

AS TABLED IN THE HOUSE OF ASSEMBLY

A BILL

entitled

CRIMINAL JURISDICTION AND PROCEDURE ACT 2015

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CRIMINAL JURISDICTION AND PROCEDURE ACT 2015

WHEREAS it is expedient to modernize criminal procedure and to promote the fair and efficient administration of justice in Bermuda by enacting the Criminal Jurisdiction and Procedure Act 2015;

AND WHEREAS it is expedient to modernize criminal procedure and to promote the fair and efficient administration of justice in Bermuda by amending the Criminal Code Act 1907;

AND WHEREAS it is expedient to modernize criminal procedure and to promote the fair and efficient administration of justice in Bermuda by amending the Police and Criminal Evidence Act 2006;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

PART I GENERAL

Citation

- 1 This Act may be cited as the Criminal Jurisdiction and Procedure Act 2015.

Interpretation

- 2 (1) In this Act, unless the context otherwise requires—
- “accused person” means a person in custody or on bail or against whom a summons or warrant has been issued who has committed or who is suspected of having committed an offence;
- “bail in criminal proceedings” has the same meaning as in the Bail Act 2005;
- “barrister and attorney” means a person admitted to practice law in Bermuda in accordance with section 51 of the Supreme Court Act 1905;
- “child” has the same meaning as in the Young Offenders Act 1950;
- “commit to custody” means commit to prison or, where any enactment authorizes or requires committal to some other place of detention instead of committal to prison, to that other place;
- “company” has the same meaning as in the Companies Act 1981;
- “director”, in relation to a company which is established by or under any enactment in Bermuda or elsewhere, and whose affairs are managed by the members thereof, means a member of that company;
- “either-way offence” means an offence which is triable either on indictment or summarily;

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“enactment” includes an enactment contained in any order, regulation or other instrument having effect by virtue of an Act;

“family court” means the court vested with jurisdiction under section 8 of the Young Offenders Act 1950;

“impose imprisonment” means pass a sentence of imprisonment or fix a term of imprisonment for failure to pay any sum of money, or for want of sufficient goods to satisfy any sum of money, or for failure to do or abstain from doing anything required to be done or left undone;

“indictable offence” means an offence which is triable on indictment, whether it is exclusively so triable or triable either way;

“indictment” means a written charge preferred against an accused person with a view to his trial before the Supreme Court;

“judge” means a judge of the Supreme Court;

“Minister” means the Minister with responsible for legal affairs;

“prescribed” means prescribed by rules issued under section 540 of the Criminal Code Act 1907;

“publish”, in relation to a report, means publish the report, either by itself or as part of a newspaper or periodical, for distribution to the public;

“rules” means rules issued under section 540 of the Criminal Code Act 1907;

“sending” means sending a person for trial or sentence to the Supreme Court by the magistrates’ court;

“sum enforceable as a civil debt” means—

- (a) any sum recoverable summarily as a civil debt which is adjudged to be paid by the order of the magistrates’ court;
- (b) any other sum expressed by this or any other Act to be so enforceable; and

“summary offence” means an offence which is triable only summarily.

(2) An either-way offence is related to an indictable offence if the charge for the either-way offence could be joined in the same indictment as the charge for the indictable offence.

(3) A summary offence is related to an indictable offence if it arises out of circumstances which are the same as or connected with those giving rise to the indictable offence.

Issue of summons to accused person

3 (1) On an information being laid before the magistrates’ court that a person has, or is suspected of having, committed an offence, the court may issue—

- (a) a summons directed to that person requiring him to appear before the magistrates’ court to answer the information; or

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(b) subject to subsection (3), a warrant to arrest that person and bring him before the magistrates' court.

(2) No warrant shall be issued under this section upon an information being laid unless the information is in writing.

(3) No warrant shall be issued under this section for the arrest of any person unless—

(a) the offence to which the warrant relates is an indictable offence or is punishable with imprisonment; or

(b) the person's address is not sufficiently established for a summons to be served on him.

(4) Where the offence charged is an indictable offence, a warrant under this section may be issued at any time notwithstanding that a summons has previously been issued.

(5) This section is without prejudice to section 49(1) of the Police and Criminal Evidence Act 2006, and any reference to a trial on an information under this Act is deemed to include a trial on a written charge issued against an individual pursuant to that Act.

Jurisdiction of magistrates' court

4 (1) The magistrates' court has jurisdiction to try any summary offence.

(2) The magistrates' court has jurisdiction under sections 23 and 24 in respect of any offence committed by a person who appears or is brought before the magistrates' court.

(3) Subject to—

(a) sections 14 to 16; and

(b) any other enactment (wherever contained) relating to the mode of trial of either-way offences,

the magistrates' court has jurisdiction to try summarily any either-way offence.

(4) The magistrates' court has jurisdiction, in the exercise of its powers under the Young Offenders Act 1950, to try summarily an indictable offence while sitting as a family court.

(5) This section does not affect any jurisdiction conferred on the magistrates' court by any other enactment but, where any other enactment is inconsistent with this Act, the provisions of this Act shall prevail.

PART II
SUMMARY TRIAL OF INFORMATION

Procedure on trial

5 (1) On the summary trial of an information, the magistrates' court shall, if the accused appears, state to him the substance of the information and ask him whether he pleads guilty or not guilty.

(2) The magistrates' court, after hearing the evidence and the parties, shall convict the accused person or dismiss the information.

(3) If the accused person pleads guilty, the magistrates' court may convict him without hearing evidence.

Witnesses for trial of information

6 (1) Where the magistrates' court is satisfied that—

- (a) any person in Bermuda is likely to be able to give material evidence, or produce any document or thing likely to be material evidence, at the summary trial of an information; and
- (b) it is in the interests of justice to issue a summons under this subsection to secure the attendance of that person to give evidence or produce the document or thing,

the magistrates' court shall issue a summons directed to that person requiring him to attend before the court at the time and place appointed in the summons to give evidence or to produce the document or thing.

(2) If the magistrates' court is satisfied by evidence on oath—

- (a) of the matters mentioned in subsection (1); and
- (b) that it is probable that a summons under that subsection would not procure the attendance of the person in question,

the magistrates' court may instead of issuing a summons issue a warrant to arrest that person and bring him before the magistrates' court as aforesaid at a time and place specified in the warrant.

(3) A summons may also be issued under subsection (1) if the magistrates' court is satisfied that the person in question is outside Bermuda but no warrant shall be issued under subsection (2) unless the magistrates' court is satisfied by evidence on oath that the person in question is outside Bermuda, thereby allowing the person to be arrested on his return to Bermuda.

(4) The magistrates' court may refuse to issue a summons under subsection (1) in relation to the summary trial of an information if it is not satisfied that an application for the summons was made by a party to the case as soon as reasonably practicable after the accused person pleaded not guilty.

(5) In relation to the summary trial of an information, subsection (2) above applies as if the reference to the matters mentioned in subsection (1) included a reference to the matter mentioned in subsection (4).

(6) On the failure of any person to attend before the magistrates' court in answer to a summons under this section, if—

- (a) the magistrates' court is satisfied by evidence on oath that he is likely to be able to give material evidence or produce any document or thing likely to be material evidence in the proceedings; and
- (b) it is proved on oath, or in such other manner as may be prescribed, that he has been duly served with the summons; and
- (c) it appears to the court that there is no reasonable excuse for the failure,

the magistrates' court may issue a warrant to arrest him and bring him before the magistrates' court at a time and place specified in the warrant.

(7) If any person attending or brought before the magistrates' court refuses without reasonable excuse to be sworn or give evidence, or to produce any document or thing, the magistrates' court may do one or both of the following—

- (a) commit him to custody until the expiration of such period not exceeding one month as may be specified in the warrant or until he sooner gives evidence or produces the document or thing;
- (b) impose on him a fine not exceeding \$2,000.

(8) A fine imposed under subsection (7) shall be deemed, for the purposes of any enactment, to be a sum adjudged to be paid on a conviction.

Adjournment of trial

7 (1) The magistrates' court may at any time, on its own motion or on the application of a party to proceedings, whether before or after beginning to try an information, adjourn the trial.

(2) The magistrates' court may when adjourning either—

- (a) fix the time and place at which the trial is to be resumed; or,
- (b) unless it remands the accused person, leave the time and place to be determined later by the court,

but the trial shall not be resumed at that time and place unless the magistrates' court is satisfied that the parties have had adequate notice thereof.

(3) Subject to subsection (4), the magistrates' court may, for the purpose of enabling inquiries to be made or of determining the most suitable method of dealing with the case, exercise its power to adjourn after convicting the accused person and before sentencing him or otherwise dealing with him.

(4) Any adjournment under subsection (3) shall not be for more than 4 weeks at a time unless the magistrates' court remands the accused person in custody and, where it so remands him, the adjournment shall not be for more than 3 weeks at a time.

(5) A family court shall not be required to adjourn any proceedings for an offence at any stage by reason only of the fact—

- (a) that the magistrates' court sends the accused person for trial for another offence; or
- (b) that the accused person is charged with another offence.

(6) On adjourning the trial of an information the magistrates' court may remand the accused person and, where the accused person is not a child, shall do so if the offence is triable either way and—

- (a) on the occasion on which the accused person first appeared, or was brought, before the magistrates' court to answer to the information he was in custody or, having been released on bail, surrendered to the custody of the court; or
- (b) the accused person has been remanded at any time in the course of proceedings on the information,

and, where the magistrates' court remands the accused person, the time fixed for the resumption of the trial shall be that at which he is required to appear or be brought before the court in pursuance of the remand or would be required to be brought before the court but for section 66(7) (remand in custody or on bail).

(7) Notice is required of any application made to adjourn under subsection (1), and rules may be made to provide for the time, manner and form of such notice.

Non-appearance of accused: issue of warrant

8 (1) Subject to the provisions of this section where the magistrates' court due to the absence of the accused person adjourns or further adjourns the trial, the court may issue a warrant for his arrest.

(2) Where a summons has been issued, the magistrates' court shall not issue a warrant under this section unless the condition in subsection (3) or that in subsection (4) is fulfilled.

(3) The condition in this subsection is that it is proved to the satisfaction of the magistrates' court, on oath or in such other manner as may be prescribed, that the summons was served on the accused person within what appears to the magistrates' court to be a reasonable time before the trial or adjourned trial.

(4) The condition in this subsection is that—

- (a) the adjournment now being made is a second or subsequent adjournment of the trial;
- (b) the accused person was present on the last (or only) occasion when the trial was adjourned; and

- (c) on that occasion the magistrates' court determined the time and place for the hearing at which the adjournment is now being made.

(5) A warrant for the arrest of any person, being of the age of 16 and over, shall not be issued under this section unless—

- (a) the offence to which the warrant relates is punishable with a period of imprisonment; or
- (b) the magistrates' court, having convicted the accused person, proposes to impose a driving disqualification on him.

(6) A warrant for the arrest of any person who has not attained the age of 16 shall not be issued under this section unless the offence to which the warrant relates is punishable, in the case of a person who has attained the age of 16, with a period of detention.

Proceedings invalid where the accused person did not know of them

9 (1) Where a summons has been issued under section 3 and the magistrates' court has begun to try the information to which the summons relates, then, if—

- (a) the accused person, at any time during or after the trial, makes a statutory declaration that he did not know of the summons or the proceedings until a date specified in the declaration, being a date after the magistrates' court has begun to try the information; and
- (b) within 21 days of that date the declaration is served on the magistrates' court,

without prejudice to the validity of the information, the summons and all subsequent proceedings shall be void.

(2) For the purposes of subsection (1) a statutory declaration shall be deemed to be duly served on the magistrates' court if it is delivered in person to the magistrates' court, or is sent in a registered letter or by the recorded delivery service addressed to the magistrates' court.

(3) If on the application of the accused person it appears to the magistrates' court that it was not reasonable to expect the accused person to serve such a statutory declaration as is mentioned in subsection (1) within the period allowed by that subsection, the magistrates' court may accept service of such a declaration by the accused person after that period has expired.

(4) A statutory declaration accepted under subsection (3) shall be deemed to have been served as required by subsection (1).

(5) Where any proceedings have become void by virtue of subsection (1), the information shall not be tried again by the same magistrate.

Non-appearance of prosecutor

10 (1) Where at the time and place appointed for the trial or adjourned trial of an information the accused person appears or is brought before the magistrates' court and the

prosecutor does not appear, the magistrates' court may dismiss the information or, if evidence has been received on a previous occasion, proceed in the absence of the prosecutor.

(2) Where, instead of dismissing the information or proceeding in the absence of the prosecutor, the magistrates' court adjourns the trial, it shall not remand the accused person in custody unless he has been brought from custody or cannot be remanded on bail by reason of his failure to find sureties.

Non-appearance of both parties

11 Where at the time and place appointed for the trial or adjourned trial of an information neither the prosecutor nor the accused person appears, the magistrates' court may dismiss the information.

PART III

OFFENCES TRIABLE ON INDICTMENT OR SUMMARILY

Initial procedure: accused to indicate intention as to plea

12 (1) This section applies where a person not being a child appears or is brought before the court on an information charging him with an either-way offence.

(2) Subject to section 12, everything that the magistrates' court is required to do under the following provisions of this section must be done with the accused person present in court.

(3) The magistrates' court shall cause the charge to be written down, if this has not already been done, and to be read to the accused person.

(4) The magistrates' court shall then explain to the accused person in ordinary language that he may indicate whether (if the offence were to proceed to trial) he would plead guilty or not guilty, and that if he indicates that he would plead guilty—

- (a) the magistrates' court shall proceed as mentioned in subsection (6);
- (b) he may be sent for sentence to the Supreme Court under sections 43 or 44 if the magistrates' court is of such opinion as is mentioned in subsection (2) of the applicable section; and
- (c) he shall be sent for sentence to the Supreme Court under section 43 or 44 where in the opinion of the Director of Public Prosecutions the charge is a fit charge for prosecution by indictment and has issued a certificate in writing accordingly.

(5) The magistrates' court shall then ask the accused person whether (if the offence were to proceed to trial) he would plead guilty or not guilty.

(6) If the accused person indicates that he would plead guilty the court shall proceed as if—

- (a) the proceedings constituted from the beginning the summary trial of the information; and
 - (b) section 5(1) were complied with and he pleaded guilty under it.
- (7) If the accused person indicates that he would plead not guilty section 14(1) shall apply.
- (8) If the accused person in fact fails to indicate how he would plead, for the purposes of this section and section 14(1) he shall be taken to indicate that he would plead not guilty.
- (9) Subject to subsection (6), the following shall not for any purpose be taken to constitute the taking of a plea—
 - (a) asking the accused person under this section whether (if the offence were to proceed to trial) he would plead guilty or not guilty;
 - (b) an indication by the accused person under this section of how he would plead.
- (10) If in respect of the offence the magistrates' court receives a notice under section 25 or 26 (which relate to serious or complex fraud cases and to certain cases involving children respectively), the preceding provisions of this section and the provisions of section 12 shall not apply, and the court shall proceed in relation to the offence in accordance with section 23.

Intention as to plea: adjournment

- 13 (1) The magistrates' court proceeding under section 12 or 14 may adjourn, on its own motion or on the application of a party involved, the proceedings at any time, and on doing so on any occasion when the accused person is present may remand the accused, and shall remand him if—
- (a) on the occasion on which he first appeared, or was brought, before the magistrates' court to answer to the information he was in custody or, having been released on bail, surrendered to the custody of the court; or
 - (b) he has been remanded at any time in the course of proceedings on the information.
- (2) Where the magistrates' court remands the accused person under subsection (1), the time fixed for the resumption of proceedings shall be that at which he is required to appear or be brought before the court in pursuance of the remand or would be required to be brought before the magistrates' court but for section 66(7) (remand in custody or on bail).
- (3) Notice is required of any application sought to adjourn under subsection (1), and rules may provide for the time, manner and form of such notice.

Initial procedure on information against adult for either-way offence

- 14 (1) Sections 15 to 18 apply where a person not being a child appears or is brought before the magistrates' court on an information charging him with an either-way offence

and he indicates under section 12 that (if the offence were to proceed to trial) he would plead not guilty.

(2) Everything that the magistrates' court is required to do under sections 15 to 18 must be done before any evidence is called and, subject to subsection (3) and section 19, with the accused person present in the magistrates' court.

(3) The magistrates' court may proceed in the absence of the accused person in accordance with such of the provisions of sections 15 to 19 as are applicable in the circumstances if the magistrates' court considers that by reason of his disorderly conduct before the magistrates' court it is not practicable for the proceedings to be conducted in his presence.

(4) Subsections (3) and (4) of section 19, so far as applicable, apply in relation to proceedings conducted in the absence of the accused person by virtue of subsection (3) (references in those subsections to the person representing the accused person being for this purpose read as references to the person, if any, representing him).

(5) The magistrates' court proceeding under 15 to 19 may adjourn the proceedings at any time, and on doing so on any occasion when the accused person is present may remand the accused person, and shall remand him if—

- (a) on the occasion on which he first appeared, or was brought, before the court to answer to the information he was in custody or, having been released on bail, surrendered to the custody of the magistrates' court; or
- (b) he has been remanded at any time in the course of proceedings on the information,

and where the magistrates' court remands the accused person, the time fixed for the resumption of the proceedings shall be that at which he is required to appear or be brought before the court in pursuance of the remand or would be required to be brought before the court but for section 66(7) (remand in custody or on bail).

