ST HELENA

REVISED EDITION OF THE LAWS, 2017

CRIME AND CRIMINAL PROCEDURE

CRIMINAL PROCEDURE ORDINANCE, 1975[1]

Ordinance 9 of 1975
In force 1 January 1976

Amended by: Ordinances 8 of 1976, 3 of 1982, 1 of 1985, 16 of 1985, 22 of 1987, 4 of 2001, 9 of 2001, 8 of 2003, 9 of 2004, 2 of 2005, 8 of 2007, 17 of 2011, 9 of 2012, 12 of 2015, 6 of 2016, 7 of 2016, 10 of 2016, 12 of 2016, 14 of 2017
L.N. 26/2009

No subsidiary legislation to 1 November 2017

Notes:

1. For the composition and jurisdiction of the Magistrates' Court, see the Magistrates' Court Ordinance, 2011
2. For powers of arrest and criminal evidence generally, see the Police and Criminal Evidence Ordinance, 2003
3. For jury selection and service and procedure at a trial with a jury see the Juries Ordinance, 1979.
4. For appeals procedure and power to make rules of court see the Superior Courts (Appeals and Rules) Ordinance, 2017.

CRIMINAL PROCEDURE ORDINANCE, 1975

ARRANGEMENT OF SECTIONS

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[1] *Under section 10 of the Revised Edition of the Laws Ordinance, 1999 this text is authoritative and is the sole authentic edition in respect of the law contained in it as at 1 November 2017.*

PART XI
SUPPLEMENTARY PROVISIONS

Irregular proceedings

Directions in the nature of habeas corpus

Miscellaneous

AN ORDINANCE to make provision for the procedure to be followed in criminal cases.

PART I
PRELIMINARY

Short title

1. This Ordinance may be cited as the Criminal Procedure Ordinance, 1975.

Interpretation

2. In this Ordinance, unless the context otherwise requires—

"appearing before a court" in relation to bail, means surrendering into the custody of the court;

"appropriate officer" of the court is—

(a) in the case of the Magistrates' Court - the Clerk of the Peace or some other officer authorised by him or her to act for the purpose;

(b) in the case of the Supreme Court - the Registrar;

"bail in criminal proceedings" means—

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

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

"committal proceedings" means proceedings held by the Magistrates' Court under Part VII;

"complaint" means an allegation that some person known or unknown has committed or is guilty of an offence, and **"complainant"** is to be construed accordingly;

"conviction" includes—

(a) a finding of guilt;

(b) a finding that a person is not guilty by reason of mental disorder;

(c) a conviction of an offence for which an order is made placing the offender on probation or discharging him or her absolutely or conditionally,

and **"convicted"** is to be construed accordingly;

"court" includes a judge of a court, a justice of the peace or a coroner and, in the case of a specified court, includes a judge or (as the case may be) justice having powers to act in connection with proceedings before that court;

"Crown Prosecutor" has the meaning given in section 51A;

"magistrate" means a justice of the peace;

"Magistrates' Court" means the Magistrates' Court established under the Magistrates' Court Ordinance, 2011;

"mental disorder" has the meaning given to that term by the Mental Health and Mental Capacity Ordinance, 2015;

"police officer" means any member of the St Helena Police Service other than a police cadet;

"public prosecutor" means the Crown Prosecutor and any person appointed under section 52;

"Registrar" means the Registrar of the Supreme Court, and includes a deputy registrar;

"summary trial" means a trial held by the Magistrates' Court under Part VI of this Ordinance;

"surrender to custody" means, in relation to a person released on bail, surrendering himself or herself into the custody of the court or of the police officer (according to the requirements of the grant of bail) at the time and place for the time being appointed for person to do so;

"Trial Judge" means any person authorised by law to hold the Supreme Court, and includes the Chief Justice when the Chief Justice is conducting the trial;

"vary", in relation to bail, means imposing further conditions after bail is granted, or varying or rescinding conditions;

"young person" in relation to bail, means a person who has attained the age of 14 and is under the age of 17.

Trial of offences

3. **(1)** All criminal offences must be inquired into, tried, and otherwise dealt with according to this Ordinance, subject to subsection (2), and to any written law for the time being in force regulating the manner or place of inquiring into, trying or otherwise dealing with such offences.

(2) **A** court may, subject to any law in force in St Helena, in exercising its criminal jurisdiction in respect of any matter or thing to which the procedure prescribed by this Ordinance is inapplicable, or for which no provision is made, exercise such jurisdiction according to the course of procedure and practice observed by and before courts of justice in England.

PART II
POWERS OF COURTS

Powers of Supreme Court

4. The Supreme Court may try any offence under any law and may pass any sentence authorised by law.

Powers of Magistrates' Court

5. The jurisdiction of the Magistrates' Court in respect of the trial of offences is that for which provision is made by the Magistrates' Court Ordinance, 2011 or by any other written law in force in St Helena.

Combination of sentences

6. Any court may pass any lawful sentence combining any of the sentences which it is authorised by law to pass.

Sentences in cases of conviction of several offences at one trial

7. **(1)** When a person is convicted at one trial of 2 or more distinct offences –

(a) the court may sentence the person for such offences to the several punishments prescribed for them which the court is competent to impose; and

(b) such punishments when consisting of imprisonment must commence the one after the expiration of the other in the order the court directs, unless the court directs that such punishments are to run concurrently.

