

20[ ]

## CRIMINAL PROCEDURE RULES

S.R.O

## Country X

STATUTORY RULES AND ORDERS No. of 20[ ].

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CRIMINAL PROCEDURE

S.R.O

**Country X**

STATUTORY RULES AND ORDERS No.        of 20[ ].

## RULES

MADE by the Chief Justice under section [x] of the [Relevant Act]

(Gazetted)

**Short title**

0.1. These Rules may be cited as the –

CRIMINAL PROCEDURE RULES 20[ ].

**Interpretation**

0.2. (1) In these Rules unless the context otherwise requires –

“accused” means the person against whom a complaint has been made;

“lawyer” means a person who is admitted and entitled to practice law as a barrister or solicitor in Country X;

“bail” includes bail which is granted –

(a) in or in connection with proceedings for an offence to a person who is accused or convicted of the offence;

(b) in connection with an offence to a person who is under arrest for an offence or for whose arrest for the offence a warrant endorsed for bail is issued; or

(c) under any enactment for the time being in force;

“clerk” includes any person employed –

(a) for any purpose as a clerk;

(b) as a collector of money, including temporarily or part-time;

(c) as a commission agent for the collection or disbursement of money or in any similar capacity;

“company” means a body corporate incorporated under the Companies Act, and includes any partnership or association, whether corporate or unincorporated;

“complaint” includes any information or charge;

“complainant” includes any informant or prosecutor;

“conviction” includes order, or minute or memorandum;

“corporation” does not include a corporation sole;

“Court” except where specifically stated, means the High Court or a Magistrate Court as the case may be, in the exercise of its criminal jurisdiction, and includes the Judge or a Magistrate;

“crime” includes any offence;

“deliver” includes causing a person to receive a thing or permitting a person to take a thing, whether directly or indirectly;

“Criminal Division” means the Criminal Division of the Supreme Court established under the Supreme Court (Criminal Division) Rules;

“Criminal Division Manager” is the proper officer in charge of the Criminal Division;

“document” includes any document in writing whether of a formal or informal character, any disc, tape, sound track or other device on or in which information is recorded or stored by mechanical, electronic or other means;

“fine” includes any pecuniary penalty, forfeiture, or compensation payable under an order;

“guardian” in relation to a child, includes the person who for the time being has charge of, or has control over, such child;

“hybrid offence” means an offence that can be tried summarily or on indictment;  
“indictable offence” means any offence punishable on indictment under any enactment;

“judicial proceeding” includes any civil or criminal trial, and any inquiry or investigation held by a judicial officer in pursuance of any duty or authority;

“Judge” means a Judge of the High Court of Justice;

“juror” includes an alternate juror;

“land” includes any immovable property;

“Magistrate” means a Magistrate appointed under the Constitution;

“offence” is an act, attempt or omission punishable by law;

“officer” in relation to a company or corporation includes any officer, chairman, director, trustee, manager, secretary, treasurer, clerk, auditor, accountant or any other person performing any function in respect of the company;

“order” includes any conviction;

“person” whether expressed or implied as in the word “any person who” or otherwise, includes a body of persons whether corporate or unincorporate; and for the purposes of any provision relating to defrauding a person or to committing any offence against the property of the person, the Government of Country X, or of any other country or state, is deemed to be a person;

“proper officer” includes the Registrar, Clerk of the Magistrate Court, or other officer or person appointed or deputed to perform any particular act or duty;

“property” includes money and all other property, immovable or movable including things in action or other intangible property;

“public officer” or “public official” includes a person employed in the public service;

“public service” means service in a civil capacity of Government;

“send” includes causing, or attempting in any manner to cause a thing to be received by a person;

“sentence” includes an order;

“special defence” includes the defence of duress, automatism, necessity, insanity or any defence tending to affect the question of liability of the accused;

“sum adjudged to be paid by order” includes any compensation or costs adjudged to be paid by the order, the amount of which is fixed by the order;

“summary offence” means any offence punishable on summary conviction before a Court and includes any matter in respect of which a Court can make an order in the exercise of its criminal jurisdiction;

“trust” includes the acquiring, holding, receiving, or having control over, or being in any manner entrusted with, any property for or belonging to another person, including property which belonged to a deceased person at the time of his or her death;

“trustee” -

(a) means a trustee of an express trust created by any deed, will or instrument in writing, or by parol, or otherwise; and

(b) includes -

(i) the heir or personal representative of a trustee, and any other person upon whom the duty of such trust devolves, whether by appointment of a Court or otherwise, and also an executor or administrator; and

(ii) an official manager, assignee, liquidator or other like officer acting under any enactment relating to joint stock companies, bankruptcy or insolvency; and

(iii) the person who acquires, holds, receives, or has control over, or is in any manner entrusted with, any property for or belonging to another person, including property which belonged to a deceased person at the time of his or her death;

“vehicle” includes any car, carriage, cart, wagon, wain, truck, barrow, tricycle, bicycle, or other means of conveyance, irrespective of how drawn or propelled;

“writing” includes typing, printing, lithography, photography or other mode of representing or reproducing words in a visible form;

“young person” means a person who is of or above the age of twelve years and under the age of sixteen years.

## PART I PRACTICE DIRECTIONS

### **Practice directions**

**1.1** A practice direction may be issued in any case where the Chief Justice thinks it is desirable so to do.

### **Publication and effective date of practice directions**

**1.2** (1) Practice directions and any variation or revocation of practice directions must immediately be published in the *Gazette* and displayed and made available in the Office of the Criminal Division.

(2) A practice direction takes effect from the effective date specified in the direction.