Decision as to allocation

15 (1) The magistrates' court shall decide whether the offence appears to it more suitable for summary trial or for trial on indictment.

(2) Before making a decision under this section, the magistrates' court—

- (a) shall give the prosecution an opportunity to inform the magistrates' court of the accused person's previous convictions (if any); and
- (b) shall give the prosecution and the accused person an opportunity to make representations as to whether summary trial or trial on indictment would be more suitable.

(3) In making a decision under this section, the magistrates' court shall consider—

- (a) whether the sentence which the magistrates' court would have power to impose for the offence would be adequate; and

- (b) any representations made by the prosecution or the accused person under subsection (2)(b).

(4) Where—

- (a) the accused person is charged with two or more offences; and
- (b) it appears to the magistrates' court that the charges for the offences could be joined in the same indictment or that the offences arise out of the same or connected circumstances,

subsection (3)(a) applies as if references to the sentence which the magistrates' court would have power to impose for the offence were a reference to the maximum aggregate sentence which the magistrates' court would have power to impose for all of the offences taken together.

(5) If, in respect of the offence, the magistrates' court receives a certificate in writing issued by the Director of Public Prosecutions under section 450(a) of the Criminal Code, the preceding provisions of this section, and section 16, 17 and 18 shall not apply, and the magistrates court shall proceed in relation to the offence in accordance with section 23

(6) For the purposes of subsection (1), where a certificate in writing has not been issued by the Director of Public Prosecutions under section 450(a) of the Criminal Code Act 1907, the magistrates' court shall decide whether the offence appears to it more suitable for summary trial or for trial on indictment.

Procedure where summary trial appears more suitable

16 (1) If the magistrates' court decides under section 15 that the offence appears to it more suitable for summary trial, the following provisions of this section shall apply (unless they are excluded by section 19).

(2) The magistrates' court shall explain to the accused person in ordinary language—

- (a) that it appears to the court more suitable for him to be tried summarily for the offence;
- (b) that he can either consent to be so tried or, if he wishes, be tried on indictment; and
- (c) that if he is tried summarily and is convicted by the magistrates' court, he may be sent for sentence to the Supreme Court under section 43 or 45 if the magistrates court is of such opinion as is mentioned in subsection (2) of the applicable section.

(3) The accused person may then request an indication ("an indication of sentence") of whether a custodial sentence or non-custodial sentence would be more likely to be imposed if he were to be tried summarily for the offence and to plead guilty.

(4) If the accused person requests an indication of sentence, the magistrates' court may, but need not, give such an indication.

(5) If the accused person requests and the magistrates' court gives an indication of sentence, the magistrates' court shall ask the accused person whether he wishes, on the basis of the indication, to reconsider the indication of plea which was given, or is taken to have been given, under section 12 or 13.

(6) If the accused person indicates that he wishes to reconsider the indication under section 12 or 13, the magistrates' court shall ask the accused person whether (if the offence were to proceed to trial) he would plead guilty or not guilty.

(7) If the accused indicates that he would plead guilty the magistrates' court shall proceed as if—

- (a) the proceedings constituted from that time the summary trial of the information; and
- (b) section 5(1) were complied with and he pleaded guilty under it.

(8) Subsection (9) applies where—

- (a) the magistrates' court does not give an indication of sentence (whether because the accused person does not request one or because the magistrates' court does not agree to give one);
- (b) the accused person either—
 - (i) does not indicate, in accordance with subsection (5), that he wishes; or
 - (ii) indicates, in accordance with subsection (5), that he does not wish, to reconsider the indication of plea under section 12 or 13; or
- (c) the accused person does not indicate, in accordance with subsection (6), that he would plead guilty.

(9) The magistrates' court shall ask the accused person whether he consents to be tried summarily or wishes to be tried on indictment and—

- (a) if he consents to be tried summarily, shall proceed to the summary trial of the information; and
- (b) if he does not so consent, shall proceed in relation to the offence in accordance with section 23.

Procedure where summary trial appears more suitable: supplementary

17 (1) Where the case is dealt with in accordance with section 16(7), no court (whether the magistrates' court or not) may impose a custodial sentence for the offence unless such a sentence was indicated in the indication of sentence referred to in section 16.

(2) Subsection (1) is subject to sections 44(4) and 45(8).

(3) Except as provided in subsection (1)—

- (a) an indication of sentence shall not be binding on any court (whether the magistrates' court or not); and

- (b) no sentence may be challenged or be the subject of appeal in any court on the ground that it is not consistent with an indication of sentence.

(4) Subject to section 16(7), the following shall not for any purpose be taken to constitute the taking of a plea—

- (a) asking the accused person under section 16 whether (if the offence were to proceed to trial) he would plead guilty or not guilty; or
- (b) an indication by the accused person under that section of how he would plead.

(5) Where the magistrates' court gives an indication of sentence under section 16, it shall cause each such indication to be entered in the record of proceedings.

Procedure where trial on indictment appears more suitable

18 If the magistrates' court decides under section 15 that the offence appears to it more suitable for trial on indictment, the magistrates' court shall tell the accused person that the magistrates' court has decided that it is more suitable for him to be tried on indictment, and shall proceed in relation to the offence in accordance with section 23.

Power of the magistrates' court, with consent of legally represented accused person, to proceed in his absence

19 (1) Where—

- (a) the accused person is represented by a barrister and attorney who in his absence signifies to the court the accused person's consent to the proceedings for determining how he is to be tried for the offence being conducted in his absence; and
- (b) the magistrates' court is satisfied that there is good reason for proceeding in the absence of the accused person,

the following provisions of this section shall apply.

(2) Subject to the following provisions of this section, the magistrates' court may proceed in the absence of the accused person in accordance with such of the provisions of sections 15 to 19 as are applicable in the circumstances.

(3) If the court decides under section 15 that the offence appears to it more suitable for summary trial then—

- (a) if the accused person's consent to be tried summarily has been or is signified by the person representing him, section 16 shall not apply, and the magistrates' court shall proceed to the summary trial of the information; or
- (b) if that consent has not been and is not so signified, section 15 shall not apply and the court shall proceed in relation to the offence in accordance with section 23(1).

(4) If the magistrates' court decides under section 15 that the offence appears to it more suitable for trial on indictment, section 18 shall not apply and the magistrates' court shall proceed in relation to the offence in accordance with section 23(1).

Power to change from summary trial to sending proceedings

20 (1) This section has effect where a person not being a child appears or is brought before the court on an information charging him with an either-way offence.

(2) Where the magistrates' court is required under section 16(9) to proceed to the summary trial of the information, the prosecution may apply to the magistrates' court for the offence to be tried on indictment instead.

(3) An application under subsection (2)—

- (a) must be made before the summary trial begins; and
- (b) must be dealt with by the magistrates' court before any other application or issue in relation to the summary trial is dealt with.

(4) The magistrates' court may grant an application under subsection (2) but only if it is satisfied that the sentence which the magistrates' court would have power to impose for the offence would be inadequate.

(5) Where—

- (a) the accused person is charged on the same occasion with two or more offences; and
- (b) it appears to the magistrates' court that they constitute or form part of a series of two or more offences of the same or a similar character,

subsection (4) applies as if references to the sentence which the magistrates' court would have power to impose for the offence were a reference to the maximum aggregate sentence which the court would have power to impose for all of the offences taken together.

(6) Where the magistrates' court grants an application under subsection (2), it shall proceed in relation to the offence in accordance with section 23.

Power to issue summons to accused in certain circumstances

21 (1) Where, in the circumstances mentioned in section 19(1)(a), the magistrates' court is not satisfied that there is good reason for proceeding in the absence of the accused person, the magistrates' court may issue a summons directed to the accused person requiring his presence before the magistrates' court.

(2) In a case within subsection (1), if the accused person is not present at the time and place appointed for the proceedings under section 15 above, the magistrates' court may issue a warrant for his arrest.

Effect of dismissal of information for either-way offence

22 Where on the summary trial of an information for an either-way offence the magistrates' court dismisses the information, the dismissal shall have the same effect as an acquittal on indictment.

PART IV

SENDING CASES TO THE SUPREME COURT

Sending cases to the Supreme Court: adults

23 (1) Where a person not being a child appears or is brought before the magistrates' court charged with an offence and any of the conditions mentioned in subsection (2) is satisfied, the magistrates' court shall send him forthwith to the Supreme Court for trial for the offence.

(2) Those conditions are—

- (a) that the offence is triable only on indictment;
- (b) that the offence is an either-way offence and the magistrates' court is required under section 16(9)(b), 18, 19(3)(b) or (4) or 20(6) to proceed in relation to the offence in accordance with subsection (1); or
- (c) the magistrates' court receives a certificate in writing issued by the Director of Public Prosecutions under section 450(a) of the Criminal Code Act 1907.

(3) Where the magistrates' court sends a person for trial under subsection (1), it shall at the same time send him to the Supreme Court for trial for any either-way or summary offence with which he is charged and which appears to the magistrates' court to be related to the offence mentioned in subsection (1).

(4) Where a person who has been sent for trial under subsection (1) subsequently appears or is brought before the court charged with an either-way or summary offence which appears to the court to be related to the offence mentioned in subsection (1), the magistrates' Court may send him forthwith to the Supreme Court for trial for that subsequent offence.

(5) Where—

- (a) the magistrates' court sends a person ("A") for trial under subsection (1) or (3);
- (b) another person not being a child appears or is brought before the court on the same or a subsequent occasion charged jointly with A with an either-way offence; and
- (c) that offence appears to the court to be related to an offence for which A was sent for trial under subsection (1) or (3),

the magistrates' court shall where it is the same occasion, and may where it is a subsequent occasion, send the other person forthwith to the Supreme Court for trial for the either-way offence.

(6) Where the magistrates' court sends a person for trial under subsection (5), it shall at the same time send him to the Supreme Court for trial for any either-way or summary offence with which he is charged and which appears to the court to be related to the offence for which he is sent for trial.

(7) The trial of the information charging any summary offence for which a person is sent for trial under this section shall be treated as if the court had adjourned it under section 7 and had not fixed the time and place for its resumption.

Sending cases to the Supreme Court: children

24 Where a child appears or is brought before the magistrates' court in respect of a matter which must be dealt with in the Supreme Court by virtue of section 9(1) of the Young Offenders Act 1950, the court shall send him forthwith to the Supreme Court for trial for the offence.

Notices in serious or complex fraud cases

25 (1) A notice in writing may be given by the Director of Public Prosecutions under this section in respect of an indictable offence if he is of the opinion that the evidence of the offence charged—

- (a) is sufficient for the person charged to be put on trial for the offence; and
- (b) reveals a case of fraud of such seriousness or complexity that it is appropriate that the management of the case should without delay be taken over by the Supreme Court.

(2) That opinion must be certified by the Director of Public Prosecutions in the notice.

(3) A notice in writing under this section must be given to the magistrates' court before any summary trial begins.

(4) The effect of such a notice in writing is that the functions of the magistrates' court cease in relation to the case, except for the purposes of sections 26 and 27.

(5) The functions of the Director of Public Prosecutions under this section may be exercised by counsel instructed by him and acting on his behalf.

(6) A decision to give a notice in writing under this section shall not be subject to appeal.

Notices in certain cases involving children

26 (1) A notice may be given by the Director of Public Prosecutions under this section in respect of an indictable offence if he is of the opinion—

- (a) that the evidence of the offence would be sufficient for the person charged to be put on trial for the offence;

- (b) that a child would be called as a witness at the trial; and
- (c) that, for the purpose of avoiding any prejudice to the welfare of the child, the case should be taken over and proceeded with without delay by the Supreme Court.

(2) Subsections (2) to (6) of section 25 apply for the purposes of this section as they apply for the purposes of that.

Notice of offence and place of trial

27 (1) The magistrates' court shall specify in a notice the offence or offences for which a person is sent for trial under section 23 or 24.

(2) A copy of the notice shall be served on the accused person and given to the Supreme Court.

(3) In a case where a person is sent for trial under section 23 or 24 for more than one offence, the magistrates' court shall specify in that notice, for each offence—

- (a) the section under which the person is so sent; and
- (b) if applicable, the offence to which that offence appears to the court to be related.

Appearance in Supreme Court of sent persons

28 (1) Where a person is sent for trial under section 16 or 18, he is to appear before the Supreme Court on—

- (a) its next available session day; or
- (b) such other session day as may be agreed between the person sent and the prosecutor.

(2) In this section, "session day" means a day upon which the Supreme Court sits or is to sit in accordance with section 37 of the Supreme Court Act 1905.

Prosecution duty of disclosure in respect of sent persons

29 (1) Subject to any regulations issued under subsection (2) and to subsection (3), where a person is sent for trial under sections 16 or 18 on any charge or charges, the prosecution must disclose its case in accordance with section 4 of the Disclosure and Criminal Reform Act 2015 as soon as is reasonably practicable.

(2) The Minister may by regulations using the negative resolution procedure provide—

- (a) subject to subsection (3), time limits within which the prosecution duty of disclosure mentioned in subsection (1) must be complied with; and
- (b) for the manner and form of such disclosure.

(3) The prosecution duty of disclosure mentioned in subsection (1) must be complied with no later than 70 days after the date on which the person was sent for trial.

Extension of time limit for service of documents

30 (1) The prosecutor may apply orally or in writing to the Supreme Court for any period prescribed by section 29 to be extended or, where that period has already been extended, for it to be further extended.

(2) Where the prosecutor proposes to make an oral application under subsection (1), he shall give notice in writing of his intention to the Supreme Court; and a copy thereof shall be given at the same time to the person sent for trial.

(3) Any written application made under subsection (1) shall be sent by the prosecutor to the Supreme Court specifying the grounds for the application; and a copy thereof shall be given at the same time to the person sent for trial who may make written representations in response within 3 days of service of the application on him.

(4) Where an application under subsection (1) is determined otherwise than at an oral hearing, the Supreme Court shall, as soon as reasonably practicable, send to all the parties to the case a notice of the outcome of the application.

Application for dismissal

31 (1) A person who is sent for trial under section 23 or 24 on any charge or charges may, at any time—

- (a) after he is served with copies of the documents containing the evidence on which the charge or charges are based; and
- (b) before he is arraigned (and whether or not an indictment has been preferred against him),

apply orally or in writing to the Supreme Court for the charge, or any of the charges, in the case to be dismissed.

(2) The judge shall dismiss a charge (and accordingly quash any count relating to it in any indictment preferred against the applicant) which is the subject of any such application if it appears to him that the evidence against the applicant would not be sufficient for a jury properly to convict him.

(3) No oral application may be made under subsection (1) unless the applicant has given to the Supreme Court written notice of his intention to make the application.

(4) Oral evidence may be given on such an application only with the leave of the judge or by his order; and the judge shall give leave or make an order only if it appears to him, having regard to any matters stated in the application for leave, that the interests of justice require him to do so.

(5) If the judge gives leave permitting, or makes an order requiring, a person to give oral evidence, but that person does not do so, the judge may disregard any document indicating the evidence that he might have given.

(6) If the charge, or any of the charges, against the applicant is dismissed—

- (a) no further proceedings may be brought on the dismissed charge or charges except by means of the preferment of a voluntary bill of indictment; and

- (b) unless the applicant is in custody otherwise than on the dismissed charge or charges, he shall be discharged.

(7) Rules may be made under section 540 of the Criminal Code Act 1907 which make provision for the purposes of this section and, without prejudice to the generality of the forgoing, may make provision—

- (a) as to the time or stage in the proceedings at which anything required to be done is to be done (unless the court grants leave to do it at some other time or stage);
- (b) as to the contents and form of notices or other documents;
- (c) as to the manner in which evidence is to be submitted; and
- (d) as to persons to be served with notices or other material.

Reporting restrictions

32 (1) Except as provided by this section, it shall not be lawful—

- (a) to publish in or from Bermuda a written report of an application under section 31; or
- (b) to include in a programme for reception in or from Bermuda a report of such an application,

if (in either case) the report contains any matter other than that permitted by this section.

(2) An order that subsection (1) shall not apply to reports of an application under section 31 may be made by the judge dealing with the application.

(3) Where in the case of two or more accused persons one of them objects to the making of an order under subsection (2), the judge shall make the order if, and only if, he is satisfied, after hearing the representations of the accused, that it is in the interests of justice to do so.

(4) An order under subsection (2) shall not apply to reports of proceedings under subsection (3), but any decision of the judge to make or not to make such an order may be contained in reports published or included in a programme before the time authorized by subsection (5).

(5) It shall not be unlawful under this subsection to publish or include in a programme a report of an application under section 31 above containing any matter other than that permitted by subsection (8) where the application is successful.

(6) Where—

- (a) two or more persons were jointly charged; and
- (b) applications under section 31 are made by more than one of them,

subsection (5) shall have effect as if for the words "the application is" there were substituted the words "all the applications are".