(2) For the purposes of an appeal, the aggregate of consecutive sentences imposed under this section in case of convictions for several offences at one trial is deemed to be a single sentence.

PART III
GENERAL PROVISIONS

Arrest, escape and retaking

Arrest

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

(2) If the person to be arrested forcibly resists the endeavour to arrest him or her, or attempts to evade the arrest, the police officer or other person making the arrest may use all means necessary to effect the arrest: but this section does not justify the use of greater force than is reasonable in the particular circumstances in which it is employed or is necessary for the arrest of the offender.

Search of place entered by person sought to be arrested

9. **(1)** If any person acting under a warrant of arrest, or any police officer having authority to arrest, has reason to believe that the person to be arrested has entered into or is within any place, the person who resides in or is in charge of the place must, on demand of the person acting as aforesaid or of the police officer, allow him or her free entry to the place and afford all reasonable facilities for a search in it.

(2) If entry to a place cannot be obtained under subsection (1), a person acting under a warrant, or (in a case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity to escape) a police officer, may enter the place and search in it.

(3) In order to effect an entrance into a place pursuant to subsection (2), a person acting under a warrant, or a police officer as there mentioned may break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his or her authority and purpose, and demand of admittance duly made, he or she cannot otherwise obtain admittance.

Power to break out for purposes of liberation

10. Any police officer or other person authorised to make an arrest may break out of any house or place in order to liberate himself or herself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

No unnecessary restraint

11. A person arrested must not be subjected to more restraint than is necessary to prevent his or her escape.

12 to 25. *Repealed.*

Recapture of person escaping

26. If a person in lawful custody escapes or is rescued, the person from whose custody he or she escapes or is rescued may immediately pursue and arrest him or her.

Provisions of sections 9 and 10 to apply to arrests under section 26

27. Sections 9 and 10 apply to an arrest under section 26, even though the person making any such arrest is not acting under a warrant and is not a police officer having authority to arrest.

Assistance to magistrate or police officer

28. Every person is bound to assist a magistrate or police officer reasonably demanding his or her aid—

(a) in taking, or preventing the escape of, any other person whom such magistrate or police officer is authorised to arrest;

(b) in the prevention or suppression of a breach of the peace, or in the prevention of any injury attempted to be committed to any public property.

Prevention of offences

Summons or warrant to prevent breach of the peace

29. (1) If it appears to a magistrate, on consideration of any written complaint,

that any person has committed a breach of the peace and that there is reason to believe that the person is likely to commit a further breach of the peace, or to do any act whereby a breach of the peace is likely to be occasioned, the magistrate may issue a summons requiring the person to appear before the Magistrates' Court to show cause why an order should not be made under section 30.

(2) If a complaint as mentioned in subsection (1) is substantiated on oath, and it appears to the magistrate that the commission of a breach of the peace or of such an act as is described in subsection (1) cannot be prevented otherwise than by detaining the person complained against, the magistrate may issue a warrant for the arrest of that person.

(3) A warrant issued under subsection (2) must require the person arrested to be brought before the first available sitting of the Magistrates' Court, there to show cause why an order should not be made under section 30.

Recognisance to be of good behaviour

30. (1) If it appears to the Magistrates' Court that a person before the court (whether before the court as a party to proceedings, a witness, or otherwise, and whether or not a summons or warrant has previously been issued under section 29) is likely to commit a breach of the peace, or to do any act whereby a breach of the peace may be occasioned, the court may order the person to enter into a recognisance, in a sum and for a period of time not exceeding 2 years that the court directs, to keep the peace and be of good behaviour.

(2) An order must not be made under subsection (1), upon a complaint made under subsection (1) unless—

(a) the defendant admits the complaint; or

(b) the court, having followed as nearly as may be the procedure applicable to a charge alleging an offence to which a plea of not guilty has been entered, finds the complaint proved.

(3) If a person ordered to enter into a recognisance in accordance with subsection (1) fails to execute such recognisance within a time prescribed in the order, the Magistrates' Court may commit the person to prison for a period not exceeding 6 months that the court thinks fit.

(4) A warrant of commitment issued under subsection (3) must direct that the prisoner be forthwith released upon his or her executing the recognisance referred to in the original order.

Breach of recognisance

31. (1) Every recognisance executed under section 30 must be a recognisance to keep the peace and be of good behaviour; and the recognisance is breached if the person executing it commits any breach of the peace, or commits, aids, abets, counsels, procures or incites any criminal offence.

(2) An allegation that a person is in breach of the terms of a recognisance must be made by way of complaint, which (for procedural purposes) is to be treated as a complaint alleging a criminal offence.

(3) If it appears to the Magistrates' Court, either upon inquiring into a complaint under subsection (2) or upon convicting a person of any criminal offence, that a person is in breach of a recognisance, the court must, subject to subsection (4), order the whole amount of the recognisance to be forfeit, and may proceed to enforce payment of it in all respects as if a fine of the same amount had been imposed on conviction for an offence.