### **Compliance with practice directions**

**1.3** Any person to whom a practice direction applies must comply with it.

## PART II RULES OF GENERAL APPLICATION

### **When Court to hear criminal matters**

**2.1** Judges and Magistrates in the Criminal Division shall hear criminal matters between the hours of 9:00 a.m. and 4:30 p.m. Monday to Friday with the exception of statutory holidays, unless otherwise provided by Practice Direction or unless the Chief Justice, the Presiding Judge, or a Judge or Magistrate presiding in any criminal proceeding directs that any matter be heard at any other hour or on any other day.

*Note:* This rule establishes fixed times for the sitting of the Courts for the hearing of matters.

### **Criminal Division deemed always open**

**2.2** (1) The Criminal Division is deemed always open for the —

- (a) filing of any proper paper;
- (b) issuance and return of service;
- (c) making of motions;



(d) entering of orders and judgments; and

(e) transaction of judicial business.

(2) Notwithstanding sub-rule (1), documents filed electronically or otherwise with the Criminal Division after 3:00 p.m. on any day must be dated for and deemed filed on the next following working day.

### **Opening hours of office of the Criminal Division**

**2.3** The Office of the Criminal Division must be open to the public for the filing of documents between 9:00 a.m. and 3:00 p.m. and for the receipt of cash and other payments between the hours of 9:00 a.m. and 2:00 p.m. every Monday to Friday except on statutory holidays.

### **Criminal Division records to be in electronic form**

**2.4** Criminal Division records must be created, entered and maintained electronically to the extent possible.

### **Verbatim records to be made**

**2.5** Official verbatim records of all criminal proceedings must be made on audio recording equipment unless the Presiding Judge, or a Judge or Magistrate presiding in any criminal proceedings directs that the record of any proceedings or any part of proceedings be made by stenographic reporting or other method approved by the Presiding Judge.

### **Courtroom events to be recorded**

**2.6** Courtroom events must be directly entered through computer terminals in the Courtroom and if terminals are not available in the Courtroom, the events shall be recorded on other computers or by other means authorized by the Presiding Judge and shall, as soon as possible thereafter, be entered into the computer system.

### **Copies of orders**

**2.7** Upon payment of the prescribed fee, parties and lawyers in any criminal proceedings shall be provided with copies of any order issued by the Court in the proceedings.

## **Electronic filing**

**2.8** Police officers and other persons may use the electronic filing program in use in the Criminal Division to electronically submit and file, in the format required by the filing program, complaints and any other documents that are required or which may be filed with the Court.

*Note:* Rules 2.4 to 2.8 recognise the modernising of the Eastern Caribbean Supreme Court with the introduction of new technologies.

## **Applications for adjournments**

**2.9** (1) Save in exceptional circumstances, a notice of application for adjournment shall be made in writing, giving reasons for the application, not less than fourteen days prior to the date of the hearing or trial through the Office of the Criminal Division.

(2) Applications for adjournments must be granted only if good cause is shown.

(3) Unless the Court orders otherwise, an accused and any witness who is bound over to appear must appear in Court on the date set for the hearing of an application for adjournment.

*Note:* The overall objective of these Rules is the timely and efficient disposal of cases in the Criminal Division that cannot be achieved by the Court readily granting adjournments without the party requesting the adjournment showing cause.

## **Summary cases - time goals**

**2.10** In consultation with the Judges, Magistrates, lawyers, and others, the Presiding Judge shall establish time goals for the disposition of summary cases in accordance with the Magistrates' Court Pre-Trial Time Limits Guidelines 2003

## **Expedited hearing when virtual complainant about to leave the jurisdiction**

**2.11** (1) The Director of Public Prosecutions or an accused may request an expedited hearing in cases where the virtual complainant, the accused or a witness is not ordinarily resident in Country X or is a resident who is about to leave the jurisdiction without expectation of return.

(2) An expedited hearing should not be granted if the expedited hearing would prejudice the person charged.

### **Jurisdiction starts with service of summons or arrest**

**2.12** The Court has jurisdiction over a person accused of committing an offence immediately when a summons is served on that person or immediately when the person is arrested either with or without warrant.

### **Electronic Transmission of summonses and arrest warrants**

**2.13** (1) The Court may electronically transmit a summons or warrant of arrest to the police by means of a computer or by fax.

(2) A printed copy of a summons or warrant of arrest transmitted according to paragraph (1) is a valid copy.

### **Transmission of summonses and arrest warrants to the Director of Public Prosecutions**

**2.14** The Court shall transmit a copy of every summons and warrant of arrest to the Director of Public Prosecutions and may transmit them electronically.

## PART III COMPLAINTS, SUMMONSES, ARREST

### *Complaints*

#### **Complaint preceding arrest warrant**

**3.1** A complaint shall be made on oath or affirmation by a complainant or a witness on his or her behalf before the Court issues a warrant in the first instance to arrest an accused.

#### **Complaints made by police officers**

**3.2**(1) The general rule is that a complaint by a police officer shall be in writing signed by the officer making the complaint.

(2) A police officer may file a complaint on oath, or in lieu of an oath, may sign a certificate certifying that the statements in the complaint are true to his or her best knowledge and belief and that the officer is aware that wilfully making a false statement in a complaint makes the officer liable to punishment.

(3) A police officer may file a complaint or a complaint on oath or affirmation by transmitting the document electronically to the Office of the Criminal Division and the typewritten name of the officer on the electronic document is deemed to be the

handwritten signature of the officer if accompanied by an authorized password issued by the Criminal Division Manager.

(4) A certificate in lieu of oath made in accordance with this rule is deemed to be equivalent to an oath.

*Note:* This rule permits the police to use available technology to certify the truth of a statement on a complaint or information without having to travel to Court to swear an oath.