(7) It shall not be unlawful under this subsection to publish or include in a programme a report of an unsuccessful application at the conclusion of the trial of the person charged, or of the last of the persons charged to be tried.

(8) The following matters may be contained in a report published or included in a programme without an order under subsection (2) before the time authorized by subsections (5) and (6), that is to say—

- (a) the identity of the court and the name of the judge;
- (b) the names, ages, addresses and occupations of the accused person and witnesses;
- (c) where the application made by the accused person under section 25 relates to a charge for an offence in respect of which notice has been given to the court under section 31, any relevant business information;
- (d) the offence or offences, or a summary of them, with which the accused person is or persons are charged;
- (e) the names of the barristers and attorneys engaged in the proceedings;
- (f) where the proceedings are adjourned, the date and place to which they are adjourned;
- (g) any arrangements as to bail; and
- (h) whether an application for representation funded by legal aid was granted to the accused person or any of the accused persons.

(9) The addresses that may be published or included in a programme under subsection (8) are addresses—

- (a) at any relevant time; and
- (b) at the time of their publication or inclusion in a programme.

(10) The following is relevant business information for the purposes of subsection (8)(c)—

- (a) any address used by the accused person for carrying on a business on his own account;
- (b) the name of any business which he was carrying on on his own account at any relevant time;
- (c) the name of any firm in which he was a partner at any relevant time or by which he was engaged at any such time;
- (d) the address of any such firm;
- (e) the name of any company of which he was a director at any relevant time or by which he was otherwise engaged at any such time;
- (f) the address of the registered or principal office of any such company;

- (g) any working address of the accused person in his capacity as a person engaged by any such company,

and here "engaged" means engaged under a contract of service or a contract for services.

(11) If a report is published or included in a programme in contravention of this section, the following persons, that is to say—

- (a) in the case of a publication of a written report as part of a newspaper or periodical, any proprietor, editor or publisher of the newspaper or periodical;
- (b) in the case of a publication of a written report otherwise than as part of a newspaper or periodical, the person who publishes it;
- (c) in the case of the inclusion of a report in a programme, any body corporate which provides the service in which the programme is included and any person having functions in relation to the programme corresponding to those of an editor of a newspaper.

shall be liable on summary conviction to a fine not exceeding \$5,000.

(12) Proceedings for an offence under this section shall not be instituted otherwise than by or with the consent of the Director of Public Prosecutions.

(13) Subsection (1) shall be in addition to, and not in derogation from, the provisions of any other enactment with respect to the publication of reports and proceedings of magistrates' and other courts.

(14) In this section—

"publish", in relation to a report, means publish the report, either by itself or as part of a newspaper or periodical, for distribution to the public; and

"relevant time" means a time when events giving rise to the charges to which the proceedings relate occurred.

Power of a magistrates court to take depositions etc.

33 (1) Subsection (2) applies where the court is satisfied that—

- (a) any person in Bermuda ("the witness") is likely to be able to make on behalf of the prosecutor a written statement containing material evidence, or produce on behalf of the prosecutor a document or other exhibit likely to be material evidence, for the purposes of proceedings for an offence for which a person has been sent for trial under section 23 or 24 by the court; and
- (b) the witness will not voluntarily make the statement or produce the document or other exhibit.

(2) In such a case the court shall issue a summons directed to the witness requiring him to attend before the court at the time and place appointed in the summons, and to have his evidence taken as a deposition or to produce the document or other exhibit.

(3) If the court is satisfied by evidence on oath of the matters mentioned in subsection (1), and also that it is probable that a summons under subsection (2) would not procure the result required by it, the court may instead of issuing a summons issue a warrant to arrest the witness and to bring him before the court at the time and place specified in the warrant.

(4) A summons may also be issued under subsection (2) if the court is satisfied that the witness is outside Bermuda, but no warrant may be issued under subsection (3) unless the court is satisfied by evidence on oath that the witness is in Bermuda.

(5) If—

- (a) the witness fails to attend before the court in answer to a summons under this section;
- (b) the court is satisfied by evidence on oath that the witness is likely to be able to make a statement or produce a document or other exhibit as mentioned in subsection (1)(a);
- (c) it is proved on oath, or in such other manner as may be prescribed, that he has been duly served with the summons and that a reasonable sum has been paid or tendered to him for costs and expenses; and
- (d) it appears to the court that there is no just excuse for the failure,

the court may issue a warrant to arrest the witness and to bring him before the court at the time and place specified in the warrant.

(6) Where—

- (a) a summons is issued under subsection (2) or a warrant is issued under subsection (3) or (5); and
- (b) the summons or warrant is issued with a view to securing that the witness has his evidence taken as a deposition,

the time appointed in the summons or specified in the warrant shall be such as to enable the evidence to be taken as a deposition before the relevant date.

(7) If any person attending or brought before the court in pursuance of this section refuses without reasonable excuse to have his evidence taken as a deposition, or to produce the document or other exhibit, the court may do one or both of the following—

- (a) commit him to custody until the expiration of such period not exceeding one month as may be specified in the summons or warrant or until he sooner has his evidence taken as a deposition or produces the document or other exhibit;
- (b) impose on him a fine not exceeding \$5,000.

(8) A fine imposed under subsection (7) shall be deemed, for the purposes of any enactment, to be a sum adjudged to be paid on a conviction.

(9) If in pursuance of this section a person—

- (a) has his evidence taken as a deposition; or
- (b) produces an exhibit which is a document,

the court shall as soon as is reasonably practicable send a copy of the deposition or exhibit to the prosecutor and the Supreme Court.

(10) If in pursuance of this section a person produces an exhibit which is not a document, the court shall as soon as is reasonably practicable inform the prosecutor and the Supreme Court of that fact and of the nature of the exhibit.

Use of depositions as evidence

34 (1) Subject to subsection (3), subsection (2) applies where in pursuance of section 33 above a person has his evidence taken as a deposition.

(2) Where this subsection applies, the deposition may without further proof be read as evidence on the trial of the accused person, whether for an offence for which he was sent for trial under section 23 or 24 or for any other offence arising out of the same transaction or set of circumstances.

(3) Subsection (2) does not apply if—

- (a) it is proved that the deposition was not signed by the court by whom it purports to have been signed;
- (b) the court of trial at its discretion orders that subsection (2) shall not apply; or
- (c) a party to the proceedings objects to subsection (2) applying.

(4) If a party to the proceedings objects to subsection (2) applying, the court of trial may order that the objection shall have no effect if the court considers it to be in the interests of justice so to order.

Power of Supreme Court to deal with summary offence

35 (1) This section applies where the magistrates' court has sent a person for trial under section 23 or 24 for offences which include a summary offence.

(2) If the person is convicted on the indictment, the Supreme Court shall consider whether the summary offence is related to the indictable offence for which he was sent for trial or, as the case may be, any of the indictable offences for which he was so sent.

(3) If it considers that the summary offence is so related, the court shall state to the person the substance of the offence and ask him whether he pleads guilty or not guilty.

(4) If the person pleads guilty, the Supreme Court shall convict him, but may deal with him in respect of the summary offence only in a manner in which the magistrates' court could have dealt with him.

(5) If he does not plead guilty—

- (a) the powers of the Supreme Court shall cease in respect of the summary offence; and

(b) the person shall be remitted to the magistrates' court for trial, except as provided by subsection (6).

(6) If the prosecution informs the court that it does not desire to submit evidence on the charge relating to the summary offence, the court shall dismiss it.

(7) The Supreme Court shall inform the magistrates' court of the outcome of any proceedings under this section.

(8) Where the Court of Appeal allows an appeal against conviction of an indictable offence which is related to a summary offence of which the appellant was convicted under this section—

- (a) it shall set aside his conviction of the summary offence and give the magistrates' court notice that it has done so; and
- (b) it may direct that no further proceedings in relation to the offence are to be undertaken,

and the proceedings before the Supreme Court in relation to the offence shall thereafter be disregarded for all purposes.

(9) A notice under subsection (8) shall include particulars of any direction given under subsection (8)(b) in relation to the offence.

(10) An offence is related to another offence for the purposes of this section if it arises out of circumstances which are the same as or connected with those giving rise to the other offence.

Where no offence for sending remains

36 (1) This section applies where—

- (a) a person has been sent for trial under section 23 but has not been arraigned; and
- (b) the person is charged on an indictment which (following amendment of the indictment, or as a result of an application under section 31, or for any other reason) includes no main offence.

(2) Everything that the Supreme Court is required to do under the following provisions of this section must be done with the accused person present in court.

(3) The court shall cause to be read to the accused person each remaining count of the indictment that charges an either-way offence.

(4) The court shall then explain to the accused person in ordinary language that, in relation to each of those offences, he may indicate whether (if it were to proceed to trial) he would plead guilty or not guilty, and that if he indicates that he would plead guilty the court must proceed as mentioned in subsection (6).

(5) The court shall then ask the accused person whether (if the offence in question were to proceed to trial) he would plead guilty or not guilty.

(6) If the accused person indicates that he would plead guilty the court shall proceed as if he had been arraigned on the count in question and had pleaded guilty.

(7) If the accused person indicates that he would plead not guilty, or fails to indicate how he would plead, the court shall decide whether the offence is more suitable for summary trial or for trial on indictment.

(8) Subject to subsection (6), the following shall not for any purpose be taken to constitute the taking of a plea—

- (a) asking the accused person under this section whether (if the offence were to proceed to trial) he would plead guilty or not guilty; or
 - (b) an indication by the accused person under this section of how he would plead.
- (9) In this section, a “main offence” is—
- (a) an offence for which the person has been sent to the Supreme Court for trial under section 23(1); or
 - (b) an offence—
 - (i) for which the person has been sent to the Supreme Court for trial under section 23(5); and
 - (ii) in respect of which the conditions for sending him to the Supreme Court for trial under paragraphs (a) and (c) of section 23(5) continue to be satisfied.

Disorderly conduct of accused

37 (1) This section applies in a case where—

- (a) a person has been sent for trial under section 23 or 24 but has not been arraigned;
 - (b) he is charged on an indictment which (following amendment of the indictment, or as a result of an application under section 31, or for any other reason) includes no main offence (within the meaning of section 36);
 - (c) he is represented by a barrister and attorney;
 - (d) the Supreme Court considers that by reason of his disorderly conduct before the Supreme Court it is not practicable for proceedings under section 36 to be conducted in his presence; and
 - (e) the Supreme Court considers that it should proceed in his absence.
- (2) In such a case—
- (a) the Supreme Court shall cause to be read to the barrister and attorney each remaining count of the indictment that charges an either-way offence;

- (b) the Supreme Court shall ask the barrister and attorney whether (if the offence in question were to proceed to trial) the accused person would plead guilty or not guilty;
 - (c) if the barrister and attorney indicates that the accused person would plead guilty the court shall proceed as if the accused person had been arraigned on the count in question and had pleaded guilty;
 - (d) if the barrister and attorney indicates that the accused person would plead not guilty, or fails to indicate how the accused person would plead, the court shall decide whether the offence is more suitable for summary trial or for trial on indictment.
- (3) Subject to subsection (2)(c), the following shall not for any purpose be taken to constitute the taking of a plea—
- (a) asking the barrister and attorney under this section whether (if the offence were to proceed to trial) the accused person would plead guilty or not guilty;
 - (b) an indication by the barrister and attorney under this section of how the accused person would plead.

Determining venue of trial where no indictable-only offence remains

38 (1) This section applies where the Supreme Court is required by section 36(7), 37(2)(d), to decide the question whether an offence is more suitable for summary trial or for trial on indictment.

- (2) Before deciding the question, the Supreme Court—
- (a) shall give the prosecution an opportunity to inform the court of the accused person's previous convictions (if any); and
 - (b) shall give the prosecution and the accused person an opportunity to make representations as to whether summary trial or trial on indictment would be more suitable.
- (3) In deciding the question, the Supreme Court shall consider—
- (a) whether the sentence which the magistrates' court would have power to impose for the offence would be adequate; and
 - (b) any representations made by the prosecution or the accused person under subsection (2)(b).
- (4) Where—
- (a) the accused person is charged on the same occasion with two or more offences; and
 - (b) it appears to the Supreme Court that they constitute or form part of a series of two or more offences of the same or a similar character,

subsection (3)(a) applies as if references to the sentence which the magistrates' court would have power to impose for the offence were a reference to the maximum aggregate sentence

which the magistrates' court would have power to impose for all of the offences taken together.

Where summary trial more suitable

39 (1) This section applies (unless excluded by section 48) where the Supreme Court considers that an offence is more suitable for summary trial.

(2) The Supreme Court shall explain to the accused person in ordinary language—

- (a) that it appears to the Supreme Court more suitable for him to be tried summarily for the offence;
- (b) that he can either consent to be so tried or, if he wishes, be tried on indictment; and
- (c) that if he is tried summarily and is convicted by the magistrates' court, he may be sent for sentence to the Supreme Court under section 43 if the magistrates' court is of such opinion as is mentioned in subsection (2) of that section.

(3) After explaining to the accused person as provided by subsection (2), the court shall ask him whether he wishes to be tried summarily or on indictment, and—

- (a) if he indicates that he wishes to be tried summarily, shall remit him for trial to the magistrates' court; or
- (b) if he does not give such an indication, shall retain its functions in relation to the offence and proceed accordingly.

Where trial on indictment more suitable

40 If the Supreme Court considers that an offence is more suitable for trial on indictment, the Supreme Court—

- (a) shall tell the accused person that it has decided that it is more suitable for him to be tried for the offence on indictment; and
- (b) shall retain its functions in relation to the offence and proceed accordingly.

Children

41 (1) This section applies, in place of sections 36 to 40, in the case of a child who—

- (a) has been sent for trial under section 24 but has not been arraigned; and
- (b) is charged on an indictment which (following amendment of the indictment, or as a result of an application under section 31, or for any other reason) no longer includes an offence listed in section 9(1) of the Young Offenders Act 1950.

(2) The Supreme Court shall remit the child for trial to the family court to be dealt with accordingly.

Power of Supreme Court, with consent of legally represented accused, to proceed in his absence

42 (1) The Supreme Court may proceed in the absence of the accused person in accordance with such of the provisions of sections 38 to 41 as are applicable in the circumstances if—

- (a) the accused person is represented by a barrister and attorney who signifies to the Supreme Court the accused person's consent to the proceedings in question being conducted in his absence; and
- (b) the Supreme Court is satisfied that there is good reason for proceeding in the absence of the accused person.

(2) Subsection (1) is subject to the following provisions of this section, which apply where the Supreme Court exercises the power conferred by that subsection.

(3) If, where the Supreme Court has decided as required by section 36(7) or 37(2) (d), it appears to the Supreme Court that an offence is more suitable for summary trial, section 40 shall not apply and—

- (a) if the barrister and attorney indicates that the accused person wishes to be tried summarily, the Supreme Court shall send the accused person for trial to the magistrates' court for trial;
- (b) if the barrister and attorney does not give such an indication, the Supreme Court shall retain jurisdiction and proceed accordingly.

(4) If, where the Supreme Court has decided as required by section 36(7) or 37(2) (d), it appears to the Supreme Court that an offence is more suitable for trial on indictment, section 40 shall apply with the omission of paragraph (a).

PART V

POWERS EXERCISABLE BEFORE SENTENCE

Sending for sentence on summary trial of either-way offence

43 (1) This section applies where on the summary trial of an either-way offence a person not being a child is convicted of the offence.

(2) If the magistrates' court is of the opinion that—

- (a) the offence; or
- (b) the combination of the offence and one or more offences associated with it,

was so serious that the Supreme Court should, in the court's opinion, have the power to deal with the offender in any way it could deal with him if he had been convicted on indictment, the magistrates' court may send the offender in custody or on bail to the Supreme Court for sentence in accordance with section 46(1).

(3) Where the court sends a person under subsection (2), section 47 (which enables the court, where it sends a person under this section in respect of an offence, also to send

him to the Supreme Court to be dealt with in respect of certain other offences) shall apply accordingly.

(4) The preceding provisions of this section shall apply in relation to a company as if—

- (a) the company were an individual not being a child; and
- (b) in subsection (2), the words "in custody or on bail" were omitted.

Sending for sentence of dangerous adult offenders

44 (1) This section applies where on the summary trial of an either-way offence a person not being a child is convicted of the offence.

(2) If, in relation to the offence, it appears to the court that the criteria for the imposition of a sentence under section 71E of the Criminal Code Act 1907 would be met, the court must send the offender in custody to the Supreme Court for sentence in accordance with section 46(1).

(3) Where the court sends a person under subsection (2), section 47 (which enables the court, where it sends a person under this section in respect of an offence, also to send him to the Supreme Court to be dealt with in respect of certain other offences) shall apply accordingly.

(4) In reaching any decision under or taking any step contemplated by this section—

- (a) the magistrates' court shall not be bound by any indication of sentence given in respect of the offence under section 16 (procedure where summary trial appears more suitable); and
- (b) nothing the magistrates' court does under this section may be challenged or be the subject of any appeal in any court on the ground that it is not consistent with an indication of sentence.

(5) Nothing in this section shall prevent the magistrates' court from sending an offender convicted of a specified offence to the Supreme Court for sentence under section 49 if the provisions of that section are satisfied.