(4) The court may, for special reasons which must be recorded in writing, order the forfeiture of less than the whole amount of the recognisance (or make no order at all), in which event the recognisance remains in force to the extent that the amount thereof has not been forfeit.

32 to 41. *Repealed.*

Preventive action of the police

Police to prevent offences

42. Every police officer may intervene for the purpose of preventing, and must to the best of his or her ability prevent, the commission of any offence.

Information of design to commit offences

43. Every police officer receiving information of a design to commit any offence must communicate the information to the police officer to whom he or she is subordinate, and to any other officer whose duty it is to prevent or take cognisance of the commission of any such offence.

Prevention of injury or damage to public property, landmark or navigation aid

44. A police officer may on his or her own authority intervene to prevent any injury or damage attempted to be committed in his or her view to, or the removal, damage or injury of, any—

(a) public property, movable or immovable;
(b) public landmark; or
(c) buoy, aid, equipment or other mark used for navigation.

PART IV
PROVISIONS RELATING TO ALL CRIMINAL TRIALS AND INQUIRIES

Place of inquiry or trial

General authority of courts

45. Every court has authority to cause to be brought before it any person who is within the limits of its jurisdiction and is charged with an offence committed within St Helena, or which according to law may be dealt with as if it had been committed within St Helena, and to deal with the accused person according to its jurisdiction.

Powers of Supreme Court

46. The Supreme Court may inquire into and try any offence subject to its jurisdiction.

Place and date of sessions of Supreme Court

47. (1) For the exercise of its original criminal jurisdiction the Supreme Court must hold sittings at places and on days that the Chief Justice or Trial Judge directs.

(2) The Registrar must normally give public notice beforehand of all sittings of the Supreme Court.

Supreme Court to decide in cases of doubt

48. (1) Whenever any doubt arises in the Magistrates' Court whether it has jurisdiction to inquire into or try an offence it may, in its discretion, report the circumstances to the Supreme Court, and the Supreme Court must decide by which court the offence is to be inquired into or tried.

(2) A decision of the Supreme Court under subsection (1) is final and conclusive: but an accused person may show that no court in St Helena has jurisdiction in the case.

Court to be open

49. (1) Subject to subsection (1A), **t**he place in which any court is held for the purpose of inquiring into or trying any criminal offence must be an open court to which the public generally may have access, so far as such place can conveniently contain them.

(1A) The Chief Justice, the Trial Judge or the presiding magistrate, as the case may be, may, if he or she thinks fit, order at any stage of the inquiry into or trial of any particular case that the public generally or any particular person is not to have access to or be or remain in the room or building used by the court.

(2) Subject to subsection (3), any court may sit for the purpose of inquiring into or trying any offence on a Sunday or a public holiday, and no finding, sentence or order made or passed by a court of competent jurisdiction may be reversed or altered by reason only of the fact that it was made or passed on a Sunday or a public holiday.

(3) A court must not sit on a Sunday or a public holiday unless in the opinion of the court the omission to do so would cause an amount of delay, expense, or inconvenience which in the circumstances of the case would be unreasonable.

Control by the Attorney General

Power to enter *nolle prosequi*

50. (1) In any case committed for trial to the Supreme Court, and at any stage thereof before judgment, the Attorney General may enter a *nolle prosequi,* either by stating in

court or by informing the court in writing that the Crown intends that the proceedings are not to continue, and thereupon the accused person must be at once discharged in respect of the charge for which the *nolle prosequi* is entered. If—

(a) the person has been committed to prison - he or she must be released;

(b) the person has been released on bail - his or her recognisances must be discharged,

but such discharge of a defendant does not operate as a bar to any subsequent proceedings against him or her on account of the same facts.

(2) If the defendant is not before the court when the *nolle prosequi* is entered –

(a) the Registrar must forthwith cause notice in writing of the entry of the *nolle prosequi* to be given to the Superintendent of Prisons, if the defendant is in the prison, and also to the Magistrates' Court by which he or she was committed; and

(b) the Magistrates' Court must forthwith cause a notice in writing to be given to any witnesses bound over to give evidence and to their sureties, if any, and also to the defendant and his or her sureties in case he or she has been admitted to bail.

Application by Crown Prosecutor for committal proceedings

51. If in the course of a trial before the Magistrates' Court it appears to the Crown Prosecutor that the case is one which ought to be tried by the Supreme Court, the Magistrates' Court, on application made by the Crown Prosecutor before the close of the prosecution case, must stay further proceedings and must hold committal proceedings in accordance with Part VII of this Ordinance.

Appointment of Crown Prosecutor

51A. (1) The Governor may, by notice in the Gazette, appoint a person to be the Crown Prosecutor.

(2) Until such time as a person is appointed under subsection (1), and at any time when there is no such appointment subsisting, the Director of Police is deemed to be the Crown Prosecutor.

Appointment of public prosecutors and conduct of prosecutions

Power to appoint prosecutors

52. (1) The Crown Prosecutor by writing under his or her hand may appoint generally, or in any case, or for any specified class of cases, any person, whether employed in the public service or not, to be a public prosecutor.