### **One accused per complaint**

**3.3** Where there is more than one accused, a separate complaint must be filed with respect to each accused.

### *Summons*

### **Content of summons**

**3.4(1)** A summons shall –

- (a) state briefly the substance of the complaint;
- (b) state the date and time when and the place where the person named in the complaint as a person who has committed or is suspected to have committed an offence is to appear before the Court;
- (c) require the person named in the complaint as a person who has committed or is suspected to have committed an offence to appear before the Court that issued the summons on the date and at the time and place stated in the summons to answer the complaint and be further dealt with according to law; and
- (d) inform that person that a warrant may be issued for his arrest if he or she fails to appear.

(2) A summons shall be signed by the Magistrate or Judge issuing it or must state the name of the Magistrate or Judge issuing it and be authenticated by the signature of any proper officer.

(3) In this rule where a signature is required, an electronic signature incorporated into the document shall satisfy this requirement.

## **Service of summons**

**3.5** (1) A copy of a summons shall be served within forty-five days after the date of the filing of the complaint.

*Note:* This paragraph is intended to assist the Court in managing and controlling its processes.

(2) The Criminal Division Manager shall arrange service of the summons.

(3) A copy of a summons may be served by process servers or police officers upon the person to whom it is directed, by delivering it to him or her personally or by leaving it for him at his last known usual place of abode.

(4) An accused in respect of whom a summons has been issued is deemed to be lawfully served if the summons –

- (a) in the case of the accused being a master or seaman or person employed in any ship or vessel, is left within the hands of a person employed on board the ship or vessel; or
- (b) in the case of the accused being a partnership, company, association, or corporation, is left at their ordinary place of business with a partner, director, secretary, manager, or other official, or if the partnership, company association, or corporation is served in the same manner as if the proceedings were in the civil Court.

(5) A body of trustees may be summoned by serving a summons on any one of them resident in Country X or on their known legal representative.

## **Proof of service of summons**

**3.6**(1) Service of a summons may be proved by a certificate of service appended to or written on the back of a copy of the summons and signed by the person who served the summons.

(2) A certificate of service shall be filed with the Court promptly after service and in any event before any further action is taken on the matter before the Court.

(3) Failure to execute or file a certificate of service does not affect the validity of the service.

(4) The Court may, at any time, allow a certificate of service to be amended or to be filed unless injustice would result.

(5) The Court may receive proof of service by affidavit made before a Magistrate or justice of the peace.

(6) A police officer may file a certificate of service or an affidavit of service electronically.

(7) A police officer who files a certificate of service or an affidavit of service electronically may use a typewritten signature, accompanied by an authorized password registered with and approved by the Court, in lieu of a handwritten signature on the certificate or affidavit.

(8) Subject to paragraph (9), a person who serves a summons shall, unless a certificate of service has been filed with the Court, attend Court at the time and place specified in it for the appearance of the accused, in order, if necessary, to prove service.

(9) Police officers and process servers shall be required to attend in person to prove service of a summons only in cases where no certificate or affidavit of service has been filed and where service is contested.

(10) Where service is contested, the Court may adjourn the hearing and require the attendance of the person who served the summons.

### **Application of rules 3.5 and 3.6 to a witness summons**

**3.7** Rules 3.5 and 3.6 apply *mutatis mutandis* to witness summons.

### *Unexecuted Arrest Warrants*

### **Report on unexecuted arrest warrants**

**3.8** (1) The Criminal Division Manager shall prepare detailed quarterly reports on the status of all warrants of arrest including bench warrants that were issued during that period.

(2) Where there are warrants of arrest that are unexecuted for more than thirty days a Magistrate or the Presiding Judge may enquire of the Commissioner of Police as to the status of the unexecuted warrants.

### **Discharge of arrest warrant**

**3.9** The Court may discharge an unexecuted arrest warrant for good cause shown.

## **Case inactivation**

**3.10** Where a warrant for the arrest of an accused remains unexecuted for a period of 12 months after the date of issue of the warrant, the case will be placed on an inactive list and will be reactivated when the warrant is executed.

## **PART IV BAIL**

### **Bail set when arrest warrant issued**

**4.1(1)** At the time of issuing an arrest warrant, the Judge, Magistrate or justice of the peace, as the case may be, shall set terms and conditions of bail, unless bail is denied, pending the Initial Hearing.

(2) The terms and conditions referred to in sub-rule (1) must be endorsed on the warrant and the officer in charge of the police station to which the accused is taken shall arrange for the release of the accused on bail in accordance with those terms and conditions.

(3) This rule does not apply to cases where the accused is alleged to have committed murder, rape, genocide, high treason, treason or misprision of treason.

### **Review of bail conditions of persons remanded in custody**

**4.2(1)** The Criminal Division Manager shall prepare by the 15<sup>th</sup> day of every month a list of all persons who are remanded in custody because they are unable to satisfy the conditions of bail.

(2) The list referred to in sub-rule (1) must contain for each person listed, the date of their remand, their bail conditions, and a brief summary of bail applications made.

(3) The Presiding Judge shall cause the list referred to in sub-rule (1) to be reviewed by a Judge who may, with or without application being made by or on behalf of the accused, vary the conditions of bail, but no such variation shall impose more onerous conditions.

### **Application for bail**

**4.3 (1)** An application for bail must be made in the prescribed form.

(2) Where an applicant is in custody and is not represented by a lawyer the application must be lodged with the Superintendent of Prisons or other person responsible for the administration of the prison.

(3) The Director of the Correctional Facility or other person referred to in sub-rule (2) who receives a copy of the application must forthwith file the application at the Office of the Criminal Division.

