5 (execution and recovery of penalties)
 - Part 6 (appeals)
 - Part 7 (bail)
 - Part 8 (costs)
 - Part 9 (return of property, etc)
 - Part 10 (miscellaneous).
3. The principal changes made by the Ordinance are as follows:
 - (i) a new overriding objective to deal with criminal cases justly, and as a result, new powers of the court to manage cases, and new duties on the court and all people taking part in criminal cases (sections 8 to 10 and 65 to 70);
 - (ii) provision for interviews carried out by police and other investigating officers to be audio recorded or visually recorded (section 13);
 - (iii) new provisions about the carrying out of intimate searches (section 18);
 - (iv) new rights to appeal against a decision on whether a person should be remanded in police custody (sections 31 and 32);
 - (v) new circumstances in which the police may arrest a person without a warrant (section 21);
 - (vi) new provisions about the treatment of defendants who have a mental disorder in criminal proceedings (sections 101 to 103);
 - (vii) priority given to compensation payments when financial penalties are paid in instalments or only partially recovered (section 124);
 - (viii) change in requirement for permission to appeal against conviction or sentence (section 135);
 - (ix) a new right to bail in certain circumstances (section 153);
 - (x) amendments to other legislation to make changes as a consequence of this Ordinance (Schedule 3).
4. Other Ordinances relevant to criminal procedure include:
 - Computer Misuse Ordinance 2010
 - Criminal Legal Services Ordinance 2005
 - Criminal Procedure (Disclosure) Ordinance 2007
 - Evidence Ordinance 2010
 - Juvenile Offenders Ordinance (Cap. 157)
 - Notification of Sexual Offences Ordinance 2008

- Police (Detainees and Volunteers) Ordinance 2007
 - Probation and Other Non-Custodial Sentences Ordinance 2006
 - Protection of Witnesses Ordinance 2005
 - Rehabilitation of Offenders Ordinance 2009
 - Suspended Sentences of Imprisonment Ordinance 1976
 - Violence in the Family Ordinance 2003.
5. The following table indicates where to find provisions in this Ordinance which deal with the same subject matter as the provisions in the previous Criminal Procedure Ordinance (Cap 155) and in section 22 of the Police Ordinance 2007.

CRIMINAL PROCEDURE ORDINANCE (CAP 155)		
Section number in previous Ordinance	Previous Section Heading	Provision in new Ordinance which deals with equivalent subject matter
1.	Short title	1
2.	Interpretation	3
3.	Law of England where applicable	7
4.	Investigating Officers	11
5.	Investigation of Offences	12
5A.	Power of Court to draw inferences from silence of accused	Schedule 2, para. 2
5B.	Admissibility of statements made under Police and Criminal Evidence Act 1984	Schedule 2, para. 3
6.	Order to produce documents	15
7.	Governor may require production of telegrams	No equivalent
8.	Application of Judge's Rules	14
9.	Arrest	16
10.	Search of arrested person	17
11.	Search of place in pursuit of person evading arrest	19
12.	Power to break out of any house for purpose of liberation	20
13.	Arrested persons to be taken to police station or place for reception of arrest persons	Previously repealed (this subject matter is now in sections 5 and 8 of Police (Detainees and Volunteers) Ordinance 2007).
14.	Arrest by police officer without warrant in certain cases	21
15.	Arrest by private person and owner of property without warrant	22
16.	Arrest by or under directions of Judge	No equivalent
17.	Disposal of person arrested without warrant	23
18.	Issue of warrant of arrest	24
19.	Forms, contents and duration of warrant of arrest	25
20.	Irregularities in warrant	26
21(1), (2) and (4)	Execution of warrant and procedure thereon	27
21(3)		28
22.	Procedure on arrest of person outside local jurisdiction	Previously repealed
23.	Power to release person arrested on warrant of arrest	29
24.	Remand in police custody	30
25(1)(a)	Search of person and place without warrant	33
25(1)(b)		34