(2) Every public prosecutor is subject to the express directions of the Crown Prosecutor.

Powers of prosecutors

53. A public prosecutor may appear and plead without any written authority

before any court in which any case of which he or she has charge is under inquiry, trial or appeal; and if any private person instructs an advocate to prosecute in any such case the public prosecutor may conduct the prosecution, and the advocate so instructed must act on the prosecution under his or her directions.

Withdrawal from prosecution in trials before Magistrates' Court

54. In any proceeding before the Magistrates' Court any public prosecutor may, with the consent of the court or on the instructions of the Crown Prosecutor, at any time before judgment is pronounced, withdraw from the prosecution of any person; and if such withdrawal is made—

(a) before the accused person is called upon to make a defence – the person must be discharged, but such discharge does not operate as a bar to subsequent proceedings against that person on account of the same facts;

(b) after the accused person is called upon to make a defence – the person must be acquitted.

Conduct of public prosecutions

55. (1) No person other than the Crown Prosecutor or any person authorised by him or her may conduct a public prosecution before the Magistrates' Court.

(2) The prosecutor has the like power of withdrawing from the prosecution as is provided by section 54, and that section applies to any such withdrawal by a person authorised under subsection (1).

(3) Any person conducting the prosecution may do so personally or by an advocate.

Institution of proceedings

Institution of proceedings

56. (1) Criminal proceedings may be instituted—

(a) by a police officer bringing a person arrested with or without a warrant of arrest before a magistrate upon a charge;

(b) by a public prosecutor or a police officer laying a charge against a person before a magistrate and requesting the issue of a warrant of arrest or a summons; or

(c) by any person, other than a public prosecutor or a police officer, making a complaint as provided in subsection (3) and applying for the issue of a warrant of arrest or a summons in the manner hereinafter mentioned.

(2) The validity of any proceedings instituted or purporting to be instituted pursuant to subsection (1) is not affected by any defect in the charge or complaint or by the fact that a summons or warrant of arrest was issued without any complaint or charge or, in the case of a warrant, without a complaint on oath.

(3) Any person, other than a public prosecutor or a police officer, who has reasonable and probable cause to believe that an offence has been committed by any person, may make a complaint thereof to a magistrate. Every such complaint may be made orally or

in writing signed by the complainant, but if made orally must be reduced into writing by the magistrate and when so reduced must be signed by the complainant.

(4) If a magistrate, upon receiving a complaint under subsection (3), is satisfied that *prima facie* the commission of an offence has been disclosed and that the complaint is not frivolous or vexatious, the magistrate must draw up or cause to be drawn up and must sign a formal charge containing a statement of the offence or offences alleged to have been committed by the accused.

(5) When a charge has been—

(a) laid under subsection (1)(b); or

(b) drawn up under subsection (4),

the magistrate must issue either a summons or a warrant of arrest, as he or she thinks fit, to compel the attendance of the accused person before the Magistrates' Court: but a warrant must not be issued in the first instance unless the charge is supported by evidence on oath, either oral or by affidavit.

(6) Notwithstanding subsection (5) –

(a) a magistrate who receives a charge or complaint may, if he or she thinks fit for reasons to be recorded in writing, postpone the issuing of a summons or warrant, and may direct an investigation, or further investigation, to be made by a police officer into the charge or complaint; and

(b) a police officer receiving such a direction must investigate or further investigate the charge or complaint and report to the magistrate who issued the direction.

(7) Subsection (5) does not authorise a police officer to make an arrest without a warrant except as provided by section 16 or by any other law.

(8) A summons or warrant of arrest may be issued on a Sunday.

Powers of Attorney General

57. (1) This Ordinance does not affect the powers of the Attorney General under section 46 of the Constitution, and for the purposes of exercising those powers, the Attorney General may do or perform any act or thing which the Crown Prosecutor may or is required to do or perform under this Ordinance.

(2) If the prosecution of any proceedings has been discontinued under section 46(4)*(c)* of the Constitution, section 54 of this Ordinance applies as if there had been a withdrawal from the prosecution under that section.

Summons to accused persons

Form and contents of summons

58. (1) Every summons issued by a court under this Ordinance must be in writing, in duplicate, signed by a magistrate or by an officer of the court as the Chief Justice directs.

(2) Every summons must be directed to the person summoned and require the

person to appear at a time and place appointed in the summons before a court having jurisdiction to inquire into and deal with the complaint or charge. A summons must state shortly the offence with which the person against whom it is issued is charged.

Service of summons

59. **(1)** Every summons must –

(a) be served by a police officer or by an officer of the court issuing it or other public servant; and

(b) if practicable, be served personally on the person summoned by delivering or tendering to the person one of the duplicates of the summons.

(2) Every person on whom a summons is served under subsection (1) must, if so required by the serving officer, sign a receipt for it on the back of the other duplicate.

Procedure when service cannot be effected

60. If service of a summons on an individual in the manner provided by section 59 cannot be effected by the exercise of due diligence, the summons may be served—

(a) by leaving one of the duplicates for the person summoned with some adult member of his or her family, or with his or her servant residing with him or her or with his or her employer; and the person with whom the summons is so left must, if so required by the serving officer, sign a receipt for it on the back of the other duplicate; or

(b) by affixing one of the duplicates of the summons to some conspicuous part of the house in which the person summoned ordinarily resides,

and thereupon the summons is deemed to have been duly served.