(4) If the applicant is in custody and is represented by a lawyer, the applicant must file the application at the Office of the Criminal Division.

(5) The Office of the Criminal Division must –

- (a) immediately send a copy of the application to the Director of Public Prosecutions;
- (b) fix a date, time and place to hear the application; and
- (c) give notice of the date, time and place to –
  - (i) the applicant;
  - (ii) the Director of Public Prosecutions; and
  - (iii) if the applicant is in custody, the Superintendent of Prisons.

## PART V INITIAL PROCEEDINGS AT CRIMINAL DIVISION

### **Case management of cases**

**5.1(1)** The major stages in the management of summary cases in the Criminal Division are:

- (a) Initial Hearing;
- (b) Pre-trial Case Management Hearing; and
- (c) Trial.

(2) The major stages in the management of indictable cases in the Criminal Division are:

- (a) Initial Hearing;
- (b) Committal Hearing;



- (c) Case Management Hearing;
- (d) Trial Readiness Hearing; and
- (e) Trial.

### **Access to case summary**

**5.2** A prosecutor will serve a case summary on the Court and the accused before the Initial Hearing for indictable cases.

*Note:* This rule encourages early disclosure to assist the accused in his plea.

### **Notice of appearance**

**5.3** At or prior to an Initial Hearing the accused's lawyer may file with the Court a Notice of Appearance on the form provided by the Court.

### **Initial Hearing list**

**5.4 (1)** The Criminal Division Manager shall prepare in advance a list of cases scheduled for each Initial Hearing and may cause a supplementary list to be prepared to include accused persons brought to Court on the same day as their Initial Hearing is held.

(2) A copy of the list shall be sent in hard copy form or electronically to the Director of Public Prosecutions and the Superintendent of Prisons and to other interested persons who request a copy.

### **Initial Hearing**

**5.5(1)** An Initial Hearing in each case shall be conducted by a Magistrate designated by the Presiding Judge.

- (2) An Initial Hearing in summary matters must include –
- (a) verification of the accused's identity and contact information;
  - (b) notice of the accused lawyer's appearance if the accused is represented by a lawyer;
  - (c) reading of the charges to the accused;
  - (d) explanation of the accused's rights;

- (e) consideration of bail;
  - (f) hearing and review of any applications made by the Prosecution or the Accused;
  - (g) explanation of the plea process and taking of the plea; and
  - (h) notification to the accused of the next Court date at which his or her appearance is required.
- (3) At the Initial Hearing in summary matters, the Magistrate may –
- (a) conduct a trial at once if the accused requests an immediate trial and the prosecutor consents; or
  - (b) make an order that copies of witness statements be made available to the accused by a specified time.
- (4) An Initial Hearing in indictable matters must include all the items in sub-rule (2) save for (g) where an indication of plea will be requested of the accused.
- (5) At the Initial Hearing in indictable matters, the Magistrate shall make a scheduling order fixing dates –
- (a) for the Committal Hearing;
  - (b) date for service of the prosecution case;
  - (c) by which a lawyer, whether retained or appointed, must file notice of appearance with the Court, if a notice of appearance has not been filed.
- (6) Nothing in this rule must be construed as preventing an accused from retaining a lawyer at a subsequent stage of the proceedings.
- (7) The Criminal Division shall cause scheduling orders made at the Initial Hearing to be served on the accused, the accused's lawyer and the Director of Public Prosecutions

### **Explanation of rights and other relevant information**

**5.6(1)** At the Initial Hearing, the Magistrate shall inform the accused of the –

- (a) offence charged by reading or causing the charge to be read to the accused in a language that he or she understands;

- (b) right to bail, if any;
- (c) right to retain a lawyer, including the right to request an adjournment to retain a lawyer;
- (d) right to have a lawyer appointed at the expense of the State where applicable;
- (e) right to remain silent, except as to plea and the right to know that any statement made may be used against him;
- (f) right to enter a plea to the charges if summary only or hybrid offences;
- (g) right to trial, if a not guilty plea is entered; and
- (h) right to an interpreter.

(2) Where the accused is charged with an offence triable summarily, the Magistrate shall explain the plea process to the accused, including that –

- (a) the accused has the option to plead either guilty or not guilty;
- (b) if the accused offers a plea of guilty to a summary offence, and the plea is accepted by the Magistrate he will not receive a trial and will be sentenced by the Magistrate receiving the appropriate discount under Rule 5.9;
- (c) if the accused pleads not guilty, the case will be set down for trial and that a scheduling order that includes a projected trial date will be entered.

### **Accepting a guilty plea**

5.7(1) Before accepting a plea of guilty or an indication for indictable offences, the Magistrate shall assure himself, by questioning the accused either personally or, at the discretion of the Magistrate, by calling upon the accused's lawyer to lead the questioning, that –

- (a) the accused committed the offence;
- (b) the plea of guilty or indication of guilt for indictable offences is voluntarily made, and not as a result of any threats or inducements not disclosed on the record; and
- (c) it is made with an understanding of the consequences of the plea.

(2) A Magistrate may refuse to accept a plea of guilty or an indication of a guilty plea for indictable offences if he believes it is not in the interests of justice to do so.

(3) If a plea of guilty or indication of a guilty plea for indictable offences is rejected, no admission made by the accused at that stage of the proceedings is admissible in evidence against the accused at trial.

### **Guilty plea - Indictable cases**

**5.8(1)** Where the accused is charged with an offence triable on indictment, the Magistrate shall explain the plea process to the accused, including that –

- (a) the accused has the option to indicate either a guilty or not guilty plea;
- (b) if the accused indicates a plea of guilty to an indictable offence, and the plea is accepted by the Magistrate he will be sentenced under the early guilty plea scheme whereby the accused will be brought before the High Court for an Early Guilty Plea Hearing at which both arraignment and sentence will take place.
- (c) Cases that plead guilty under the early guilty plea scheme will qualify for the maximum appropriate sentence reduction under Rule 5.9. Cases that plead guilty at later hearings are likely to attract lesser reductions in sentence under Rule 5.9.