Sending for sentence on indication of guilty plea to either-way offence

45 (1) This section applies where—

- (a) a person not being a child appears or is brought before the court on an information charging him with an either-way offence ("the offence");
- (b) he or (where applicable) his barrister and attorney indicates under section 12, 13 or 16(7) that he would plead guilty if the offence were to proceed to trial; and
- (c) proceeding as if section 5(1) were complied with and he pleaded guilty under it, the court convicts him of the offence.

(2) If the court has sent the offender to the Supreme Court for sentence for one or more related offences, that is to say, one or more offences which, in its opinion, are related to the offence, it may send him in custody or on bail to the Supreme Court to be dealt with in respect of the offence in accordance with section 46(1).

(3) If the power conferred by subsection (2) is not exercisable but the magistrates' court is still to determine to, or to determine whether to, send the offender to the Supreme Court for sentence under section 46 for one or more related offences—

- (a) it shall adjourn the proceedings relating to the offence until after it has made those determinations; and
 - (b) if it sends the offender to the Supreme Court for trial for one or more related offences, it may then exercise that power.
- (4) Where the court—
- (a) under subsection (2) sends the offender to the Supreme Court to be dealt with in respect of the offence; and
 - (b) does not state that, in its opinion, it also has power so to send him under section 43(2), or, as the case may be, section 44(2),

section 43(1) shall not apply unless he is convicted before the Supreme Court of one or more of the related offences.

(5) Where section 46(1) does not apply, the Supreme Court may deal with the offender in respect of the offence in any way in which the court could deal with him if it had just convicted him of the offence.

(6) Where the magistrates' court sends a person under subsection (2), section 47 (which enables the court, where it sends a person under this section in respect of an offence, also to send him to the Supreme Court to be dealt with in respect of certain other offences) shall apply accordingly.

(7) For the purposes of this section one offence is related to another if, were they both to be prosecuted on indictment, the charges for them could be joined in the same indictment.

(8) In reaching any decision under or taking any step contemplated by this section—

- (a) the magistrates' court shall not be bound by any indication of sentence given in respect of the offence under section 16 (procedure where summary trial appears more suitable); and
- (b) nothing the magistrates' court does under this section may be challenged or be the subject of any appeal in any court on the ground that it is not consistent with an indication of sentence.

Power of Supreme Court on sending for sentence under section 43, 44 and 45

46 (1) Where an offender is sent for sentence under section 43, 44 or 45, the Supreme Court shall inquire into the circumstances of the case and may deal with the offender in

any way in which it could deal with him if he had just been convicted of the offence on indictment before the Supreme Court.

(2) Where an offender is sent for sentence under section 43, subsection (1) applies subject to section 43(3) and (4).

Sending for sentence in certain cases where offender sent in respect of another offence

47 (1) This section applies where the court sends a person in custody or on bail to the Supreme Court to be sentenced or otherwise dealt with in respect of an offence ("the relevant offence").

(2) Where this section applies and the relevant offence is an indictable offence, the magistrates' court may also send the offender, in custody or on bail as the case may require, to the Supreme Court to be dealt with in respect of any other offence whatsoever in respect of which the magistrates' court has power to deal with him (being an offence of which he has been convicted by that court).

(3) Where this section applies and the relevant offence is a summary offence, the magistrates' court may send the offender, in custody or on bail as the case may require, to the Supreme Court to be dealt with in respect of—

- (a) any other offence of which the magistrates' court has convicted him; and
- (b) any suspended sentence in respect of which the magistrates' court has power to deal with him.

Power of Supreme Court on sending for sentence under section 47

48 (1) Where under section 47 the court sends a person to be dealt with by the Supreme Court in respect of an offence (not being the relevant offence for the purpose of that section), the Supreme Court may after inquiring into the circumstances of the case deal with him in any way in which the court could deal with him if it had just convicted him of the offence.

(2) Subsection (1) does not apply where under section 47 the court sends a person to be dealt with by the Supreme Court in respect of a suspended sentence, but in such a case the powers under section 70K of the Criminal Code Act 1907 (power of court to deal with suspended sentence) shall be exercisable by the Supreme Court.

(3) Without prejudice to subsections (1) and (2), where under section 47 the court sends a person to be dealt with by the Supreme Court, any duty or power which, apart from this subsection, would fall to be discharged or exercised by the court shall not be discharged or exercised by that court but shall instead be discharged or may instead be exercised by the Supreme Court.

Power of family court to remit offender who attains age of 16 to magistrates' court other than family court for sentence

49 (1) Where a child who appears or is brought before a family court charged with an offence subsequently ceases to be a child, the family court may, at any time after conviction

and before sentence, send him for sentence to the magistrates' court (other than a family court).

(2) Where an offender is sent under subsection (1), the family court shall adjourn proceedings in relation to the offence, and—

- (a) section 67 (remand in custody or on bail) and all other enactments, whenever passed, relating to remand or the granting of bail in criminal proceedings apply, in relation to the family court's power or duty to remand the offender on that adjournment, as if any reference to the court to or before which the person remanded is to be brought or appear after remand were a reference to the court to which he is being sent; and
- (b) the court to which the offender is sent may deal with the case in any way in which it would have power to deal with it if all proceedings relating to the offence which took place before the family court had taken place before that other court.

(3) Where an offender is sent under subsection (1) he shall have no right of appeal against the sending order (but without prejudice to any right of appeal against an order made in respect of the offence by the court to which he is sent).

Remand by magistrates' court for medical examination

50 (1) If, on the trial by the magistrates' court of an offence punishable on summary conviction with imprisonment, the magistrates' court—

- (a) is satisfied that the accused person did the act or made the omission charged; but
- (b) is of the opinion that an inquiry ought to be made into his physical or mental condition before the method of dealing with him is determined,

the magistrates' court shall adjourn the case to enable a medical examination and report to be made, and shall remand him.

(2) An adjournment under subsection (1) shall not be for more than three weeks at a time where the court remands the accused person in custody, nor for more than four weeks at a time where it remands him on bail.

(3) Where on an adjournment under subsection (1) the accused person is remanded on bail, the magistrates' court shall impose conditions under section 4(4)(d) of the Bail Act 2005 and the requirements imposed as conditions under section 4(4)(d) shall include requirements that the accused person—

- (a) undergo medical examination by a medical practitioner who is registered to practise in accordance with the Medical Practitioners Act 1950; or
- (b) where the inquiry is into his mental condition and the court so directs, two such practitioners who are registered in accordance with the Medical Practitioners Act 1950; and

for the purposes of paragraph (a) or (b), attend such an institution or place, or on such practitioner, as the court directs and, where the inquiry is into his mental condition, comply with any other directions which may be given to him for that purpose by any person specified by the court or by a person of any class so specified.

PART VI

BAIL AND RECOGNIZANCES

Restriction on grant of bail in treason

51 A person charged with treason shall not be granted bail except by order of the Governor.

Bail on arrest

52 (1) Where a person has been granted police bail under the Bail Act 2005 subject to a duty to appear before the court, the court may appoint a later time as the time at which he is to appear and may enlarge the recognizances of any sureties for him at that time.

(2) The recognizance of any surety for any person granted bail subject to a duty to attend at a police station may be enforced as if it were conditioned for his appearance before the court.

Warrant endorsed for bail

53 (1) Subject to subsection (2), the magistrates' court on issuing a warrant for the arrest of any person may grant him bail by endorsing the warrant for bail, that is to say, by endorsing the warrant with a direction in accordance with subsection (3).

(2) The magistrates' court may not endorse for bail any warrant concerning an offence listed in paragraph 2 of Part 1 of Schedule 1 of the Bail Act 2005 (exceptions to right to bail).

(3) A direction for bail endorsed on a warrant under subsection (1) shall—

- (a) in the case of bail in criminal proceedings, state that the person arrested is to be released on bail subject to a duty to appear before such court and at such time as may be specified in the endorsement;
- (b) in the case of bail otherwise than in criminal proceedings, state that the person arrested is to be released on bail on his entering into such a recognizance (with or without sureties) conditioned for his appearance before the court as may be specified in the endorsement;

and the endorsement shall fix the amounts in which any sureties and, in a case falling within paragraph (b), that person is or are to be bound.

(4) Where a warrant has been endorsed for bail under subsection (1)—

- (a) where the person arrested is to be released on bail on his entering into a recognizance without sureties, it shall not be necessary to take him to a

police station, but if he is so taken, he shall be released from custody on his entering into the recognizance; and

- (b) where he is to be released on his entering into a recognizance with sureties, he shall be taken to a police station on his arrest, and the custody officer there shall (subject to his approving any surety tendered in compliance with the endorsement) release him from custody as directed in the endorsement.

Varying or dispensing with requirement as to sureties

54 (1) Subject to subsection (2), where the court has sent a person to custody in default of finding sureties, the court may, on application by or on behalf of the person sent, and after hearing new facts, reduce the amount in which it is proposed that any surety should be bound or dispense with any of the sureties or otherwise deal with the case as it thinks just.

(2) Subsection (1) does not apply in relation to a person granted bail in criminal proceedings.

Postponement of taking recognizance

55 (1) Where the court has power to take any recognizance, the court may, instead of taking it, fix the amount in which the principal and his sureties, if any, are to be bound; and thereafter the recognizance may be taken by any such person as may be prescribed.

(2) Where, in pursuance of this section, a recognizance is entered into otherwise than before the court that fixed the amount of it, the same consequences shall follow as if it had been entered into before that court; and references in this or any other Act to the court before which a recognizance was entered into shall be construed accordingly.

(3) Nothing in this section shall enable the court to alter the amount of a recognizance fixed by the Supreme Court.

Forfeiture of recognizance

56 (1) This section applies where—

- (a) a recognizance to keep the peace or to be of good behaviour has been entered into before the magistrates' court; or
- (b) any recognizance is conditioned for the appearance of a person before the magistrates' court, or for his doing any other thing connected with a proceeding before the magistrates' court.

(2) If, in the case of a recognizance which is conditioned for the appearance of an accused person before the magistrates' court, the accused person fails to appear in accordance with the condition, the magistrates' court shall—

- (a) declare the recognizance to be forfeited;
- (b) issue a summons directed to each person bound by the recognizance as surety, requiring him to appear before the magistrates' court on a date

specified in the summons to show cause why he should not be adjudged to pay the sum in which he is bound,

and on that date the magistrates' court may proceed in the absence of any surety if it is satisfied that he has been served with the summons.

(3) If, in any other case falling within subsection (1), the recognizance appears to the magistrates' court to be forfeited, the magistrates' court may—

- (a) declare the recognizance to be forfeited; and
- (b) adjudge each person bound by it, whether as principal or surety, to pay the sum in which he is bound,

but in a case falling within subsection (1)(a), the magistrates' court shall not declare the recognizance to be forfeited except by order made on an information on oath.

(4) The magistrates' court which declares the recognizance to be forfeited may, instead of adjudging any person to pay the whole sum in which he is bound, adjudge him to pay part only of the sum or may remit the sum.

(5) Payment of any sum adjudged to be paid under this section, including any costs awarded against the defendant, may be enforced, and any such sum shall be applied, as if it were a fine and as if the adjudication were a summary conviction of an offence not punishable with imprisonment.

(6) Where payment is enforced under subsection (5), at any time before the issue of a warrant of commitment to enforce payment of the sum, or before the sale of goods under a warrant of distress to satisfy the sum, the court may remit the whole or any part of the sum either absolutely or on such conditions as the court thinks just.

(7) A recognizance such as is mentioned in this section shall not be enforced otherwise than in accordance with this section, and accordingly shall not be transmitted to the Supreme Court nor shall its forfeiture be certified to that Court.

Security for keeping peace

57 (1) Where it is made to appear to the court by information on oath that any person is likely to commit a breach of the peace or to do any wrongful act which is likely to occasion a breach of the peace, the court may, as hereinafter provided, require such person to show cause why he should not be ordered to enter into a recognizance, with or without sureties, to keep the peace or to be of good behaviour for such period, not exceeding twelve months, as the court thinks fit.

(2) The person informed against shall be summoned to appear before the court at such time and place as may be specified in the summons, and if he fails to appear in accordance with the summons, the court may issue a warrant for his arrest.

(3) If upon enquiry, the court is satisfied that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person informed against should enter into a recognizance, with or without sureties, the court shall make an order accordingly.

(4) Where the person informed against is unwilling to enter into a recognizance as aforesaid or is unable to find the required sureties, the court may order that he be detained in custody until such time as he complies with the terms of the order or for a period of six months, whichever is the shorter period.

(5) Any person in respect of whom an order has been made under this section may appeal to the Supreme Court against the making of the order, and the provisions of the Criminal Appeal Act 1952 shall apply to any such appeal as they apply to an appeal against a conviction by a court of summary jurisdiction.

PART VII

COSTS, FINES AND ENFORCEMENT

Costs against informant

58 (1) When a charge is dismissed, and appears to the magistrates' court to have been unfounded, frivolous or made from any improper motive, the court may order the costs, or any part of the costs, to be paid by the informant, either forthwith or within such time as the magistrates' court may allow.

(2) If such costs ordered to be paid under subsection (1) are not paid, the magistrates' court may commit the informant to prison for a term not exceeding ten days, unless such costs are sooner paid.

(3) The costs which the magistrates' court may order to be paid under subsection (1) shall be such sums as may be fixed by the court in respect of the expenses incurred by the defendant, including fees payable to his barrister and attorney (if any), which sum shall be payable to the defendant.

Prosecution costs

59 The magistrates' court may award and order, in and by the conviction or order, the defendant to pay such sum towards the costs of the prosecution as to the court seems reasonable.

Enforcement of payment of fine and costs

60 (1) Where—

- (a) under powers conferred by law the magistrates' court has ordered a convicted person to pay a fine or costs in consequence of his conviction; and
- (b) the fine or costs so ordered to be paid have not been paid within the time allowed by the magistrates' court—
 - (i) the magistrates' court may enforce the payment by levy and distress of the goods of the convicted person; or
 - (ii) the magistrates' court may issue a warrant under this section for the convicted person's arrest.

(2) A warrant under this section shall be authority—

- (a) for any police officer, whether he has the warrant with him or not, to arrest the convicted person named in the warrant and bring him before the magistrates' court to be dealt with according to law; and
- (b) if the circumstances warrant, for the convicted person to be detained in custody at a police station for a period of not more than two days (not including Saturdays, Sundays or public holidays) after his arrest before he is brought before the magistrates' court in accordance with paragraph (a).

(3) In relation to the issue of a warrant under this section, the provisions of section 53 (warrant endorsed for bail) shall apply with necessary modifications.

(4) A police officer arresting a person by virtue of a warrant under this section shall at the time of the arrest either—

- (a) show the warrant to the person being arrested; or
- (b) if the officer does not have the warrant with him at that time, inform the person being arrested of the existence and purport of the warrant,

and, where a person is arrested in accordance with paragraph (b), the warrant shall be shown to him as soon as may be after the arrest and in any event not more than four hours after the arrest.

(5) Subject to subsection (6), the magistrates' court shall enquire into the case and if satisfied that that person ("the detainee") is in default in payment of a fine or costs in consequence of a summary conviction, may either—

- (a) order that he be forthwith imprisoned for the default for the period which the court which convicted him specified in relation to the default or, if a period of imprisonment was not so specified, then for such period warranted by law as the first-mentioned court determines; or
- (b) enlarge the time for payment and order the detainee's release if it appears to the court to be just in all the circumstances to do so,

and the magistrates' court may also in any event order the detainee to pay as costs such sum not exceeding five hundred dollars in respect of the expenses occasioned by his arrest and, where he was detained after arrest, his detention as the court thinks fit.

(6) The magistrates' court shall not order imprisonment under subsection (5)(a) unless—

- (a) the detainee appears to the magistrates' court to have sufficient means to pay the sum forthwith; or
- (b) it appears to the magistrates' court that the detainee is unlikely to remain long enough at a place of abode in Bermuda to enable payment of the sum to be enforced by other methods.

CRIMINAL JURISDICTION AND PROCEDURE ACT 2015

Application of money found on defaulter to satisfy sum adjudged

61 (1) Where the magistrates' court has adjudged a person to pay a sum by a conviction, the magistrates' court may order him to be searched.

(2) Any money found on the arrest of a person adjudged to pay such a sum as aforesaid, or on a search as aforesaid, or on his being taken to a prison or other place of detention in default of payment of such a sum or for want of sufficient distress to satisfy such a sum, may, unless the magistrates' court otherwise directs, be applied towards payment of the said sum; and the balance, if any, shall be returned to him.

(3) The magistrates' court shall not allow the application as aforesaid of any money found on a person if it is satisfied that the money does not belong to him or that the loss of the money would be more injurious to his family than would be his detention.

Nolle prosequi

62 In any proceedings instituted before a magistrates' court, the Director of Public Prosecutions may at any stage of the proceedings, by writing under his hand, enter a nolle prosequi to stay proceedings on any information or summons, and upon receipt of such nolle prosequi the magistrate shall cause the accused person to be discharged from any further proceedings in respect of such information or summons; and such discharge shall operate as a bar to further proceedings on the same information or summons, unless the Director of Public Prosecutions by writing under his hand, consents to such further proceedings.