61. *Repealed.*

Service on a company

62. Service of a summons on an incorporated company or other corporate body may be effected by serving it personally on the secretary, local manager or other principal servant of the corporation in St Helena.

Proof of service

63. **(1)** If a person summoned is not present at the place and time appointed in a summons, an affidavit purporting to be made before a magistrate that the summons has been served, and a duplicate of the summons purporting to be endorsed in the manner hereinbefore provided by the person to whom it was delivered or tendered or with whom it was left, is admissible in evidence and the statements made in it are deemed to be correct unless and until the contrary is proved.

(1A) If the duplicate of a summons is not endorsed in the manner hereinbefore provided, the affidavit mentioned in subsection (1) is admissible in evidence if the court is satisfied from the statements made in it that service of the summons has been effected in accordance with the foregoing provisions.

(2) The affidavit mentioned in this section may be attached to the duplicate of the summons and returned to the court.

(3) Notwithstanding subsection (1), the service of a summons may be proved by the oral evidence of the person who effected service.

Meaning of "summons"

64. For the purposes of sections 58 to 63, **"summons"** means a summons to the accused person.

Warrant of arrest

Warrant after issue of summons

65. Notwithstanding the issue of a summons to an accused person, a warrant of arrest may be issued at any time before or after the time appointed in the summons for the appearance of the accused person.

Disobedience of summons

66. (1) If an accused person, other than a corporation, does not appear at the time and place appointed in and by the summons, the court may issue a warrant to arrest him or her and cause him or her to be brought before the court.

(2) If an accused person, being a corporation, does not appear in the manner for which provision is made by this Ordinance, the court may cause any officer of it to be summoned before it in the manner for which provision is made by this Ordinance for compelling the attendance of witnesses and if the officer fails to attend he or she may be dealt with under subsection (1).

(3) In this section and section 269, **"officer"**, in relation to a corporation, means any director, any member of the board of management, by whatsoever name or style designated, the secretary, and the local manager or other principal servant of the corporation in St Helena.

(4) A warrant must not be issued under this section for the arrest of any person unless the court is satisfied by evidence on oath that the summons directed to that person was duly served.

(5) This section does not affect the power of a court to deal with a case in the absence of the accused person, whether an individual or a corporation, in the manner for which provision is made by sections 147 and 149.

Form, contents and duration of warrant of arrest

67. (1) Every warrant of arrest must be under the hand of the Chief Justice, a Trial Judge or a magistrate.

(2) Every warrant of arrest must –

(a) state shortly the offence with which the person against whom it is issued is charged;
(b) name or otherwise describe the person; and
(c) order the person or persons to whom it is directed to arrest the person against whom it is issued and bring him or her before the court issuing the warrant, or before some other court having jurisdiction in the case, to answer to the charge mentioned in the warrant and further to be dealt with according to law.

(3) Every warrant of arrest remains in force until it is executed or until it is cancelled by the court which issued it.

68. *Repealed.*

Warrants, to whom directed

69. **(1)** A warrant of arrest may be directed –
(a) to one or more police officers named in it;
(b) generally to all police officers; or
(c) if no police officer is immediately available, and its immediate execution is necessary, to any other person, who must then execute it.

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

Notification of substance of warrant

70. The police officer or other person executing a warrant of arrest must notify the substance of it to the person to be arrested, and, if so required, must show him or her the warrant.

Person arrested to be brought before the court without delay

71. The police officer or other person executing a warrant of arrest must without unnecessary delay (but subject to Part V of the Police and Criminal Evidence Ordinance, 2003 as to detention) bring the person arrested before the court before which he or she is required by law to produce such person.

Irregularities in warrant

72. Any irregularity or defect in the substance or form of a warrant, and any variance between it and the written complaint or information, or between either and the evidence produced on the part of the prosecution at any inquiry or trial, does not affect the validity of any proceedings at or subsequent to the hearing of the case; but if any such variance appears to the court to be such that the accused has been thereby deceived or misled, the court may, at the request of the accused, adjourn the hearing of the case to some future date, and in the meantime remand the accused or admit him or her to bail.

Miscellaneous provisions regarding processes

Power to take bond for appearance

73. If a person for whose appearance or arrest the Chief Justice, a Trial Judge or the magistrate presiding in the Magistrates' Court, as the case may be, is empowered to issue a summons or warrant is present in court, the Chief Justice, Trial Judge or magistrate, as the case may be, may require the person to execute a bond, with or without sureties, for his or her appearance in court at a time specified in the bond.

Arrest for breach of bond for appearance

74. If a person who is bound by any bond taken under this Ordinance to appear before a court does not so appear, the Chief Justice, the Trial Judge or the magistrate presiding in the court, as the case may be, may issue a warrant directing the person to be arrested and produced before the court.

Power of court to order prisoner to be brought before it

75. (1) If a person for whose appearance or arrest a summons or warrant may be issued is confined in any prison, the court may issue an order to the officer in charge of the prison requiring him or her to bring the prisoner in proper custody, at a time specified in the order, before the court.