(2) The Magistrate will commit the case to an Early Guilty Plea Hearing at the High Court in compliance with the Early Guilty Plea Practice Direction.

(3) A Magistrate will decide whether to order any reports for sentencing having regard to the nature of the case, available resources and applying the procedure in the Early Guilty Plea Scheme

(4) For those matters where the accused indicates a wish to enter the Early Guilty Plea scheme at any stage prior to or after the committal hearing the Early Guilty Plea Scheme Practice Direction procedure will be followed.

### **Sentence Reductions**

**5.9 (1)** Reductions in sentence for a guilty plea will be applied as follows:

- (a) Any accused who does not plead guilty at an Initial Hearing but who pleads guilty at a later hearing will not receive maximum credit for that plea unless a successful submission is made that the Initial Hearing was not the first reasonable opportunity for the accused to have pleaded guilty.

- (b) Cases that are indicated as guilty at the Initial Hearing and an Early Guilty Plea Hearing is requested in accordance with rule 5.8, will qualify for a one third reduction.
- (c) A plea of guilty at the Pre-Trial Case Management Hearing in the Magistrates Court will generally receive a reduction of 25%. Later pleas of guilty will attract less credit.
- (d) A plea of guilty at the Case Management Hearing in the High Court will generally receive a reduction of 25%. Later pleas of guilty will attract less credit.

## PART VI CASE MANAGEMENT

### **Case management: General**

**6.1** The Criminal Division shall actively manage cases and this includes –

- (a) the early identification of real issues;
- (b) the early identification of the needs of witnesses;
- (c) achieving certainty as to what must be done, by whom, and when;
- (d) the early setting of a timetable for the progress of a case;
- (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 participants to co-operate in the progress of the case;
- (h) making use of technology; and
- (i) giving any direction appropriate to the needs of a case as early as possible.

### **The duty of the parties**

**6.2** Each party shall –

- (a) comply with directions given by the Court;

- (b) take every reasonable step to make sure his or her witnesses will attend Court when they are needed;
- (c) promptly inform the Court and the other party or parties of anything that may affect the date of trial or the progress of the case in any way;
- (d) monitor compliance with directions;
- (e) ensure that the Court is kept informed of events that may affect the progress of the case;
- (f) ensure that he or she can be contacted promptly about the case during ordinary business hours;
- (g) act promptly and reasonably in response to communications about the case; and
- (h) if his or her lawyer will be unavailable for a scheduled hearing, appoint a substitute lawyer for the purpose and inform the other party or parties.

### **Case management powers of the Court**

**6.3** (1) The Criminal Division shall give any direction and take any step actively to manage a case unless that direction or step would be inconsistent with any enactment, including these Rules.

- (2) In particular, the Court may –
  - (a) appoint a Case Manager to manage cases;
  - (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 without a hearing;
  - (f) fix, postpone, bring forward, extend or cancel a hearing;
  - (g) shorten or extend (even after it has expired) a time limit fixed by a direction;

(h) require that issues in the case should be 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 Court hearing summary offences may give a direction that applies in the High Court if the case is to continue there.

(4) The High Court may give a direction that applies in a Court hearing summary offences if the case is to continue there.

(5) Any power to give a direction under this Part includes a power to vary or revoke the direction.

## PART VII

### SUMMARY CASE MOVEMENT: FROM INITIAL HEARING TO TRIAL

#### **Scheduling Order and Pre-Trial Case Management Hearing**

7.1 (1) A Scheduling Order required by these Rules to be made at an Initial Hearing shall be made by a Magistrate and must set out the following dates:

- (a) the date by which a retained lawyer must file a Notice of Appearance with the Office of the Criminal Division, if the accused is granted an adjournment to retain a lawyer;
- (b) the date by which the prosecution must make disclosure of their evidence;
- (c) date by which the prosecution must disclose to the accused any material in the possession of the prosecution that they don't intend to use at trial which materially weakens the prosecution case or is exculpatory;
- (d) the date by which the accused must disclose alibi or other special defences;
- (e) the date by which any pre-trial motions must be filed;
- (f) the date of the Pre-Trial Case Management Hearing; and
- (g) the projected trial date.

(2) The Court may hold Pre-Trial Case Management Hearings as required.

## **Monitoring and Follow-up of Scheduling Orders and other cases**

7.2 The Court through a Case Manager shall actively monitor and follow-up on Scheduling Orders in order to keep cases moving on a timely basis and it shall cause to be reviewed on a regular basis all pending cases, to ensure that proper notifications have been given, and other necessary action taken.

## **Pre-Trial Case Management Hearing**

7.3 (1) The purpose of the Pre-Trial Case Management Hearing is to —

- (a) review the status of disclosure of the prosecution evidence;
- (b) discuss trial readiness issues and action to be taken to cure any defects in readiness;
- (c) set out issues to be resolved at trial;
- (d) arrange for mediation or restitution discussions when appropriate;
- (e) discuss plea and sentence reduction possibilities still available in consideration of guilty plea;
- (f) discuss witness lists and the need to summons witnesses;
- (g) discuss any special measures for witnesses;
- (h) Confirm if any material in the possession of the prosecution, that they don't intend to use at trial, which materially weakens the prosecution case or is exculpatory, has been served on the accused
- (i) identify possible scheduling conflicts and ways to resolve them;
- (j) determine whether an interpreter will be needed at trial;
- (k) set a firm trial date;
- (l) set down for hearing by a Magistrate any legal issues that must be resolved prior to trial; and
- (m) set a hearing date before a Magistrate for an accused who so desires to withdraw his or her plea of not guilty and enter a plea of guilty instead.