Period of imprisonment in default of payment of fine or costs

63 (1) When the magistrates' court has authority under any enactment to impose imprisonment in default of payment of a fine or, as the case may be, of costs, the period of imprisonment shall not exceed the period shown, respectively, in the following Table—

Amount of fine or costs, or fine and costs combined	Period of imprisonment
Not exceeding one hundred dollars	Seven days
Exceeding one hundred dollars but not exceeding two hundred dollars	Fourteen days
Exceeding two hundred dollars but not exceeding five hundred and fifty dollars	One month
Exceeding five hundred and fifty dollars but not exceeding one thousand dollars	Three months
Exceeding one thousand dollars	Six months

(2) Notwithstanding anything in subsection (1), an offender shall be discharged on payment of the fine or, as the case may be, of the costs, or of both, or such proportion thereof as the magistrates' court, taking into consideration the period of imprisonment suffered, may permit.

Time for payment; payment excused; instalments

64 (1) Without prejudice to any other power or authority vested in the magistrates' court, the court by whose conviction or order any sum is to be paid may—

- (a) excuse such payment, or any part thereof, for any specific reason which the magistrates' court deems sufficient;
- (b) allow time for payment; and
- (c) direct payment by instalments.

(2) The powers under subsection (1) are exercisable by the court on its own motion or on the application of the prosecution or the defendant.

Fines imposed on companies

65 Where—

- (a) the magistrates' court has, or is treated by any enactment as having, adjudged a company by a conviction to pay a sum;
- (b) the magistrates' court has issued a warrant of distress under section 60(1)(b)(i) for the purpose of levying the sum; and
- (c) it appears on the return to the warrant that the money and goods of the company are insufficient to satisfy the sum with the costs and charges of levying the same,

the Attorney General may make an application in relation to the company under section 163 of the Companies Act 1981 (winding up).

PART VIII

REMANDS AND SHORT DETENTIONS

Remand in custody or on bail

66 (1) Where the magistrates' court has power to remand any person, then, subject to section 6 of the Bail Act 2005 and to any other enactment modifying that power, the magistrates' court may—

- (a) remand him in custody, that is to say, commit him to custody to be brought before the court subject to subsection (7), at the end of the period of remand or at such earlier time as the magistrates' court may require;
- (b) where it is inquiring into or trying an offence alleged to have been committed by that person or has convicted him of an offence, remand him on bail in accordance with the Bail Act 2005, that is to say, by directing him to appear as provided in section 2(3) of the Bail Act 2005; or
- (c) except in a case falling within paragraph (b), remand him on bail by taking from him a recognizance (with or without sureties) conditioned as provided in that subsection,

and may, in a case falling within paragraph (c), instead of taking recognizances in accordance with that paragraph, fix the amount of the recognizances with a view to their being taken subsequently in accordance with section 55.

(2) Where on adjourning a case under section 7(1) or 13 the magistrates' court proposes to remand or further remand a person in custody and that person is—

- (a) before the magistrates' court; and
- (b) represented by a barrister and attorney in that magistrates' court,

it shall be the duty of the magistrates' court to—

- (i) explain the effect of subsections (7) and (8) to him in ordinary language; and
- (ii) inform him in ordinary language that, notwithstanding the procedure for a remand without his being brought before a magistrates' court, he would be brought before a magistrates' court for the hearing and determination of at least every fourth application for his remand, and of every application for his remand heard at a time when it appeared to the magistrates' court that he did not have a barrister and attorney acting for him in the case.

(3) For the purposes of subsection (2) a person is to be treated as legally represented in a court if, but only if, he has the assistance of a barrister and attorney to represent him in the proceedings in that magistrates' court.

(4) After explaining to an accused as provided by subsection (2) the court shall ask him whether he consents to the hearing and determination of such applications in his absence.

(5) Where the magistrates' court fixes the amount of a recognizance under subsection (1) or section 11(3) of the Bail Act 2005 with a view to its being taken subsequently, the court shall in the meantime commit the person so remanded to custody in accordance with paragraph (a) of the said subsection (1).

(6) Where a person is brought before the magistrates' court after remand, the magistrates' court may further remand him.

(7) Subject to subsection (8), where a person has been remanded in custody and the remand was not a remand under section 66 for a period exceeding 8 clear days, the magistrates' court may further remand him (otherwise than in the exercise of the power conferred by that section) on an adjournment under section 7(1) or 13 without his being brought before it if it is satisfied—

- (a) that he gave his consent, either in response to a question under subsection (4) or otherwise, to the hearing and determination in his absence of any application for his remand on an adjournment of the case under any of those provisions; and
- (b) that he has not by virtue of this subsection been remanded without being brought before the magistrates' court on more than two such applications immediately preceding the application which the court is hearing; and

- (c) that he has not withdrawn his consent to their being so heard and determined.

(8) The magistrates' court may not exercise the power conferred by subsection (7) if it appears to the court, on an application for a further remand being made to it, that the person to whom the application relates does not have a barrister and attorney acting for him in the case (whether present in the magistrates' court or not).

(9) Where—

- (a) a person has been remanded in custody on an adjournment of a case under section 7(1) or 13;
- (b) an application is subsequently made for his further remand on such an adjournment;
- (c) he is not brought before the magistrates' court which hears and determines the application; and
- (d) that magistrates' court is not satisfied as mentioned in subsection (7),

the magistrates' court shall adjourn the case and remand him in custody for the period for which it stands adjourned.

(10) An adjournment under subsection (9) shall be for the shortest period that appears to the magistrates' court to make it possible for the accused person to be brought before it.

(11) Where—

- (a) on an adjournment of a case under section 7(1) or 13 a person has been remanded in custody without being brought before the magistrates' court; and
- (b) it subsequently appears to the magistrates' court,

that he ought not to have been remanded in custody in his absence, the magistrates' court shall require him to be brought before it at the earliest time that appears to the magistrates' court to be possible.

(12) Where a person is remanded on bail under subsection (1) the magistrates' court may, where it remands him on bail in accordance with the Bail Act 2005 direct him to appear or, in any other case, direct that his recognizance be conditioned for his appearance—

- (a) before that magistrates' court at the end of the period of remand; or
- (b) at every time and place to which during the course of the proceedings the hearing may be from time to time adjourned;

and, where it remands him on bail conditionally on his providing a surety during an inquiry into an offence alleged to have been committed by him, may direct that the recognizance of the surety be conditioned to secure that the person so bailed appears—

- (c) at every time and place to which during the course of the proceedings the hearing may be from time to time adjourned and also before the Supreme Court in the event of the person so bailed being sent for trial there.

(13) Where a person is directed to appear or a recognizance is conditioned for a person's appearance in accordance with paragraph (b) or (c) of subsection (1), the fixing at any time of the time for him next to appear shall be deemed to be a remand, but nothing in this subsection or subsection (1) shall deprive the magistrates' court of power at any subsequent hearing to remand him afresh.

(14) Subject to the provisions of sections 66 and 67, the magistrates' court shall not remand a person for a period exceeding 8 clear days, except that—

- (a) if the magistrates' court remands him on bail, it may remand him for a longer period if he and the other party consent;
- (b) where the magistrates' court adjourns a trial under section 7(3) or section 50, the magistrates' court may remand him for the period of the adjournment; and
- (c) where a person is charged with an either-way offence, then, if it falls to the magistrates' court to try the case summarily but the magistrates' court is not at the time so constituted, and sitting in such a place, as will enable it to proceed with the trial, the magistrates' court may remand him until the next occasion on which it will be practicable for the magistrates' court to be so constituted, and to sit in such a place, as aforesaid, notwithstanding that the remand is for a period exceeding 8 clear days.

Remand in custody for more than eight days

67 (1) The magistrates' court may remand the accused person in custody for a period exceeding 8 clear days if it has previously remanded him in custody for the same offence and he is before the magistrates' court, if—

- (a) it has previously remanded him in custody for the same offence; and
- (b) he is before the magistrates' court,

but only if, after affording the parties an opportunity to make representations, it has set a date on which it expects that it will be possible for the next stage in the proceedings, other than a hearing relating to a further remand in custody or on bail, to take place, and only—

- (i) for a period ending not later than that date; or
- (ii) for a period of 28 clear days,

whichever is the less.

(2) Nothing in this section affects the right of the accused person to apply for bail during the period of the remand.

Further remand

68 (1) If the magistrates' court is satisfied that any person who has been remanded is unable by reason of illness or accident to appear or be brought before the magistrates' court at the expiration of the period for which he was remanded, the magistrates' court may, in his absence, remand him for a further time; and section 66(14) shall not apply.

(2) Notwithstanding anything in section 66(1), the power of a magistrates' court under subsection (1) to remand a person on bail for a further time—

- (a) where he was granted bail in criminal proceedings, includes power to enlarge the recognizance of any surety for him to a later time;
- (b) where he was granted bail otherwise than in criminal proceedings, may be exercised by enlarging his recognizance and those of any sureties for him to a later time.

(3) Where a person remanded on bail is bound to appear before the magistrates' court at any time and the magistrates' court has no power to remand him under subsection (1), the court may in his absence—

- (a) where he was granted bail in criminal proceedings, appoint a later time as the time at which he is to appear and enlarge the recognizances of any sureties for him to that time;
- (b) where he was granted bail otherwise than in criminal proceedings, enlarge his recognizance and those of any sureties for him to a later time,

and the appointment of the time or the enlargement of his recognizance shall be deemed to be a further remand.

(4) Where the magistrates' court sends a person to the Supreme Court for trial on bail and the recognizance of any surety for him has been conditioned in accordance with section 66 the court may, in the absence of the surety, enlarge his recognizance so that he is bound to secure that the person so sent for trial appears also before the Supreme Court.

Remand of accused already in custody

69 (1) When the magistrates' court remands an accused person in custody and he is already detained under a custodial sentence, the period for which he is remanded may be up to 28 clear days.

(2) But the magistrates' court shall inquire as to the expected date of his release from that detention; and if it appears that it will be before 28 clear days have expired, he shall not be remanded in custody for more than 8 clear days or (if longer) a period ending with that date.

(3) Where the accused person is serving a sentence of imprisonment to which an intermittent custody order under section 70L of the Criminal Code Act 1907 relates, the reference in subsection (2) to the expected date of his release is to be read as a reference to the expected date of his next release.

Video conference appearance while on remand

70 (1) In relation to section 66, 67, 68, 69, and in relation to section 501 of the Criminal Code Act 1907, the person in charge of the accused person shall cause the accused person to appear before the Judge of the Supreme Court, the magistrate or Justice of the Peace, as the case may be, by a means set out in subsection (2) for any part of the preliminary proceedings or proceedings in the Supreme Court other than a part in which the evidence of any witness is taken.

(2) The means referred to in subsection (1) are an appearance by the accused person—

- (a) by video conference; or
- (b) by any other means that allow the Judge of the Supreme Court, Magistrate or Justice of the Peace, as the case may be, and the accused person to engage in simultaneous visual and oral communication.

(3) If the accused person cannot appear by the means set out in subsection (2), the accused person shall be made to appear at a time and by a means as the Judge of the Supreme Court, the magistrate or Justice of the Peace, as the case may be, so orders.

PART IX

MISCELLANEOUS AND SUPPLEMENTARY

Evidence on oath

71 Subject to the provisions of any enactment or rule of law authorizing the reception of unsworn evidence, evidence given before the magistrates' court shall be given on oath.

Proof of previous convictions

72 Where a person is convicted of a summary offence by the magistrates' court, other than a family court, and—

- (a) it is proved to the satisfaction of the magistrates' court, on oath or in such other manner as may be prescribed, that not less than 7 days previously a notice was served on the accused person in the prescribed form and manner specifying any alleged previous conviction of the accused person of a summary offence proposed to be brought to the notice of the magistrates' court in the event of his conviction of the offence charged; and
- (b) the accused person is not present in person before the magistrates' court,

the magistrates' court may take account of any such previous conviction so specified as if the accused person had appeared and admitted it.

Companies

73 (1) The magistrates' court may send a company for trial by an order in writing empowering the prosecutor to prefer a bill of indictment in respect of the offence named in the order.

(2) An order under this section shall not prohibit the inclusion in the bill of indictment of counts that under section 485 of the Criminal Code Act 1907 may be included in the bill in substitution for, or in addition to, counts charging the offence named in the order.

(3) A representative may on behalf of a company—

- (a) make before the magistrates' court such representations as could be made by an accused who is not a company;
- (b) consent to the company being tried summarily; or
- (c) enter a plea of guilty or not guilty on the trial by the magistrates' court of an information.

(4) Where a representative appears pursuant to subsection (3), any requirement that anything shall be done in the presence of the accused person, or shall be read or said to the accused person, shall be construed as a requirement that that thing shall be done in the presence of the representative or read or said to the representative.

(5) Where a representative does not appear pursuant to subsection (3), any such requirement, and any requirement that the consent of the accused person shall be obtained for summary trial, shall not apply.

(6) Notification or indication may be given on behalf of a company by a director or the secretary of the company; and those subsections shall apply in relation to a notification or indication purporting to be so given as they apply to a notification or indication purporting to be given by an individual accused.

(7) Subject to this section, the provisions relating to the inquiry into, and trial of, indictable offences shall apply to a company as they apply to an adult.

(8) Where a company and an individual who has attained the age of 16 are jointly charged before the magistrates' court with an either-way offence, the magistrates' court shall not try either the company or the accused person summarily unless each of them consents to be so tried.

(9) Section 503(2) of the Criminal Code Act 1907 shall apply to a representative for the purposes of this section as it applies to a representative for the purposes of that section.

(10) In this section the expression "representative" in relation to a company means a person duly appointed by the company to represent it for the purpose of doing any act or thing which the representative of a company is by this section authorized to do, but a person so appointed shall not, by virtue only of being so appointed, be qualified to act on behalf of the company before any court for any other purpose.

(11) A representative for the purposes of this section need not be appointed under the seal of the company, and a statement in writing purporting to be signed by a managing director of the company, or by any person (by whatever name called) having, or being one of the persons having, the management of the affairs of the company, to the effect that the person named in the statement has been appointed as the representative of the company for the purposes of this section shall be admissible without further proof as prima facie evidence that that person has been so appointed.

Service of summons

74 A summons shall be served by showing the summons, and delivering a copy thereof, to the person to whom the summons is directed, or by leaving a copy of the summons at his usual or last known place of abode.

Service of summons out of time after failure to prove service by post

75 (1) Where any enactment requires, expressly or by implication, that—

- (a) a summons in respect of an offence shall be issued or served within a specified period after the commission of the offence; and
- (b) service of the summons may be effected by post,

then, if service of the summons is not treated as proved, but it is shown that a letter containing the summons was posted at such time as to enable it to be delivered in the ordinary course of post within that period, a second summons may be issued on the same information.

(2) The enactment applies, in relation to that summons, as if the specified period were a period running from the return day of the original summons.

Appearance by a barrister and attorney

76 (1) A party to any proceedings before the magistrates' court may be represented by a barrister and attorney.

(2) Subject to subsection (3) below, an absent party so represented shall be deemed not to be absent.

(3) Appearance of the barrister and attorney shall not satisfy any provision of any enactment or any condition of a recognizance expressly requiring the presence of the party.

Defect in process

77 (1) No objection shall be allowed to any information, or to any summons or warrant to procure the presence of the accused person, for any defect in it in substance or in form, or for any variance between it and the evidence adduced on behalf of the prosecutor or informant at the hearing of the information.

(2) If it appears to the magistrates' court that any variance between a summons or warrant and the evidence adduced on behalf of the prosecutor or informant is such that the accused person has been misled by the variance, the magistrates' court shall, on the application of the accused person, dismiss the hearing.

Process valid notwithstanding death, etc., of magistrate

78 A warrant or summons issued by the magistrate shall not cease to have effect by reason of his death or his ceasing to be a magistrate.

Warrants

79 A warrant of arrest, commitment, detention, or a search warrant issued by the magistrates' court—

- (a) shall remain in force until it is executed or withdrawn or it ceases to have effect in accordance with rules of court; and
- (b) may be executed anywhere in Bermuda by any police officer.

Limitation of time for commencing summary prosecutions

80 (1) Subject to subsection (2), a prosecution for a summary offence must, unless otherwise expressly provided, be begun within a period of—

- (a) 12 months after the offence is committed; or
- (b) 6 months of the date when facts sufficient in the opinion of the Director of Public Prosecutions to justify the institution of criminal proceedings first come to his notice,

whichever period last expires.

(2) Unless otherwise expressly provided, no prosecution for a summary offence shall be begun more than 18 months after the offence is committed.

(3) For the purpose of subsection (1)(b), a certificate purporting to be under the hand of the Director of Public Prosecutions and specifying the date upon which such facts first came to his notice shall be evidence that such facts first came to his notice upon such date.

Disposal of non-pecuniary forfeitures

81 (1) Subject to any enactment relating to customs or excise, anything other than money forfeited on a conviction by the magistrates' court or the forfeiture of which may be enforced by the magistrates' court shall be sold or otherwise disposed of in such manner as the magistrates' court may direct.