(2) The officer to whom an order under subsection (1) is directed must act in accordance with it, and provide for the safe custody of the prisoner during his or her absence from the prison for the purpose aforesaid.

Warrants, etc, reciprocal provisions

76. (1) Any warrant, summons, charge, indictment, notice or other process in connection with any criminal cause or matter issued by a magistrate or court in St Helena which is required to be executed or served in relation to or upon a person residing in Ascension or Tristan da Cunha may be forwarded by the Registrar to a court having jurisdiction in that territory with a request for the execution of it in relation to or upon the person: but a warrant for the arrest of any person must not be so forwarded without the consent of the Chief Justice or a Trial Judge.

(2) If the Magistrates' Court receives any warrant, summons, charge, indictment, notice or other process in connection with any criminal cause or matter issued by a magistrate or court exercising jurisdiction in Ascension or Tristan da Cunha, with a request for the execution or service of it in relation to or upon a person residing in St Helena –

(a) the court must, subject as hereinafter in this section provided, proceed as if the warrant, summons, charge, indictment, notice or other process had been issued by a magistrate exercising jurisdiction in St Helena or by itself; and

(c) must subsequently make a return of execution or service to the magistrate who, or court which issued the process together with a record of all proceedings, if any, in relation to it.

(2A) A warrant of arrest of a person charged with the commission of an offence must not be executed unless the court to which the request is addressed receives a copy of the

charge against the person together with a summary of the evidence which is proposed to be adduced at the inquiry into or trial of that offence.

(3) If, in the exercise of the powers conferred upon it by subsection (2), the Magistrates' Court has caused to be executed a warrant of arrest of any person charged with the commission of an offence –

(a) the court must forward to the Chief Justice or Trial Judge a report of the arrest together with a copy of the charge and a summary of evidence referred to in subsection (2);

(b) if the Chief Justice or Trial Judge is satisfied, after reading the copy and summary, and after any further inquiry he or she thinks fit to make, that the evidence is such that, if it is believed, a *prima facie* case may be established against the person arrested, the Chief Justice or Trial Judge may direct that the person be sent in custody to the court by which the warrant was issued; and

(c) thereupon the Registrar must endorse the warrant pursuant to the direction.

(4) If the Chief Justice or Trial Judge does not issue a direction under subsection (3), the person arrested under the warrant of arrest referred to in that subsection must be released forthwith.

(5) A warrant of arrest endorsed by the Registrar under subsection (3) is sufficient authority to any person named in the endorsement to receive and detain the person named in the warrant and to carry him or her and deliver him or her up to the court which issued the warrant.

Provisions in relation to summonses and warrants to be generally applicable

77. The provisions in this Part of this Ordinance relating to a summons and warrant, and their issue, service and execution, apply, so far as practicable, to every summons and every warrant of arrest issued under this Ordinance.

Searches and search warrants

Search of premises of arrested persons

78. If a police officer has reason to believe that material evidence can be obtained in connection with an offence for which an arrest has been made, whether with or without warrant, or for which an arrest has been authorised by warrant, any police officer may search the dwelling or place of business of the person so arrested or for whom the warrant of arrest has been issued, and may take possession of anything which might reasonably be used as evidence in any criminal proceedings.

Power to issue search warrant

79. If it is proved on oath to a court that in fact or according to reasonable suspicion anything upon, by or in respect of which an offence has been committed, or anything which is necessary to the conduct of an investigation into any offence is in any building, vessel, aircraft, carriage, box, receptacle or place, the court may by warrant (called a **"search warrant"**) authorise the person to whom the warrant is addressed –

(a) to search the building, vessel, aircraft, carriage, box, receptacle or place (which

must be named or described in the warrant) for any such thing; and

(b) if anything searched for is found, to seize it and carry it before the court issuing the warrant or some other court to be dealt with according to law.

Execution of search warrant

80. A search warrant may be issued and executed on any day, including a Sunday or public holiday, and must be executed between the hours of sunrise and sunset, but the court may, by the warrant, in its discretion, authorise the police officer or other person to whom it is addressed to execute it at any hour.

Persons in charge of closed place to allow entry

81. (1) Whenever any building or other place liable to search is closed, any person who resides in or is charge of the building or place must, on demand of the police officer or other person executing the search warrant, and on production of the warrant, allow him or her freely to enter and leave it and afford all reasonable facilities for a search in it.

(2) If entry to or exit from the building or other place cannot be ~~so~~ obtained by virtue of subsection (1), the police officer or other person executing the search warrant may proceed in the manner prescribed by section 9 or 10.

(3) Any person in or about the building or place who is reasonably suspected of concealing about his or her person any article for which search is made may be searched: but if the person is a female, section 14 must be observed.

Detention of property seized

82. (1) Anything seized or of which possession is taken under section 78 or 79 may be detained until the conclusion of the case or the investigation, reasonable care being taken for its preservation.

(2) If an appeal is made, or if any person is committed for trial, the court may order the thing referred to in subsection (1) to be detained for the purpose of the appeal or the trial.