(2) Unless the Court orders otherwise, a Pre-Trial Case Management Hearing shall be held on the date specified in the Scheduling Order.

(4) The accused, their lawyer, and the prosecutor shall attend the Pre-Trial Case Management Hearing.

### **Disclosure by the prosecution**

7.4 (1) The prosecution shall disclose material under Rule 7.1 (1)(c), unless the Magistrate orders that such material should not be disclosed in the public interest.

(2) Any application for an order under sub-rule (1) may be made *ex parte* with or without notice to the accused depending on the sensitivity of the material concerned.

(2) An accused or his lawyer may make an application to the Court to permit the accused to inspect and copy relevant prosecution material if not made available under Rule 7.1 (1)(c).

### **Disclosure by the accused**

7.5 (1) Where the accused pleads not guilty and will give evidence of a special defence, he shall give notice of such defence to the Court and to the prosecutor by the date fixed by the Magistrate at the Pre-Trial Case Management Hearing and shall make available to the prosecutor, on the date set, any information which might be of material assistance, including:

- (a) the name and address of any witness the accused believes is able to give evidence in support of the special defence if the name and address are known to the accused when the statement is given;
- (b) any information in the possession of the accused which might be of material assistance in finding any such witness, if his or her name and address are not given.

(2) Where the accused intends to plead an alibi, he shall give notice of such defence to the Court and to the prosecutor by the date fixed in the scheduling order and shall make available to the prosecutor, on the date set by the Magistrate at the Pre-Trial Case Management Hearing, information as to the particulars of time and place and of the witnesses by whom he proposes to prove the alibi.

## **Failure to prosecute**

**7.6** The Court will only adjourn any summary case for good reason if the charge has been pending for more than one hundred and eighty days and the delay is not attributable to the accused.

## **PART VIII HYBRID CASES**

### **Procedure**

**8.1** Where a hybrid offence is committed to the High Court for Trial the procedure is the same in all respects as if the offence were to be dealt with throughout the trial as an indictable offence.

**8.2** When a hybrid offence is to be tried summarily, the same procedure applies as if the offence was a summary offence and not an indictable offence, and the provisions of these Rules on summary cases apply.

**8.3** When an accused pleads guilty to a hybrid offence rules 5.7 and 5.9 and the Early Guilty Plea Practice Direction will apply.

**8.4** A conviction for the hybrid offence at the High Court has the same effect as a conviction for the offence on indictment;

**8.5** Where the Court exercises the power to deal with the case summarily, and dismisses the complaint, it shall, if required, deliver to the person charged a copy of the order of dismissal duly certified under the hand of Magistrate and such dismissal has the same effect as an acquittal on a trial on indictment for the offence;

## **PART IX INDICTABLE CASE MOVEMENT: FROM INITIAL HEARING TO COMMITTAL**

### **Indictable Case Cause List**

**9.1** The date of the Initial Hearing of the complaint is the summons return date or a date as soon as possible after arrest unless the accused has not been granted bail in which case, the Initial Hearing must be scheduled for a date within seventy two hours of arrest.

## **Transmission of documents to the Director of Public Prosecutions**

**9.2** (1) At the conclusion of the Initial Hearing for an indictable offence, the Criminal Division Manager shall transmit to the Director of Public Prosecutions copies of relevant documents as requested by the Director of Public Prosecutions.

(2) The Criminal Division Manager shall transmit to the Director of Public Prosecutions a copy of the notice of appearance entered by the accused's lawyer or shall notify the Director of Public Prosecutions if the notice has not been entered in accordance with the scheduling order.

## **Committal Hearing**

**9.3** (1) Within ninety days of the Initial Hearing, or such other reasonable time fixed by order of the Court, a Committal Hearing must be held before a Magistrate, unless sub-rule (2) or (3) applies.

(2) The prosecutor may apply at the Initial Hearing for a Committal Hearing involving any of the following charges to be fixed for a date later than ninety days -

- (a) Armed robbery
- (b) Corruption offences
- (c) Drug trafficking offences
- (d) Firearm offences
- (e) Fraud
- (f) Human trafficking
- (g) Kidnapping
- (h) Manslaughter
- (i) Money laundering
- (j) Murder
- (k) Rape
- (l) Treason
- (m) Wounding with Intent

(3) The prosecutor may also apply at the Initial Hearing for a Committal Hearing involving any of the following charges to be fixed for a date later than ninety days that allege conspiring, procuring, counseling, aiding and abetting or attempting to commit an offence in sub-rule (2).

(4) The prosecutor when making any application under sub-rule (2) or (3) must provide to the Court a proposed date when the Committal Hearing should be fixed in view of any complexities in the matter;

(5) The accused or his lawyer will be able to make representations on the date when the Committal Hearing should be fixed when any application under sub-rule (2) or (3) is made at an Initial Hearing.

(6) When any application is made under sub-rule (2) or (3) the Magistrate will determine the appropriate date for the Committal Hearing balancing the rights of the accused and the representations made by the prosecution.

(7) The prosecutor shall provide to the accused, not less than 14 days before the date of the Committal Hearing, copies of all documents he intends to rely upon for trial.

(8) The accused or his lawyer must notify the Criminal Division Manager seven days before the Committal Hearing if an application will be made to dismiss any indictable offence. There will then be a Contested Committal Hearing.