(2) The proceeds from such sale or disposal shall be applied as if they were a fine imposed under the enactment on which the proceedings for the forfeiture are founded.

Power of magistrates' court to re-open cases to rectify mistakes etc.

82 (1) The magistrates' court may vary or rescind a sentence or other order imposed or made by it when dealing with an offender if it appears to the court to be in the interests of justice to do so.

(2) The power under subsection (1) extends to replacing a sentence or order which for any reason appears to be invalid by another which the court has power to impose or make.

(3) The powers conferred on the magistrates' court by subsections (1) and (2) shall not be exercisable in relation to any sentence or order imposed or made by it when dealing with an offender if—

- (a) the Supreme Court has determined an appeal against—
 - (i) that sentence or order;

- (ii) the conviction in respect of which that sentence or order was imposed or made; or
 - (iii) any other sentence or order imposed or made by the court when dealing with the offender in respect of that conviction (including a sentence or order replaced by that sentence or order); or
 - (b) the Supreme Court has determined a case stated for the opinion of that court on any question arising in any proceeding leading to or resulting from the imposition or making of the sentence or order.
- (4) Where a person is convicted by the magistrates' court and it subsequently appears to the magistrates' court that it would be in the interests of justice that the case should be heard again by a different magistrate, the magistrates' court may so direct.
- (5) The power conferred on the court by subsection (4) above shall not be exercisable in relation to a conviction if—
- (a) the Supreme Court has determined an appeal against—
 - (i) the conviction; or
 - (ii) any sentence or order imposed or made by the magistrates' court when dealing with the offender in respect of the conviction; or
 - (b) the Supreme Court has determined a case stated for the opinion of that magistrates' court on any question arising in any proceeding leading to or resulting from the conviction.
- (6) Where a magistrates' court gives a direction under subsection (4) above—
- (a) the conviction and any sentence or other order imposed or made in consequence thereof shall be of no effect; and
 - (b) section 7(4) shall apply as if the trial of the person in question had been adjourned.
- (7) Where a sentence or order is varied under subsection (1), the sentence or other order, as so varied, shall take effect from the beginning of the day on which it was originally imposed or made, unless the magistrates' court otherwise directs.

Record of proceedings

83 (1) The magistrates' court must maintain a record of proceedings for all cases coming before it, which is to include all matters noted in subsections (2), (3), (5) and (7).

(2) The record of proceedings must include the details of any rulings, determinations or directions made at a case management hearing held under Part XXVI of the Criminal Code Act 1907.

(3) The record of proceedings must include a written note of all material evidence before the court in narrative form, to be composed by the magistrate composing a court of summary jurisdiction.

(4) In any written note taken under subsection (3), any particular question and the answer thereto shall be taken down in full—

- (a) on an application by a party to the case; or
- (b) of the magistrates court's own motion.

(5) The record of proceedings must include the magistrates' court's final judgment in writing, which will include—

- (a) the point or points for determination;
- (b) the decision made on such points; and
- (c) the reasons for the decisions.

(6) When it is delivered, the final judgment mention in subsection (5) must be dated and signed by—

- (a) the magistrate composing the court of summary jurisdiction; or
- (b) in the case of a Special Court, its chairman.

(7) The record of proceedings must include such other particulars as may be required by rules made under section 540 of the Criminal Code Act 1907.

(8) Subject to subsection (9), for the purposes of subsection (4) and (5), a tape recorded record of proceedings may be used in lieu of a written note.

(9) A tape recorded record shall be of such type approved by the Minister and specified in a notice published in the Gazette.

Record of conviction

84 (1) The magistrates' court shall continue to maintain a record of convictions (including records of conviction for matters subsequently tried on indictment), for matters dealt with by the court.

(2) Every conviction shall be entered into the record of convictions.

(3) The record of convictions shall be maintained in such form, and contain such particulars, as may be prescribed by rules made under section 540 of the Criminal Code Act 1907.

(4) In respect of any conviction on a ticket information under Part II of the Traffic Offences Procedure Act 1974, it shall be sufficient compliance with this section for the magistrates' court to complete the record of conviction portion of the ticket and to cause the same to be filed in the court records.

Newly constituted court

85 (1) Where proceedings have commenced before a court of summary jurisdiction and the magistrate who composed the court is absent, then any other magistrate may act in the place of the absent magistrate; and, subject to this section, all proceedings may be

had and taken by the newly constituted court as if the original magistrate had continued to sit.

(2) Notwithstanding anything in subsection (1), where evidence has been given before a court of summary jurisdiction and the proceedings in respect of which that evidence was given are continued before a newly constituted court, the following provisions of this subsection shall have effect with regard to such evidence in relation to the proceedings before the newly constituted court—

- (a) subject to paragraph (b), a witness who gave evidence before the court as originally constituted shall be summoned to appear before the newly constituted court and shall again be sworn; and upon being sworn the court may require him again to give evidence, or may allow the record given before the court as originally constituted to be read over for his assent; and, where the court allows the record of evidence to be read over as aforesaid, the court may allow such further examination and cross-examination of the witness as the court thinks proper;
- (b) where a witness who gave evidence before the court as originally constituted has died, or is absent from Bermuda or is otherwise, in the opinion of the newly constituted court, incapable of giving evidence, then the record of the evidence of that witness given before the court as originally constituted shall for the purposes of any proceedings had and taken before the newly constituted court be deemed to be the record of evidence given before the newly constituted court.

Punishment where no special punishment prescribed

86 Where no punishment has been, or shall be, prescribed by an Act for an offence punishable on summary prosecution, the magistrates' court may impose a fine not exceeding \$2,000 (and imprisonment in default of paying such fine) or imprisonment for a term not exceeding twelve months, or both such fine and imprisonment.

Saving for family courts

87 The provisions relating to the constitution, place of sitting and procedure of magistrates' courts shall, in their application to family courts, have effect subject to rules prescribed by the Chief Justice in accordance with this section, or to any other enactment regulating the constitution, place of sitting or procedure of family courts.

Forms in Schedule 1

88 The forms in the Schedule 1, or forms to the like effect, shall be deemed good, valid and sufficient in law.

AMENDMENTS TO THE CRIMINAL CODE ACT 1907

Amends the Criminal Code Act 1907

89 The Criminal Code Act 1907 is amended—

- (a) in section 3 by inserting next after the definition for "riot" the following—

“sending” means the process by which an accused is sent for trial to the Supreme Court pursuant to Part IV of the Criminal Jurisdiction and Procedure Act 2015, and cognate expressions shall be construed accordingly;”;

- (b) in section 70F(8)(b) by deleting “30 of the Summary Jurisdiction Act 1930” and substituting “62 of the Criminal Jurisdiction and Procedure Act 2015”.
- (c) in section 461A by deleting the word “A” and by substituting the words “Subject to section 59A to 59E of the Police and Criminal Evidence Act 2006,”;
- (d) in section 470 by deleting the words “examination and committal” and substituting the word “sending”;
- (e) in section 485(2)—
 - (i) in paragraph (a) by deleting the word “committed” and substituting the word “sent”; and
 - (ii) in paragraph (a) by deleting the words “Indictable Offences Act 1929” and substituting the words “Criminal Jurisdiction and Procedure Act 2015”;
 - (iii) by deleting paragraph (i) of the proviso and substituting the following—
 - “(i) where the person charged has been sent for trial, the bill of indictment against him may include, either in substitution for or in addition to any count charging an offence for which the person is sent pursuant to Part IV of the Criminal Jurisdiction and Procedure Act 2015, any counts founded on material which, in pursuance of section 29 or 33 of that Act, was served on the person charged, being counts which may lawfully be joined in the same indictment; and”;
 - (iv) in paragraph (ii) by deleting the words “the committal” and substituting the words “the notice of any sending”;
- (f) in section 487(2) by—
 - (i) deleting the words “committal order” and substituting the words “the notice of any sending”;
 - (ii) deleting the word “committal” and substituting the word “sending”;
- (g) in section 491 by—
 - (i) by inserting in the headnote, after “490”, the words “and 492 to 499”;
 - (ii) by inserting after “490” the words “and 492 to 499”;
- (h) by inserting next after section 503 the following—

“Procedure on charge of offence against a company

503A (1) On arraignment of a company, the company may enter in writing by its representative a plea of guilty or not guilty, and if either the company does not appear by a representative or, though it does so appear, fails to enter as aforesaid any plea, the court shall order a plea of not guilty to be entered and the trial shall proceed as though the company had duly entered a plea of not guilty.

(2) Provision may be made by rules with respect to the service on any company charged with an offence of any documents required to be served in connection with the proceedings.

(3) In this section the expression “representative” in relation to a company means a person duly appointed by the company to represent it for the purpose of doing any act or thing which the representative of a company is by this section authorized to do, but a person so appointed shall not, by virtue only of being so appointed, be qualified to act on behalf of the company before any court for any other purpose.

(4) A representative for the purposes of this section need not be appointed under the seal of the company, and a statement in writing purporting to be signed by a managing director of the company, or by any person (by whatever name called) having, or being one of the persons having, the management of the affairs of the company, to the effect that the person named in the statement has been appointed as the representative of the company for the purposes of this section shall be admissible without further proof as prima facie evidence that that person has been so appointed.”; and

(i) in section 556(2) by deleting the word “committal”, where it appears, and substituting the word “sending”.

AMENDMENTS TO THE EVIDENCE ACT 1905

Amends the Evidence Act 1905

90 The Evidence Act 1905 is amended by inserting next after section 69 the following—

“Onus of proving exceptions, etc.

69A (1) Where the defendant to an information, an indictment or a complaint relies for his defence on any exception, exemption, proviso, excuse or qualification, whether or not it accompanies the description of the offence in the enactment creating the offence or on which the complaint is founded, the burden of proving the exception, exemption, proviso, excuse or qualification shall be on him.

(2) Subsection (1) is notwithstanding that the information or indictment contains an allegation negating the exception, exemption, proviso, excuse or qualification.”.

CRIMINAL JURISDICTION AND PROCEDURE ACT 2015

AMENDMENTS TO THE POLICE AND CRIMINAL EVIDENCE ACT 2006

Amends the Police and Criminal Evidence Act 2006

91 The Police and Criminal Evidence Act 2006 is amended—

- (a) in section 59 by deleting the word “A” and substituting the words “Subject to sections 59A and 59B, a”; and
- (b) by inserting next after section 59 the following—

“Evidence of silence in criminal proceedings for offences

59A (1) In a criminal proceeding for an offence, such unfavourable inferences may be drawn as appear proper from evidence that, during official questioning in relation to the offence, the accused person failed or refused to mention a fact—

- (a) that the accused person could reasonably have been expected to mention in the circumstances existing at the time; and
- (b) that is relied on in his defence in that proceeding.

(2) Subsection (1) does not apply unless—

- (a) a special caution was given to the accused person by an investigating official who, at the time the caution was given, had reasonable cause to suspect that the accused person had committed the offence;
- (b) the special caution was given before the failure or refusal to mention the fact;
- (c) the special caution was given in the presence of a barrister and attorney who was acting for the accused person at that time; and
- (d) the accused person had, before the failure or refusal to mention the fact, been allowed a reasonable opportunity to consult with that barrister and attorney, in the absence of the investigating official, about the general nature and effect of special cautions.

(3) It is not necessary that a particular form of words be used in giving a special caution.

(4) An investigating official must not give a special caution to an accused person being questioned in relation to an offence unless satisfied that a special caution should be given.

(5) This section does not apply—

- (a) to an accused person who, at the time of the official questioning, is under 18 years of age or is incapable of understanding the general nature and effect of a special caution; or
- (b) if evidence of the failure or refusal to mention the fact is the only evidence that the accused person is guilty of the offence.

(6) The provisions of this section are in addition to any other provisions relating to an accused person being cautioned before being investigated or questioned for an offence that the accused person does not have to say or do anything. The special caution may be given after or in conjunction with that caution.

(7) Nothing in this section precludes the drawing of any inference from evidence of silence that could properly be drawn apart from this section.

(8) The giving of a special caution in accordance with this section in relation to offence does not of itself make evidence obtained after the giving of the special caution inadmissible in proceedings for any other offence.

(9) In this section—

“official questioning” of an accused person in relation to an offence means questions put to the accused person by an investigating official who at that time was performing functions in connection with the investigation of the commission, or possible commission, of the offence;

“special caution” means a caution given to a person that is to the effect that—

- (a) the accused person does not have to say or do anything, but it may harm the person’s defence if the accused person does not mention when questioned something the accused person later relies on in court; and
- (b) anything the person does say or do may be used in evidence.

Effect of accused’s failure to mention facts when questioned or charged

59B (1) Where, in criminal proceedings against a person for an offence, evidence is given that the accused person—

- (a) at any time before he was charged with the offence, on being questioned under caution by a police officer trying to discover whether or by whom the offence had been committed, failed to mention any fact relied on in his defence in those proceedings; or
- (b) on being charged with the offence or cautioned that he might be prosecuted for it, failed to mention any such fact,

being a fact which in the circumstances existing at the time the accused could reasonably have been expected to mention when so questioned, charged or informed, as the case may be, subsection (2) below applies.

(2) Where this subsection applies—

- (a) a judge, in deciding whether to grant an application made by the accused person under section 31 of the Criminal Jurisdiction and Procedure Act 2015;

- (b) the court, in determining whether there is a case to answer; and
- (c) the court or jury, in determining whether the accused person is guilty of the offence charged,

may draw such inferences from the failure as appear proper.

(3) Where the accused person was at a police station at the time of the failure, subsections (1) and (2) above do not apply if he had not been allowed an opportunity to consult a barrister and attorney prior to being questioned, charged or informed as mentioned in subsection (1).

(4) Subject to any directions by the court, evidence tending to establish the failure may be given before or after evidence tending to establish the fact which the accused person is alleged to have failed to mention.

(5) This section applies in relation to questioning by—

- (a) a customs officer within the meaning prescribed by section 2 of the Revenue Act 1898;
- (b) an immigration officer within the meaning prescribed by section 2 of the Bermuda Immigration and Protection Act 1956; or
- (c) any person lawfully conferred with a duty to investigate an offence or to levy a criminal charge in relation to a criminal offence.

(6) This section does not—

- (a) prejudice the admissibility in evidence of the silence or other reaction of the accused person in the face of anything said in his presence relating to the conduct in respect of which he is charged, in so far as evidence thereof would be admissible apart from this section; or
- (b) preclude the drawing of any inference from any such silence or other reaction of the accused person which could properly be drawn apart from this section.

(7) For the avoidance of doubt this section does not—

- (a) have retrospective effect; or
- (b) apply in relation to a failure to mention a fact if the failure occurred before the commencement of this section.

Effect of accused's silence at trial

59C (1) At the trial of any person for an offence, subsections (2) and (3) below apply unless—

- (a) the accused person's guilt is not in issue; or
- (b) it appears to the court that the physical or mental condition of the accused person makes it undesirable for him to give evidence,

but subsection (2) below does not apply if, at the conclusion of the evidence for the prosecution, his barrister and attorney informs the court that the accused person will give evidence or, where he is unrepresented, the court ascertains from him that he will give evidence.

(2) Where this subsection applies, the court shall, at the conclusion of the evidence for the prosecution, satisfy itself (in the case of proceedings on indictment with a jury, in the presence of the jury) that the accused person is aware that the stage has been reached at which evidence can be given for the defence and that he can, if he wishes, give evidence and that, if he chooses not to give evidence, or having been sworn, without good cause refuses to answer any question, it will be permissible for the court or jury to draw such inferences as appear proper from his failure to give evidence or his refusal, without good cause, to answer any question.

(3) Where this subsection applies, the court or jury, in determining whether the accused person is guilty of the offence charged, may draw such inferences as appear proper from the failure of the accused person to give evidence or his refusal, without good cause, to answer any question.

(4) This section does not render the accused person compellable to give evidence on his own behalf, and he shall accordingly not be guilty of contempt of court by reason of a failure to do so.

(5) For the purposes of this section a person who, having been sworn, refuses to answer any question shall be taken to do so without good cause unless—

- (a) he is entitled to refuse to answer the question by virtue of any enactment, whenever passed or made, or on the ground of privilege; or
- (b) the court in the exercise of its general discretion excuses him from answering it.

(6) This section applies—

- (a) in relation to proceedings on indictment for an offence, only if the person charged with the offence is arraigned on or after the commencement of this section; or
- (b) in relation to proceedings in a magistrates' court, only if the time when the court begins to receive evidence in the proceedings falls after the commencement of this section.

Effect of accused's failure or refusal to account for objects, substances or marks

59D (1) Where—

- (a) a person is arrested by a police officer, and there is—
 - (i) on his person;

- (ii) in or on his clothing or footwear;
- (iii) otherwise in his possession; or
- (iv) in any place in which he is at the time of his arrest,
any object, substance or mark, or there is any mark on any such object;
- (b) that or another police officer investigating the case reasonably believes that the presence of the object, substance or mark may be attributable to the participation of the person arrested in the commission of an offence specified by the police officer;
- (c) the police officer informs the person arrested that he so believes, and requests him to account for the presence of the object, substance or mark; and
- (d) the person fails or refuses to do so,

then if, in any proceedings against the person for the offence so specified, evidence of those matters is given, subsection (2) below applies.