25(2)		36
25A.	Power to enter and search dwelling houses without warrant	34
26(1)	Power to search means of conveyance	35
26(2)		36
26(3)		44
27.	Search warrant	37
28.	Forms and duration of search warrant	38
29.	Execution of search warrant	39
30(1) and (2)	Ingress to a closed place	43
30(3)		40
31.	Discharge of suspected occupier or other person	41
32.	Detention or disposal of things seized under search warrant	46
33.	Seizure of property not mentioned in the warrant	42
34.	Power of Judge as to documents or things possession of which is unlawful	46
35.	Persons convicted or acquitted not to be tried again for same offence	48
36.	Civil Remand not to be suspended	49
37.	Commencement by charge	55
38.	Form of charge	56
39.	Provisions regarding the framing of charges	57
40.	Joinder of counts in charges and power of Court	58
41.	Joinder and trial of persons	59
42.	Manner in which parties to offences may be charged	60
43.	Filing of charge	No equivalent
44.	Summons or warrant for compelling attendance	61
45.	Form and contents of summons	62
46.	Service of summons	63
47.	On trial, Court to acquit or convict	88
48.	Adjournment and remand in custody	64
49.	Issue of summons for witness	72
49(1) Second proviso		73
50.	Warrant for witness	72
51.	Witness to attend adjourned hearing	74
52.	Penalty for witness refusing to attend	75
53.	Summoning prisoner, etc. as witness	76
54.	Power to call or re-call witnesses	89
55.	Evidence to witness to be an oath or affirmation	90
56.	Order of examination of witnesses	91
57.	Cross-examination of witnesses by co-accused	92
58.	Refractory witnesses	93
59.	Dumb witnesses	94
60.	Court may order payment for the costs and expenses of witnesses	171
61.	Taking evidence by commission	97
62.	Pleading to charge or information	77
63.	Presence of accused during trial	83
64.	Assignment of advocate by Court	No equivalent
65.	Interpretation of evidence to accused	98
66.	Objection to charge or information	78

67.	Pleas by accused	79
68.	Plea of guilty or not guilty	79
69.	Special pleas	80
70.	Insanity of accused	101, 102, 103
71.	Pleading to charge of previous convictions	81
72.	Appearance and plea by corporation	82
73.	Witnesses to leave court during hearing	84
74.	Hearing of the case	85
75.	Procedure at trial of more persons than one	86
76.	Cross-examination by co-accused	87
77(1), (3) (excluding proviso) and (4).	Acquittal or conviction	88
77(2) and proviso to (3)		108
78.	Allocutus	116
79.	Motion in arrest of judgement	109
80.	Sentence	117
80A.	Taking into account previous convictions in member States	119
81.	Outstanding offences	118
82.	Variances	110
83.	Alteration of defective charge or information	104
84.	Procedure on alteration of charge or information	105
85.	Proof of part of charge or information	106
86.	Quashing of charge or information	107
87.	View of locus	99
88.	Limitation of time for charges in summary trials in certain cases	52
89.	Proceedings on non-appearance of accused or prosecutor	71
90.	Offences proving unsuitable summary trial	Previously repealed
91.	Withdrawal of charge	111
92.	Preliminary inquiry to be held for offences not triable summarily	Previously repealed
93.	Procedure in preliminary inquiries	Previously repealed
94.	Conflict of evidence	Previously repealed
95.	Committal of corporation	Previously repealed
96.	Depositions may be read as evidence in certain cases	Previously repealed
97.	Taking deposition of witness who is ill etc.	Previously repealed
98.	Depositions may be read as evidence in certain cases	Previously repealed
99.	Binding over of witnesses	Previously repealed
100.	Conditional binding over of witnesses	Previously repealed
101.	Transmission of record of preliminary inquiry	Previously repealed
102.	Accused to have copy of dispositions, etc. on payment	Previously repealed
103.	Power of Judge to try summarily during course of preliminary inquiry	Previously repealed
104.	Preliminary inquiry may be continued by other Judge	Previously repealed
105.	Transfer of case where offence committed outside jurisdiction	Previously repealed
106.	Committal for trial without a preliminary inquiry	Previously repealed
107.	Trials upon information, summaries of evidence	95
107A.	Special provisions in relation to notice of trial and summaries of evidence	95