(9) At a Contested Committal Hearing the prosecution must satisfy the Magistrate that there is *prima facie* evidence that an indictable offence has been committed and that the accused has committed it.

(10) Establishing a *prima facie* case means there must be sufficient evidence served by the prosecution for the Magistrate to find as a matter of law that a jury, taking the evidence in the light most favourable to the prosecution, could return a verdict of guilty against the accused.

(11) At the Contested Committal Hearing a Magistrate shall examine only such evidence as the prosecutor submits including, but not limited to, witness statements and any documentary exhibits.

(12) At the conclusion of the Contested Committal Hearing, lawyer's for the parties may make submissions.

(13) If the Court finds that the prosecution has met its burden at a Contested Committal Hearing, it shall commit the accused to stand trial, and if it finds that the prosecution has not met its burden, it shall discharge the accused.

(14) Where no notice is received by the Criminal Division Manager and the prosecutor, in accordance with sub-rule (8), the Magistrate shall commit the accused to stand trial.

(15) Where an accused is committed to stand trial the Magistrate will fix a Plea and Case Management Hearing at the High Court within thirty days.

(16) All Committal Hearings and Contested Committal Hearings must be attended by the prosecutor, the accused, and his lawyer, if any.

(17) All Committal Hearings and Contested Committal Hearings must be held in open Court unless a provision of any other enactment or these Rules provide otherwise or the circumstances require confidentiality as to certain charges in which event the proceedings will be held in chambers.

### **Written statements at a Contested Committal Hearing**

**9.4** (1) Witness Statements submitted to the Court and used in Contested Committal Hearings are, if the conditions under sub-rule (2) are satisfied, admissible as evidence to the like extent as oral evidence to the like effect by that person but the Magistrate may exclude such evidence if he or she is of the opinion that such evidence ought to be excluded in the interest of justice.

(2) The conditions referred to in sub-rule (1) are that –

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

(3) Any document or object referred to as an exhibit and identified in a written statement tendered in evidence under this rule is treated as if it had been produced as an exhibit and identified by the maker of the statement.

(4) Any vulnerable witness video will be admissible as evidence to the like extent as oral evidence but the Magistrate may exclude such evidence if he or she is of the opinion that such evidence ought to be excluded in the interest of justice.

## **Director of Public Prosecution may prefer or decline to prefer indictment**

**9.5** (1) If the Court commits an accused to stand trial, the Magistrate will fix a date for a Plea and Case Management Hearing in the High Court.

(2) The Director of Public Prosecutions may prefer an indictment or may decline to prefer an indictment after committal from the Magistrates Court.

(3) If the Director of Public Prosecutions declines to prefer an indictment under sub-rule (2), he shall give written notice to the Presiding Judge and the accused.

(4) If the Director of Public Prosecution intends to indict under sub-rule (2), the indictment must be preferred within seven days after the conclusion of the Committal Hearing.

## **Dismissal for delay**

**9.6** (1) If there is unreasonable delay in preferring an indictment, the Presiding Judge may order dismissal of the indictable complaint on his own motion or that of the accused.

(2) The Director of Public Prosecutions must be given notice and an opportunity to be heard before an order dismissing an indictable complaint is made.

## **Signing of indictments**

**9.7** (1) Subject to sub-rules (2) and (3), all indictments shall be signed by the Director of Public Prosecutions or by Crown Counsel acting for him, and a statement on the indictment stating that Crown Counsel is acting for the Director of Public Prosecution is sufficient evidence of that fact.

(2) Where under any enactment any injured party or complainant is entitled to prosecute privately, the indictment shall be signed by that party but not by the Director of Public Prosecutions.

(3) The Criminal Division must not receive an indictment from any private prosecutor unless the –

- (a) indictment has been endorsed by a certificate of the Director of Public Prosecutions to the effect that he has seen the indictment and declines to prosecute the offence set out in the indictment as there is no reasonable prospect of conviction and it is not in the public interest; and

- (b) private prosecutor has given the required security to prosecute the indictment to conclusion at the time at which the accused is required to appear and has paid such costs as may be ordered by the Court in exceptional circumstances.

### **Filing of indictments**

**9.8** (1) Indictments must be filed in the Office of the Criminal Division.

(2) Copies of the indictment for service must be supplied to the Criminal Division Manager.

### **Service of copy of indictment**

**9.9** A copy of the indictment filed against an accused must be served on the accused or his or her lawyer.

## PART X CASE MANAGEMENT HEARING

### **Arraignment**

**10.1** (1) The Judge shall inform the accused of—

- (a) the offence charged by reading or causing the indictment to be read;
  - (b) the right to enter a plea to the charge;
  - (c) the right to an interpreter;
  - (d) the right to trial by jury if a not guilty plea is entered; and
  - (e) the right to know the maximum penalty and any mandatory minimum penalty provided by law for the offence charged.
- (2) The Judge shall explain the plea process to the accused, including that —
- (a) the accused has the option to plead either guilty or not guilty or to plead any of the special pleas permitted by law;
  - (b) if the accused pleads not guilty, the case will be scheduled for trial;
  - (c) the right to receive a sentencing indication under rule 10.3;
  - (d) sentence may be reduced if there is a guilty plea as set out under rule 5.9; and

(e) sentence reduction will be less for an accused who pleads guilty at a later stage.

### **Plea of guilty at arraignment**

**10.2** (1) Before accepting a plea of guilty to an indictment, the Judge must assure himself, either by questioning the accused either personally, or, at the discretion of the Judge, by calling upon counsel to lead the questioning, that the accused committed the offence, that the plea of guilty is voluntarily made, and that it is made with an understanding of the consequences of the plea.

(2) A Judge may refuse to accept a plea of guilty if he believes it is not in the interests of justice so to do.