(3) If no appeal is made, or if no person is committed for trial, the court must direct the thing to be restored to the person from whom it was taken, unless the court sees fit or is authorised or required by law to dispose of it otherwise.

Provisions applicable to search warrants

83. Section 67(1) and (3) and section 69 apply, so far as may be, to all search warrants issued under section 79.

Provisions as to bail

Release on bail

84. (1) Any court before which an accused person appears or is brought may

at any stage in the proceedings release the person on bail.

Discharge from custody

85. **(1)** Every person to whom bail is granted must be released as soon as is practicable after bail is granted (or, where the grant of bail is subject to compliance with conditions prior to release, as soon as is practicable after such conditions have been complied with); and, if the person is in prison, the court which grants bail must cause notice of the grant of bail to be given to the officer in charge of the prison.

(2) Neither this section nor section 84 requires the release of any person liable to be detained for some matter other than that in respect of which bail was granted.

Deposit instead of bond

86. When any person is required by any court or officer to execute a bond, with or without sureties, the court or officer may, except in the case of a bond for good behaviour, permit the person to deposit a sum of money or any specific property, to an amount or of a value the court or officer fixes, *in lieu* of executing such a bond.

Power to order sufficient bail when that first taken is insufficient

87. If, through mistake, fraud or otherwise, insufficient sureties have been accepted, or if they afterwards become insufficient, the court may issue a warrant of arrest directing that the person released on bail be brought before it and thereupon may order the person to find sufficient sureties, and if the person fails to do so may commit the person to prison.

Discharge of sureties

88. **(1)** All or any of the sureties for the appearance and attendance of a person released on bail may at any time apply to the Magistrates' Court to discharge the bond either wholly or so far as it relates to the applicant or applicants.

(2) On such an application being made the court must issue a warrant of arrest directing that the person so released be brought before it.

(3) On the appearance of a person pursuant to a warrant issued under subsection (2), or on his or her voluntary surrender, the court must direct the bond to be discharged either wholly or so far as it relates to the applicant or applicants, and must call upon the person to find other sufficient sureties, and if the person fails to do so may commit the person to prison.

Death of surety

89. If a surety to a bond dies before the bond is forfeited, his or her estate is discharged from all liability in respect of the bond, but the party who gave the bond may be required to find a new surety.

90. *Repealed.*

Forfeiture of bond

91. **(1)** Whenever it is proved to the satisfaction of—

(a) the court by which a bond has been taken; or

(b) the court before which a person has engaged by bond to appear,

that the bond has been forfeited, the court must record the grounds of such proof, and may call upon any person bound by the bond to pay the penalty of it, or to show cause why the penalty should not be paid.

(2) If sufficient cause is not shown and the penalty is not paid, the court may proceed to recover the penalty by issuing a warrant for the attachment and sale of the movable property belonging to the person bound by the bond.

(3) A warrant issued under subsection (2) may be executed within the limits of the jurisdiction of the court which issued it.

(4) If a penalty on a bond is not paid and cannot be recovered by attachment and sale as contemplated by subsection (2), the person bound is liable, by order of the court which issued the warrant, to imprisonment for up to 6 months or until the penalty is paid, whichever period is the less.

(5) The court may, in its discretion, remit any portion of the penalty and enforce payment in part only.

(6) When any person who has furnished security is convicted of an offence the commission of which constitutes a breach of the conditions of the bond –

(a) a certified copy of the judgment of the court by which he or she was convicted of the offence may be used as evidence in proceedings under this section against his or her surety or sureties; and

(b) if such certified copy is so used, the court must presume that such offence was committed by him or her unless the contrary is proved.

Appeals from orders

92. A person aggrieved by an order made by the Magistrates' Court under section 91 may appeal to the Supreme Court and Part X applies to every such appeal.

Power to direct levy of amount due on certain bonds

93. The Supreme Court may direct the Magistrates' Court to levy the amount due on a bond to appear and attend before the Supreme Court.

Incidents of bail in criminal proceedings

93A. **(1)** In this section **"person"** means a person granted bail in criminal proceedings.

(2) A person is under a duty to surrender to custody; that duty is enforceable in accordance with section 93D, and (except as provided by this section)—

(a) no security for the person's surrender to custody may be taken from him or her;
(b) the person must not be required to provide a surety or sureties for his or her surrender to custody; and
(c) no other requirement may be imposed on the person as a condition of bail.

(3) A person may be required, before release on bail, to provide a surety or sureties to secure his or her surrender to custody.

(4) If it appears that a person is unlikely to remain in St Helena until the time appointed for him or her to surrender to custody, the person may be required, before release on bail, to give security for his or her surrender to custody. Such security may be given by the person or on his or her behalf.

(5) A person may be required (but only by a court) to comply, before release on bail or later, with any requirements that appear to the court to be necessary to secure that the person—
(a) surrenders to custody;
(b) does not commit an offence while on bail;
(c) does not interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or herself or any other person;
(d) makes himself or herself available for the purpose of enabling inquiries or a report to be made to assist the court in dealing with him or her for the offence.