(2) Where this subsection applies—

- (a) a judge, in deciding whether to grant an application made by the accused person under section 31 of the Criminal Jurisdiction and Procedure Act 2015;
- (b) the court, in determining whether there is a case to answer; and
- (c) the court or jury, in determining whether the accused person is guilty of the offence charged,

may draw such inferences from the failure or refusal as appear proper.

(3) Subsections (1) and (2) above apply to the condition of clothing or footwear as they apply to a substance or mark thereon.

(4) Subsections (1) and (2) above do not apply unless the accused was told in ordinary language by the police officer when making the request mentioned in subsection (1)(c) above what the effect of this section would be if he failed or refused to comply with the request.

(5) Where the accused person was at a police station at the time of the failure or refusal, subsections (1) and (2) above do not apply if he had not been allowed an opportunity to consult a barrister and attorney prior to the request being made.

(6) This section applies in relation to customs officers as it applies in relation to police officers.

(7) This section does not preclude the drawing of any inference from a failure or refusal of the accused person to account for the presence of an object,

substance or mark or from the condition of clothing or footwear which could properly be drawn apart from this section.

(8) This section does not apply in relation to a failure or refusal which occurred before the commencement of this section.

Effect of accused's failure or refusal to account for presence at a particular place

59E (1) Where—

- (a) a person arrested by a police officer was found by him at a place at or about the time the offence for which he was arrested is alleged to have been committed;
- (b) that or another police officer investigating the offence reasonably believes that the presence of the person at that place and at that time may be attributable to his participation in the commission of the offence;
- (c) the police officer informs the person that he so believes, and requests him to account for that presence; and
- (d) the person fails or refuses to do so,

then if, in any proceedings against the person for the offence, evidence of those matters is given, subsection (2) below applies.

(2) Where this subsection applies—

- (a) a judge, in deciding whether to grant an application made by the accused person under section 31 of the Criminal Jurisdiction and Procedure Act 2015;
- (b) the court, in determining whether there is a case to answer; and
- (c) the court or jury, in determining whether the accused person is guilty of the offence charged,

may draw such inferences from the failure or refusal as appear proper.

(3) Subsections (1) and (2) do not apply unless the accused person was told in ordinary language by the police officer when making the request mentioned in subsection (1)(c) above what the effect of this section would be if he failed or refused to comply with the request.

(4) Where the accused person was at a police station at the time of the failure or refusal, subsections (1) and (2) do not apply if he had not been allowed an opportunity to consult a barrister and attorney prior to the request being made.

(5) This section applies in relation to customs officers as it applies in relation to police officers.

(6) This section does not preclude the drawing of any inference from a failure or refusal of the accused person to account for his presence at a place which could properly be drawn apart from this section.

(7) This section does not apply in relation to a failure or refusal which occurred before the commencement of this section.

Furtherance or preservation of the Bermuda Constitution Order 1968

59F (1) For the avoidance of doubt, nothing in sections 59A to 59E shall be construed as a revocation of the provisions of the Bermuda Constitution Order 1968.

(2) The Minister may make regulations, in relation to sections 59A to 59E, for the furtherance or preservation of the provisions of the Bermuda Constitution Order 1968.

(3) Regulations made under subsection (2) are subject to the negative resolution procedure.

Interpretation and savings for sections 59A to 59E

59G (1) In sections 59A to 59E of this Act, "place" includes any—

- (a) aircraft;
- (b) building (or any part of a building);
- (c) motor car;
- (d) motor vehicle;
- (e) vessel; or
- (f) any other place whatsoever.

(2) In sections 59B(2), 59C(3), 59D(2) and 59E(2), references to an offence charged include references to any other offence of which the accused person could lawfully be convicted on that charge.

(3) A person shall not have a case to answer or be convicted of an offence solely on an inference drawn from such a failure or refusal as is mentioned in sections 59B(2), 59C(3), 59D(2) and 59E(2).

(4) A judge shall not refuse to grant such an application as is mentioned in section 59B(2)(a), 59D(2)(a) and 59E(2)(a) solely on an inference drawn from such a failure or as is mentioned in sections 59B(2), 59D(2) or 59E(2).

(5) Nothing in sections 59B to 59E prejudices the operation of a provision of any enactment which provides (in whatever words) that any answer or evidence given by a person in specified circumstances shall not be admissible in evidence against him or some other person in any proceedings or class of proceedings (however described, and whether civil or criminal).

CRIMINAL JURISDICTION AND PROCEDURE ACT 2015

(6) In subsection (5), the reference to giving evidence is a reference to giving evidence in any manner, whether by furnishing information, making discovery, producing documents or otherwise.

(7) Nothing in sections 59B to 59E prejudices any power of a court, in any proceedings, to exclude evidence (whether by preventing questions being put or otherwise) at its discretion.”.

Consequential amendments

92 (1) Schedule 2 makes provision for consequential amendments.

(2) The Minister may by Regulations repeal or amend any provision relating to criminal jurisdiction or criminal procedure—

(a) in any law that is passed before this Act; or

(b) in any other instrument made under an Act before the passing of this Act,

where it appears to him that that provision is inconsistent with, or requires amendment consequentially upon or has become unnecessary in consequence of, the provisions of this Act or the Regulations.

(3) Regulations made under subsection (2) shall be subject to the negative resolution procedure.

Repeals

93 The enactments mentioned in Schedule 3 are repealed to the extent specified therein.

Commencement

94 (1) Subject to subsection (2), the provisions of this Act shall come into operation on a day appointed by the Minister responsible for legal affairs by notice in the Gazette.

(2) The Minister responsible for legal affairs may appoint different days for the provisions of this Act to come into operation.

CRIMINAL JURISDICTION AND PROCEDURE ACT 2015

SCHEDULE 1

(Section 88)

CRIMINAL JURISDICTION AND PROCEDURE ACT 2015- FORMS

FORM A

INFORMATION FOR A SUMMARY OFFENCE

BERMUDA ISLANDS)
[blank] PARISH)

To wit

THE INFORMATION OF *(name of informant)* of *(place of abode and description)* taken this [blank] day of [blank] 20[blank] before me the undersigned, one of Her Majesty's Justices of the Peace, who saith that *(name of accused person)* of *(place of abode and description)* on the [blank] day of [blank] 20[blank] did *(state the offence)*.

(Signature of informant)

Sworn the day and year above mentioned, before me.

A.B.,

J.P.

CRIMINAL JURISDICTION AND PROCEDURE ACT 2015

FORM B

SUMMONS TO PERSON ACCUSED OF A SUMMARY OFFENCE

BERMUDA ISLANDS)
[blank] PARISH)

To wit

WHEREAS you have this day been charged before the undersigned, a magistrate for that you on the [blank] day of [blank] 20[blank] at [blank] (*state shortly the offence*):

These are therefore to command you in Her Majesty's name to be and appear before me on [blank] next the [blank] day of 20[blank] at [blank] o'clock in the [blank] noon at (*Place of hearing*) or before such other magistrate as may then be there to answer the said charge and to be further dealt with according to law.

Given under my hand and seal this [blank] day of [blank] 20[blank].

A.B.,

Magistrate.

CRIMINAL JURISDICTION AND PROCEDURE ACT 2015

FORM C

WARRANT TO APPREHEND PERSON CHARGED WITH
A SUMMARY OFFENCE

BERMUDA ISLANDS)
[blank] PARISH)

To wit

To the Police Officers of Bermuda:

WHEREAS (*name of accused person*) of (*abode and description*) has this day been charged on oath before me the undersigned, one of Her Majesty's Justices of the Peace, that he on the (*date of offence*) at (*place*) did (*state shortly the offence*).

To the Police Officers of Bermuda:

WHEREAS (*name of accused person*) of (*abode and description*) has this day been charged on oath before me the undersigned, one of Her Majesty's Justices of the Peace, that he on the (*date of offence*) at (*place*) did (*state shortly the offence*).

(*When the accused person has been summoned but has not appeared add, "And where the accused person was summoned to appear before a magistrate on [blank] the [blank] day of [blank] 20[blank] at o'clock in the [blank] noon to answer the charge, and oath has been made that the accused person was duly served with the summons but did not appear"*):

These are therefore to command you in Her Majesty's name forthwith to apprehend the said (*name of accused person*) and to bring him before me or some other of Her Majesty's Justices of the Peace to answer to the said charge and to be further dealt with according to law.

Given under my hand and seal this [blank] day of [blank] 20[blank].

A.B.,

J.P.

FORM D

SUMMONS TO WITNESS

BERMUDA ISLANDS)
[blank] PARISH)

To wit

To *(name of witness)* of *(residence and occupation)*.

(The name of two or more witnesses in the same case may be inserted in one summons.)

You are hereby required to appear as a witness on the hearing of a charge against (name of defendant) on [blank] next the day of [blank] 20[blank] at [blank] o'clock in the [blank] noon at *(place of hearing)* before the magistrate then present to testify to what you know concerning the charge against the accused person.

Given under my hand and seal this [blank] day of [blank] 20[blank].

A.B.,

Magistrate.

CRIMINAL JURISDICTION AND PROCEDURE ACT 2015

FORM E

WARRANT FOR WITNESS

BERMUDA ISLANDS)
[blank] PARISH)

To wit

To the Police Officers of Bermuda:

(Name of witness summoned) having failed to appear as a witness on the hearing of a charge against *(name of accused person)* after having been duly served with a summons, you are hereby commanded to bring and have the said *(name of witness)* before the magistrate then present on [blank] next the [blank] day of 20[blank] to testify what he knows concerning the charge against the accused person.

Given under my hand and seal this [blank] day of [blank] 20[blank].

A.B.,

Magistrate.

CRIMINAL JURISDICTION AND PROCEDURE ACT 2015

FORM F

WARRANT TO APPREHEND CONVICTED PERSON FOR NON-PAYMENT
OF FINE OR COSTS

BERMUDA ISLANDS)
[blank] PARISH)

To wit

To the Police Officers of Bermuda:

WHEREAS (*name of convicted person*) of (*abode and description*) was on the (**date of conviction*) convicted in due form of law of the offence of (*specify*) and was thereupon *adjudged to pay a fine of (*amount*)/ordered to pay (*amount*) towards the costs of his prosecution:

AND WHEREAS (*amount*) of the said *fine/costs remains due and unpaid at the date hereof:

These are therefore to command you in Her Majesty's name forthwith to apprehend the said (name of convicted person) and to bring him before me or some other magistrate in Bermuda to show cause why he should not now be imprisoned in default of payment of the said *fine/costs and to be further dealt with according to law.

Given under my hand this [blank] day of [blank] 20[blank].

AB

[blank]
Magistrate

*Delete as necessary

CRIMINAL JURISDICTION AND PROCEDURE ACT 2015

SCHEDULE 2

(Section 91)

CONSEQUENTIAL AMENDMENTS

Revenue Act 1898

1 Section 120 of the Revenue Act 1898 is amended by deleting “Summary Jurisdiction Act 1930” and substituting “Criminal Jurisdiction and Procedure Act 2015”.

St George’s Sewerage Act 1943

2 Section 11 of the St George’s Sewerage Act 1943 is amended by deleting the reference to the “Summary Jurisdiction Act 1930” and substituting “Criminal Jurisdiction and Procedure Act 2015”.

Magistrates Act 1948

3 Section 12(6) of the Magistrates Act 1948 is amended by deleting the reference to the “Summary Jurisdiction Act 1930” and substituting “Criminal Jurisdiction and Procedure Act 2015”.

Public Health Act 1949

4 Section 190(1) of the Public Health Act 1949 is amended by deleting the reference to the “Summary Jurisdiction Act 1930” and substituting “Criminal Jurisdiction and Procedure Act 2015”.

Young Offenders Act 1950

5 The Young Offenders Act 1950 is amended—

- (a) in section 6(3) by deleting “section 22 of the Summary Jurisdiction Act 1930” and substituting “section 85 of the Criminal Jurisdiction and Procedure Act 2015”;
- (b) in section 10 by deleting the words “Summary Jurisdiction Act 1930” in the heading and the principal text of the section and substituting “Criminal Jurisdiction and Procedure Act 2015”; and
- (c) in section 47 by deleting the words “section 25 of the Summary Jurisdiction Act 1930” and substituting “section 41 of the Criminal Jurisdiction and Procedure Act 2015”.

CRIMINAL JURISDICTION AND PROCEDURE ACT 2015

Interpretation Act 1951

6 Section 4(4) of the Interpretation Act 1951 is amended by deleting “of section 450 of the Criminal Code Act 1907 or section 14 of the Summary Jurisdiction Act 1930” and substituting “of the provisions of the Criminal Jurisdiction and Procedure Act 2015”.

Criminal Appeal Act 1952

7 The Criminal Appeal Act 1952 is amended—

- (a) in section 13(2)(a)(iii) by deleting the words “section 16 of the Summary Jurisdiction Act 1930” and by substituting the words “section 85 of the Criminal Jurisdiction and Procedure Act 2015”;
- (b) in section 13(2)(a)(iv) by deleting the words “section 21 of the Summary Jurisdiction Act 1930” and by substituting the words “section 85 of the Criminal Jurisdiction and Procedure Act 2015”;
- (c) in section 23(2) by deleting the words “section 22 of the Summary Jurisdiction Act 1930” and by substituting the words “section 85 of the Criminal Jurisdiction and Procedure Act 2015”;
- (d) in section 24(4)(b) by—
 - (i) deleting the words “Summary Jurisdiction Act 1930” and by substituting the words “Criminal Jurisdiction and Procedure Act 2015”; and
 - (ii) deleting the words “section 31” and by substituting the words “section 62”.

Restaurant Act 1961

8 Section 7(2) of the Restaurant Act 1961 is amended by deleting the words “Summary Jurisdiction Act 1930” and by substituting the words “Criminal Jurisdiction and Procedure Act 2015”.

Mental Health Act 1968

9 Section 48(3) of the Mental Health Act 1968 is amended by deleting the words “section 13 of the Indictable Offences Act 1929, or under section 12 of the Summary Jurisdiction Act 1930” and by substituting the words “section 7 of the Criminal Jurisdiction and Procedure Act 2015”.

Misuse of Drugs Act 1972

10 Section 27(5) of the Misuse of Drugs Act 1972 is amended by deleting the words “452 of the Criminal Code” and by substituting the words “section 81 of the Criminal Jurisdiction and Procedure Act 2015”.

CRIMINAL JURISDICTION AND PROCEDURE ACT 2015

Explosive Substances Act 1974

11 Section 22(2) of the Explosive Substances Act 1974 is amended by deleting the words “452 of the Criminal Code” and by substituting the words “section 81 of the Criminal Jurisdiction and Procedure Act 2015”.

Firearms Act 1973

12 Section 30(2) of the Firearms Act 1973 is amended by deleting the words “452 of the Criminal Code” and by substituting the words “section 81 of the Criminal Jurisdiction and Procedure Act 2015”.

Traffic Offences Procedure Act 1974

- 13 The Traffic Offences Procedure Act 1974 is amended—
- (a) in section 2 by deleting the words “Summary Jurisdiction Act 1930” and by substituting the words “Criminal Jurisdiction and Procedure Act 2015”;
 - (b) in section 6(7) by deleting the words “section 4 of the Summary Jurisdiction Act 1930” and by substituting the words “section 3 of the Criminal Jurisdiction and Procedure Act 2015”; and
 - (c) in section 20 by deleting the words “Summary Jurisdiction Act 1930” and by substituting the words “Criminal Jurisdiction and Procedure Act 2015”.

Liquor Licence Act 1974

14 Section 12(3) of the Liquor Licence Act 1974 is amended by deleting the words “Summary Jurisdiction Act 1930” and by substituting the words “Criminal Jurisdiction and Procedure Act 2015”.

Betting Act 1975

- 15 Section 8(7) of the Betting Act 1975 is amended by—
- (a) deleting the words “Summary Jurisdiction Act 1930” and by substituting the words “Criminal Jurisdiction and Procedure Act 2015”; and
 - (b) by deleting the words “section 8” and by substituting the words “section 87”.

Stamp Duties Act 1976

16 Section 71(3) of the Stamp Duties Act 1976 is amended by deleting the words “452 of the Criminal Code”, where they appear, and by substituting the words “81 of the Criminal Jurisdiction and Procedure Act 2015”.

CRIMINAL JURISDICTION AND PROCEDURE ACT 2015

Administration of Justice (Contempt of Court) Act 1979

17 Section 4(3) of the Administration of Justice (Contempt of Court) Act 1979 is amended by deleting “section 5 of the Summary Jurisdiction Act 1930” and by substituting the words “Part 2 of the Criminal Jurisdiction and Procedure Act 2015”.

Legal Aid (General) Regulations 1980

18 Regulation 4(1) of the Legal Aid (General) Regulations 1980 is amended by deleting the words “Indictable Offences Act 1929” and by substituting the words “Criminal Jurisdiction and Procedure Act 2015”.