(3) If a plea of guilty is rejected, an admission made by the accused during the proceedings in which the guilty plea was made is not admissible in evidence against the accused at trial.

### **Sentence indication**

**10.3** Except in cases where a minimum sentence is mandated by law, an accused may apply for a sentencing indication in accordance with [Practice Direction No.x]

### **Plea of not guilty**

**10.4** Where the accused pleads not guilty at arraignment, the Judge will develop a plan for the case and take such other action as may be necessary to streamline and expedite the case for trial.

### **Case Management**

**10.5** (1) Immediately following the arraignment of the accused the Judge may make the following case management orders, as required.

- (a) date by which the prosecution must disclose to the accused any material in the possession of the prosecution that they don't intend to use at trial which materially weakens the prosecution case or is exculpatory;
- (b) date by which the accused must plead an alibi or any other special defence under Rule 10.7;
- (c) date for the filing of any pre-trial motions;
- (d) date for any subsequent case management hearings that may be required;



- (e) date any applications for special measures should be made by;
- (f) fix a Trial Readiness Hearing; and
- (f) fix a trial date.

(2) The Court may hold one or more case management hearings as the interests of justice require.

### **Disclosure by the prosecution**

**10.6** (1) The prosecution shall disclose material under Rule 10.5 (1)(a), unless the Judge orders that such material should not be disclosed in the public interest.

(2) Any application for an order under sub-rule (1) may be made *ex parte* with or without notice to the accused depending on the sensitivity of the material concerned.

(2) An accused or his lawyer may make an application to the Court to permit the accused to inspect and copy relevant prosecution material if not made available under Rule 10.5 (1)(a).

### **Disclosure by the accused**

**10.7** (1) Where the accused pleads not guilty after arraignment and will give evidence of a special defence, he shall give notice of such defence to the Court and to the prosecutor by the date fixed by the Judge at the Case Management Hearing and shall make available to the prosecutor, on the date set, any information which might be of material assistance, including:

- (a) the name and address of any witness the accused believes is able to give evidence in support of the special defence if the name and address are known to the accused when the statement is given;
- (b) any information in the possession of the accused which might be of material assistance in finding any such witness, if his or her name and address are not given.

(2) Where the accused intends to plead an alibi, he shall give notice of such defence to the Court and to the prosecutor by the date fixed in the scheduling order and shall make available to the prosecutor, on the date set by the Judge at the Case Management Hearing, information as to the particulars of time and place and of the witnesses by whom he proposes to prove the alibi.

## Trial Readiness Hearing

10.8 (1) The purposes of the Trial Readiness Hearing are to -

- (a) review the status of disclosure;
  - (b) discuss trial readiness issues and action to be taken to cure any defects in readiness;
  - (c) set out issues to be resolved at trial;
  - (d) arrange for mediation or restitution discussions when appropriate;
  - (e) discuss witness lists and the need to subpoena witnesses;
  - (f) determine if applications for special measures have been made;
  - (g) identify possible scheduling conflicts and ways to resolve them;
  - (h) determine whether an interpreter will be needed at trial;
  - (i) determine if any technology is needed for the trial to play video's or DVD's;
  - (j) set down for hearing by a Judge any legal issues that must be resolved prior to trial with a timetable for service of skeleton arguments from the prosecution and accused ; and
  - (k) confirm the trial date;
  - (l) set a hearing date before a Judge for an accused who so desires to withdraw his plea of not guilty and enter a plea of guilty instead
- (2) In order to manage the trial the Court may require a party to identify –
- (a) which witnesses the party intends to call to give oral evidence;
  - (b) the order in which the party intends that those witnesses will give their evidence;
  - (c) whether the party requires an order compelling the attendance of a witness;
  - (d) what arrangements, if any, the party proposes to facilitate the giving of evidence by a witness;

- (e) what arrangements, if any, the party proposes to facilitate the participation of any other person, including the accused;
- (f) what written evidence the party intends to introduce;
- (g) what other material, if any, the party intends to make available to the Court in the presentation of the case; and
- (h) what timetable the party proposes and expects to follow.

(3) Unless the Court orders otherwise, a Trial Readiness Hearing must be held on the date specified in the case management order.

(4) The conference must be convened and chaired by a member of the Criminal Division Case Management team.

(5) The accused, his lawyer and the prosecutor shall attend the conference.

## PART XI TRIAL

### **Jury administration**

**11.1** (1) The Criminal Division Manager shall carry out the functions and duties ascribed to the Registrar in the [Relevant Jury Act].

(2) A computer program and database developed in compliance with the relevant legislation concerning jurors lists, approved by the Chief Justice for the purpose, may be used in lieu of the Juror's Book for the selection, summoning and empanelling of jurors and for the calculation of fees to be paid to jurors.

### **Trial to be by Judge and jury**

**11.2** An indictable case that is tried and decided by a Judge and jury must be constituted in accordance with the provisions of the [Relevant Jury Act] and these Rules.

### **Notice of right to appeal**

**11.3** (1) Upon conviction, the Court shall notify the convicted person of his right to appeal and explain how and when a notice of appeal may be filed according to any prescribed procedures and in the High Court pursuant to {Relevant Act]

(2) The Criminal Division Manager shall offer assistance to an unrepresented convicted person to file a notice of appeal.

PART XII  
GENERAL PROCEDURAL MATTERS

**Case management forms and records**

**12.1** (1) Case management forms may be prescribed by Practice Direction and the prescribed forms must be used.

(2) Where there is no form no specific formality is required.

(3) The Court must make available to the parties a record of case management directions given.

Made this                      day of                      , 20[ ].

Chief Justice.

DRAFT