108.	Information may charge accused with any offence disclosed in depositions	Previously repealed
109.	Form of information	No equivalent
110.	Section 40, 41 and 42 apply to informations	No equivalent
111.	Additional Witnesses	96
112.	Mode of delivering judgment	112
113.	Contents of judgement	113
114.	Delivery of judgment by another Judge in certain cases	114
115.	Copy of judgement to accused	115
116.	Notes of evidence and report to be forwarded to the Governor in certain cases	120
117.	Commencement of sentence of imprisonment	121
118.	Payment of penalty	122
119.	Interrogation of person as to his means	123
120.	Warrant for levy of penalty	126
121.	Manner of execution of warrants	126
122.	Claim on property taken in execution	127
123.	Commitment to prison	129
124.	Commitment in lieu of warrant of execution	No equivalent
125.	Payment after commitment	130
126.	Application of sum received under warrant	124
127.	Reduction of period of imprisonment on part payment of penalty	131
128.	Period of imprisonment in case of commitment	132
129.	Detention after warrant of execution	128
130.	Orders by Assize Court	Previously repealed
131.	No appeals in criminal cases except as provided for	133
132.	Appeals from Judge's Court against conviction	135
133.	Appeal from District Court against Conviction	Previously repealed
134.	Extension of time of notice of appeal, etc.	135
135.	Appeal after plea of guilty	136
136.	No appeal against imprisonment in certain cases	137
137.	Appeal by Attorney-General	139
138.	Form of notice and of application for leave to appeal	138
139.	Procedure on receipt of notice of, or application for leave to, appeal	No equivalent
140(1), (2) and (4).	Procedure on receipt of file of proceedings	141
140(3)		No equivalent
141(1) and (2)	Fixing date of hearing of appeal and notice thereof	142
141 (3)		No equivalent
142.	Abandonment of appeal or application for leave to appeal	143
143(1)-(4)	Procedure on hearing the appeal	144
143(5)		140
144.	Senior Judge's Court not to hear any party except on grounds of appeal	145
145(1)-(2)	Power of Supreme Court Senior Judge's Court in determining appeal	146
145(3)		147
146.	Supplementary power of Senior Judge's Court during hearing of appeal	148
147.	Power of Senior Judge's Court as to commencement of suspension of sentence, etc.	149
148.	Question of law reserved for opinion of Senior Judge's	150

	Court	
149.	Stating case by Judge for opinion of Senior Judge's Court	151
150.	Notices, etc. left at address named	54
151(1)	Costs on appeal	174
151(2)		175
152.	Judgement to be entered in book, etc.	No equivalent
153.	No judgement to be reversed on appeal on point of form or matter of variance, unless objection taken at trial	134
154.	Nolle prosequi in criminal cases	51
155.	Power of Attorney-General to remit case to lower Court	Previously repealed
156.	Delegation of powers by Attorney-General	181
157(1) and (5)	Release on bail	152
157(2)		160
157(3)		154
157(4)		155 (in part)
157ZA.	Defence appeal against withholding of bail	161
157ZB.	Prosecution appeal against grant of bail	162
157A.	Forfeiture of security	167
158.	Bail bond	163
159.	Power to increase bail and to order sufficient sureties	158
160.	Person on bail about to leave Colony	159
161.	Release of person in custody and warrant of deliverance	156
162.	Discharge of sureties	164
163.	Death of surety	165
164.	Forfeiture of bail bond and procedure thereon	166
165.	Certain provisions to apply to recognisances	179
166(1)	Costs, how to be paid	168
166(2)		175
166(3)		No equivalent
167.	Costs of witnesses for defence	171
168.	Payment of costs by accused	169
169.	Award of costs to accused	170
170.	Disposal of property in possession of police	176
171.	Restitution of property	177
172.	Restoration of possession of immovable property	178
173.	Notes of evidence	100
174.	Change of place of trial	Previously repealed
175.	General power of Courts to regulate proceedings	53
176.	Rules of Court	182, Schedule 4 para. 2
177.	Senior Judge, Senior Judge's Court or Judge's Court may exercise certain powers while absent from the Areas	Previously repealed
Police Ordinance 2007 (Ordinance 6/07)		
22(1)(a)	Power to members of the Service to inspect licences and search means of conveyance	33
22(1)(b)		35
22(2)		21(2)(d)
22(3), (4)		44(8), (9)
22(5), (6)		21, 44

SBA/AG/CR/152

Published by the Sovereign Base Areas Administration
The Sovereign Base Areas Gazette may be viewed on the official Sovereign Base Areas Administration
web site: <http://sbaadministration.org/>