Companies Act 1981

19 Section 278 of the Companies Act 1981 is amended—

- (a) in the headnote, by deleting the words “Section 452 of the Criminal Code” and by substituting the words “Section 81 of the Criminal Jurisdiction and Procedure Act 2015”; and
- (b) by deleting the words “Section 452 of the Criminal Code” and by substituting the words “Section 81 of the Criminal Jurisdiction and Procedure Act 2015”.

Occupational Safety and Health Act 1982

20 The Occupational Safety and Health Act 1982 is amended—

- (a) in section 21(3C)(b) by deleting the words “Summary Jurisdiction Act 1930” and by substituting the words “Criminal Jurisdiction and Procedure Act 2015”;
- (b) in section 28 by deleting the words “Summary Jurisdiction Act 1930” and by substituting the words “Criminal Jurisdiction and Procedure Act 2015”; and
- (c) in section 32(6) by deleting the words “section 4 of the Summary Jurisdiction Act 1930” and by substituting the words “section 3 of the Criminal Jurisdiction and Procedure Act 2015”.

Computer Misuse Act 1996

21 Section 9(4) of the Computer Misuse Act 1996 is amended by deleting the words “section 452 of the Criminal Code (limitation of time for commencing summary prosecutions)” and by substituting the words “section 81 of the Criminal Jurisdiction and Procedure Act 2015”.

CRIMINAL JURISDICTION AND PROCEDURE ACT 2015

Proceeds of Crime Act 1997

- 22 Section 59 of the Proceeds of Crime Act 1997 is amended by—
- (a) in paragraph (a) by deleting “450” and substituting “450(a)”; and
 - (b) in paragraph (b) by—
 - (i) deleting the word “commit” and by substituting the word “send”; and
 - (ii) deleting the words “section 25(1) of the Summary Jurisdiction Act 1930” and by substituting the words “sections 43, 44 or 45 of the Criminal Jurisdiction and Procedure Act 2015”.

Traffic Offences Procedure Validation Act 1998

- 23 Section 3(4)(b) of the Traffic Offences Procedure Validation Act 1998 is amended by deleting the words “section 30 of the Summary Jurisdiction Act 1930” and by substituting the words “section 60 of the Criminal Jurisdiction and Procedure Act 2015”.

Merchant Shipping Act 2002

- 24 Section 144(2)(a)(i) of the Merchant Shipping Act 2002 is amended by deleting the words “section 3 of the Summary Jurisdiction Act 1930” and by substituting the words “section 3 of the Criminal Jurisdiction and Procedure Act 2015”.

Bail Act 2005

- 25 The Bail Act 2005 is amended—
- 26
- (a) in section 4(7) by deleting “committed” and substituting “sent”; and
 - (b) in section 14—
 - (i) in subsection 3 by deleting the words “commits” and “commit” and substituting the words “sends” and “send”, respectively; and
 - (ii) in subsection 4(b) by deleting “on committal” and substituting the words “following sending”.

Investment Funds Act 2006

- 26 Section 74(1) of the Investment Funds Act 2006 is amended by deleting the words “section 452 of the Criminal Code Act 1907” and by substituting the words “section 81 of the Criminal Jurisdiction and Procedure Act 2015”.

Dogs Act 2008

- 27 The Dogs Act 2008 is amended—

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- (a) in section 32 by deleting “Summary Jurisdiction Act 1930” and substituting “Criminal Jurisdiction and Procedure Act 2015”; and
- (b) in section 36(6) by deleting “section 4 of the Summary Jurisdiction Act 1930” and substituting “section 3 of the Criminal Jurisdiction and Procedure Act 2015”.

Adoption of Children Act 2006

28 Section 61(3) of the Adoption of Children Act 2006 is amended by deleting the words “Summary Jurisdiction Act 1930” and by substituting the words “Criminal Jurisdiction and Procedure Act 2015”.

Marine Offences Procedure Act 2006

29 The Marine Offences Procedure Act 2006 is amended—

- (a) in section 3 by deleting the words “Summary Jurisdiction Act 1930” and by substituting the words “Criminal Jurisdiction and Procedure Act 2015”; and
- (b) in section 7(6) by deleting the words “section 4 of the Summary Jurisdiction Act 1930” and by substituting the words “section 3 of the Criminal Jurisdiction and Procedure Act 2015”.

Merchant Shipping (Prevention of Oil Pollution) Regulations 2010

30 Rule 37(6)(a)(i) of the Merchant Shipping (Prevention of Oil Pollution) Regulations 2010 is amended by deleting the words “section 3 of the Summary Jurisdiction Act 1930” and by substituting the words “section 3 of the Criminal Jurisdiction and Procedure Act 2015”.

Casino Gaming Act 2014

31 Section 179(2) of the Casino Gaming Act 2014 is amended by deleting the words “452 of the Criminal Code Act 1907” and by substituting the words “81 of the Criminal Jurisdiction and Procedure Act 2015”.

CRIMINAL JURISDICTION AND PROCEDURE ACT 2015

SCHEDULE 3

(Section 93)

REPEALS

Indictable Offences Act 1929	The whole Act.
Summary Jurisdiction Act 1930	The whole Act.
Young Offenders Act 1950	Section 15.
Liquor Licence Act 1974	Section 12(4).
Criminal Code Act 1907	Sections 450(b), 452 and 475

CRIMINAL JURISDICTION AND PROCEDURE BILL 2015

EXPLANATORY MEMORANDUM

The provisions in this Bill reform and modernize criminal procedure in the court.

Clause 1 is self explanatory.

Clause 2 is the interpretation section of the principal Act.

Clause 3 allows for the commencement of proceedings in the court through the issue of a summons requiring that a person appear before the magistrates' court to answer the charge that he or she has committed a criminal offence. It also allows for the court to issue an arrest warrant instead where the offence is punishable with imprisonment or the person's address is not known. The clause also preserves the charging process under the Police and Criminal Evidence Act 2006.

Clause 4 sets out the jurisdiction of magistrates' the court, which includes summary trial of summary and either way offences, initial proceedings before a matter is sent to the Supreme Court and proceedings while sitting as a family court. This clause does not affect any jurisdiction conferred on the magistrates' court by other statutory enactments.

Clause 5 sets out the procedure for a summary trial in the magistrates' court.

Clause 6 allows for the court to issue a summons for any witness who is likely to be able to give material evidence or to produce material documents at a summary trial. It allows for an arrest warrant to be issued against such a witness where the court is satisfied that a summons would not procure the witness' attendance at court. It also allows the court to punish uncooperative witnesses with a fine or imprisonment of up to one month.

Clause 7 gives a general power to the magistrates' court to adjourn a summary trial before or after conviction. It may fix the next time and place for trial, or (where the accused person is not remanded) leave the time and place to be determined later by the court. Parties must have sufficient notice in respect of a return following adjournment. The clause also imposes a time limit for the court to return of 3 weeks where the accused person is remanded in custody, or 4 weeks in all other cases. This time limit ensures that cases are processed and dealt with expeditiously. The clause also allows the court to remand the accused person in custody or on bail (which will be determined pursuant to the Bail Act 2005) when adjourning.

Clause 8 sets out what happens when an accused does not appear for trial when required to by the court.

Clause 9 clarifies that proceedings are invalid where an accused does not know about them and files a statutory declaration to the court to that effect within 21 days of a court commencing the trial of the relevant information.

Clause 10 governs when a prosecutor does not show up in court when required. The court can (1) dismiss the information, (2) if evidence has been received on a previous occasion, proceed in the prosecutor's absence, or (3) adjourn the matter. Where the matter

is adjourned, an accused can only be remanded in custody if he or she is brought from custody or cannot be remanded on bail by reason of a failure to find sureties.

Clause 11 governs when a prosecutor and the accused person do not show up in court when required. The court can (1) dismiss the information, or (2) if evidence has been received on a previous occasion, proceed in the prosecutor's absence.

This Part of the Act amends the procedure to be followed by magistrates' courts in determining whether cases triable either way should be tried summarily or on indictment, and provides for the sending to the Supreme Court of those cases which need to go there. The new procedures are designed to enable cases to be dealt with in the level of court which is appropriate to their seriousness, and to ensure that they reach that court as quickly as possible. Many of these provisions derive from Lord Justice Auld's Review of the Criminal Courts in England & Wales.

Clause 12 sets out the initial procedure to be undertaken by the court in respect of a person charged with an either-way offence. The accused must first be warned that if he were to plead guilty, the court would proceed direct to sentencing and that his or her matter might be sent to the Supreme Court for sentencing. The accused must then indicate an intention to plead guilty or not guilty. If the plea is guilty, the court proceeds direct to sentencing. If the plea is not guilty (including if it is equivocal or if no plea is taken) the matter, then the allocation procedure established in the parent Act applies. This procedure is subject to whether a notice is issued by the DPP that the matter is more suitable for trial on indictment (or section 450(a) of the Criminal Code Act 1907). The accused should ordinarily be present throughout this initial procedure.

Clause 13 allows the court to adjourn an initial procedure and to remand the accused in custody or on bail.

Clause 14 provides for the continuation of the initial procedure and subsequent allocation procedure when an accused indicates that he or she would plead not guilty to an either-way offence. This procedure must proceed in the presence of the accused (unless his or her disorderly conduct would make it impractical to so continue) and before the taking of any evidence. The procedure may be adjourned at any time, and the accused will be remanded in custody or on bail.

Clause 15 sets out decision as to allocation.

Clause 16 sets out procedure where summary trial appears more suitable

Clause 17 sets out the supplementary procedure where, in the opinion of the magistrates' court, summary trial appears more suitable.

Clause 18 sets out the procedure to be adopted by the magistrates' court where trial on indictment appears more suitable.

Clause 19 sets out power of the magistrates' court, with the consent of a legally represented accused person, to proceed in his absence.

Clause 20 sets out the magistrates' courts powers to change a summary trial to a sending proceedings.

CRIMINAL JURISDICTION AND PROCEDURE BILL 2015

Clause 21 sets out the magistrates' courts power to issue summons to accused in certain circumstances.

Clause 22 sets out the effect of dismissal of information for either-way offences.

Clause 23 sets out the requirements for sending cases, from the magistrates' court to the Supreme Court, involving adults.

Clause 24 sets out the requirements for sending cases, from the magistrates' court to the Supreme Court, involving children.

Clause 25 sets out the obligations of the courts to provide notices in cases concerning serious or complex fraud.

Clause 26 sets out the obligations of the courts in certain cases involving children.

Clause 27 sets out obligations of the courts to notify an accused person of the offence charged and the place of trial.

Clause 28 sets out the manner and time for an accused person to appear in the Supreme Court.

Clause 29 sets out the prosecutions duty of disclosure in respect of a sent person to the Supreme Court.

Clause 30 sets out the means by which an extension of time may be granted for the service of documents.

Clause 31 sets out the means by which a person can apply for dismissal of a criminal charge.

Clause 32 sets out the reporting restrictions that may be imposed by the courts.

Clause 33 sets out the powers of the magistrates' court for taking depositions, etc.

Clause 34 sets out the means by which dispositions are to be used as evidence.

Clause 35 sets out the means by which the Supreme Court can deal with a summary offence matter.

Clause 36 sets out the means by which the Supreme Court can deal an accused person where no offence for sending remains in existence.

Clause 37 sets out the means by which the Supreme Court can deal with a matter where an accused person exhibits disorderly conduct.

Clause 38 sets out the means by which to determine the venue of trial where no indictable-only offence remains.

Clause 39 sets out the obligations of the Supreme Court where it considers it more suitable for a person to be tried in the magistrates' court.

Clause 40 sets out the obligations of the Supreme Court where it considers it more suitable to try a person before the Supreme Court.

Clause 41 sets out the provisions as they relate to the trial of children (young offenders).

CRIMINAL JURISDICTION AND PROCEDURE BILL 2015

Clause 42 sets out the power of the Supreme Court to proceed with the consent of a legally-represented accused person in his absence.

Clause 43 sets out the requirements for sending for sentence a person on summary trial of an either-way offence.

Clause 44 sets out the requirements for sending dangerous adult offenders, to the Supreme Court, for sentencing.

Clause 45 sets out the powers of the Supreme Court where a person enters a guilty plea to an either-way offence.

Clause 46 sets out the powers of the Supreme Court where the magistrates' court sends a person to the same for sentencing in accordance with sections 47, 48 and 49.

Clause 47 sets out the powers of the Supreme Court where the magistrates' court sends a person to the same for sentencing in cases where an offender is committed in relation to another offence.

Clause 48 sets out the powers of the Supreme Court where the magistrates' court sends a person to the same for sentencing in accordance with section 53.

Clause 49 sets out the means by which the magistrates' court can remit an offender, who attains the age of 16, to the magistrates' court rather than the family court for sentence.

Clause 50 sets out the means by which the magistrates' court can remand an accused person for medical examination.

Clause 51 clarifies that by way of an order, in matters of treason, only the Governor may grant bail.

Clause 52 sets out the means by which bail can be granted at the time of arrest.

Clause 53 sets out the means by which a warrant can be endorsed for bail.

Clause 54 sets out the means by which the magistrates' court can vary or dispense with the requirement of requesting sureties.

Clause 55 sets out the manner by which the magistrates' court can postpone the taking of recognizance.

Clause 56 sets out the means by which forfeiture of recognizance can be ordered by the magistrates' court.

Clause 57 sets out the means by which the magistrates' court can order security for the purpose of keeping the peace.

Clause 58 sets out the means by which the magistrates' court can order costs against an informant.

Clause 59 sets out the means by which the magistrates' court can order a defendant to pay to the prosecutions costs.

Clause 60 sets out the means by which to attain enforcement of payment of fines or costs in the magistrates' court.

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Clause 61 sets out the means by which the application of money, found on a defaulter, may be used to satisfy the a sum adjudged owing.

Clause 62 clarifies that the Director of Prosecutions at any stage, in any proceedings before a magistrates' court, enter a nolle prosequi to stay proceedings on any information or summons.

Clause 63 sets out the periods of imprisonment for default of payment of a fine or costs.

Clause 64 sets out the time period for paying a fine in the magistrates' court and the occasions where payment is excused or allowed by way of instalments.

Clause 65 sets out the means by which the magistrates' court may impose a fine on a company.

Clause 66 sets out the conditions by which a magistrates' court may remand a person into custody or grant a person bail.

Clause 67 sets out the obligations arising in instances where an accused person is remanded into custody for more than eight days.

Clause 68 sets out the means by which the magistrates' court can impose a further remand of an accused person.

Clause 69 sets out the means by which an accused person, already in custody, can be remanded.

Clause 70 allows video conference appearance to be used while an accused person is on remand.

Clause 71 clarifies that evidence given in the magistrates' court is to be give on oath. This clause is to be read with section 25 of the Evidence Act 1905. Where a person objects to giving an oath, and stating, as the ground of objection, either that he has no religious belief or that the taking of an oath is contrary to his religious belief, section 25 of the Evidence Act 1905 permits that person to make a solemn affirmation, instead of taking an oath

Clause 72 clarifies the manner by which the magistrates' court can take into account a person's previous convictions.

Clause 73 sets out the means by which a company can be sent for trial.

Clause 74 sets out the requirements for the service of a summons.

Clause 75 sets out the requirements by which service of a summons out of time can be served after failure to prove service by post.

Clause 76 clarifies that a barrister and attorney may appear on behalf of party to proceedings. Clause 78 also clarifies that if a barrister and attorney appears on behalf of an absent party, the party will not be deemed by the court to be absent.

Clause 77 sets out the means by which a defect in process is to be resolved.

Clause 78 affirms that a court process shall remain valid notwithstanding the death or incapacity of a magistrate.

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Clause 79 clarifies that warrants shall remain in force until executed or withdrawn and clarifies that they can be executed anywhere within Bermuda by a police officer.

Clause 80 sets out the manner by which the limitation of time, for commencing summary prosecutions, takes effect.

Clause 81 sets out the manner by which the magistrates' court may dispose of non-pecuniary forfeitures.

Clause 82 gives power to the magistrates' court, in certain circumstances, to re-open cases to rectify mistakes.

Clause 83 sets out the requirement for the magistrates' court to maintain a record of proceedings of the magistrates' court.

Clause 84 sets out the requirement for the magistrates' court to maintain a record of conviction for matters dealt with by the magistrates' court.

Clause 85 sets out the requirements for imposing punishment, in the magistrates' court, where no special punishment is prescribed under any enactment.

Clause 86 is the savings provision as it relates to the family courts.

Clause 87 clarifies that the forms in Schedule 1, or forms in like effect, shall be deemed to be good, valid and sufficient law.

Clause 88 amends the Criminal Evidence Act 1907 thereby setting out the procedure to be used for charging a company with an offence.

Clause 89 amends the Evidence Act 1905 to indicate on who has the onus of proving exceptions.

Clause 90 amends the Police and Criminal Evidence Act 2006 to allow the court to draw adverse inferences, in criminal proceedings for an offence, where a person previously failed or refused to mention facts that he could have reasonably been expected to mention.

Clause 91 makes consequential amendments listed in Schedule 2.

Clause 92 is the repeals provision, thereby repealing the enactments listed in Schedule 3.

Clause 93 is the commencement provision.