(6) If a parent or guardian of a child under the age of 14 or young person consents to be surety for the child or young person for the purposes of this subsection, the parent or guardian may be required to secure that the child or young person complies with any requirement imposed on him or her by virtue of subsection (5); but—
(a) no requirement may be imposed on the parent or the guardian of a young person by virtue of this subsection if it appears that the young person will attain the age of 17 before the time to be appointed for him or her to surrender to custody; and
(b) the parent or guardian must not be required to secure compliance with any requirement to which his or her consent does not extend and must not, in respect of those requirements to which his or her consent does extend, be bound in a sum greater than £100.

(7) If a court has granted bail in criminal proceedings it may on application—
(a) by or on behalf of the person to whom it was granted; or
(b) by the prosecutor or a police officer,
vary the conditions of bail or (subject to this section) impose conditions in respect of bail which it has granted unconditionally.

(8) Notwithstanding the words in brackets in subsection (5), a police officer acting as a custody officer under the Police and Criminal Evidence Ordinance, 2003, who is satisfied that he or she would refuse bail if the provisions of this subsection were not available to him or her, may, with the consent of the detained person, grant bail subject to any conditions which a court could lawfully impose: but subsection (7) applies to a person to whom bail has been granted under this subsection as if such bail had been granted by the Magistrates' Court.

Presumption in favour of granting bail

93B. (1) This section applies to a person who appears or is brought before a court –

(a) during the course of criminal proceedings for an offence or offences alleged to have been committed by the person, but for which he or she has not been convicted; or

(b) in connection with an allegation that the person has failed to pay a fine or compensation or has failed to comply with a probation order or a community service order.

(2) Subject to subsection (3) and sections 93E and section 84(1), a person to whom this section applies must, on every occasion when the proceedings are adjourned, be granted unconditional bail.

(3) Bail need not be granted, or may be granted with conditions, if the court is satisfied that—

(a) there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not) would—

(i) fail to surrender to custody;

(ii) commit an offence while on bail; or

(iii) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or herself or any other person;

(b) the defendant should be kept in custody for his or her own protection or, if he or she is a child under the age of 14 or young person, for his or her own welfare;

(c) he or she is in custody in pursuance of the sentence of a court; or

(d) it has not been practicable to obtain sufficient information for the purpose of taking the decisions required by this section for want of time since the institution of the proceedings against him or her.

Supplementary provisions about decisions on bail

93C. (1) Subject to subsection (2), when—

(a) a court or police officer grants bail in criminal proceedings;

(b) a court withholds bail in criminal proceedings from a person to whom section 93B applies;

(c) a court, officer of a court or police officer appoints a time or place, or a court or officer of a court appoints a different time or place, for a person granted bail in criminal proceedings to surrender to custody; or

(d) a court varies any conditions of bail or imposes conditions in respect of bail in criminal proceedings,

that court, officer or police officer must make a record of the decision in the prescribed manner and containing the prescribed particulars and, if requested to do so by the person in relation to whom the decision was taken, must cause him or her to be given a copy of the record of the decision as soon as practicable after the record is made.

(2) If bail in criminal proceedings is granted by endorsing a warrant of arrest for bail, the police officer who releases on bail the person arrested must make the record required by subsection (1), instead of the judge or justice who issued the warrant.

(3) If a Magistrates' Court or the Supreme Court—

(a) withholds bail in criminal proceedings;

(b) imposes conditions in granting bail in criminal proceedings; or

(c) varies any conditions of bail or imposes conditions in respect of bail in criminal proceedings,

and does so in relation to a person to whom section 93B applies, the court must state its reasons for withholding bail or for imposing or varying the conditions.

(4) A court which is by virtue of subsection (3) required to state reasons for its decision must include a note of those reasons in the record of its decision and give a copy of that note to the person in relation to whom the decision was taken.

(5) If a person has given security pursuant to section 93A(4) and a court is satisfied that the person failed to surrender to custody, then, unless it appears that the person had reasonable cause for such failure, the court may order the forfeiture of the security, or any part of it the court thinks fit to order.

(6) A security which has been ordered to be forfeited by a court under subsection (5) must, to the extent of the forfeiture—

(a) if it consists of money - be accounted for and paid in the same manner as a fine imposed by that court;

(b) if it does not consist of money - be enforced in a manner specified in the order.

Offence of absconding by person released on bail

93D. (1) **A** person who has been released on bail in criminal proceedings and who fails without reasonable cause to surrender to custody commits an offence.
Penalty: As provided in subsection (5).

(2) It is an offence for a person who—

(a) has been released on bail in criminal proceedings; and

(b) having reasonable cause therefor, has failed to surrender to custody,

to fail to surrender to custody at the appointed place as soon after the appointed time as is reasonably practicable.
Penalty: As provided in subsection (5).

(3) On a charge of an offence under subsection (1) or (2), it is for the accused to prove that he or she had reasonable cause for his or her failure to surrender to custody.

(4) A failure to give to a person granted bail in criminal proceedings a copy of the record of the decision does not constitute a reasonable cause for that person's failure to surrender to custody.

(5) A person who commits an offence under this section is liable on conviction to a fine of £500 or imprisonment for 6 months, or both.

(6) In any proceedings for an offence under this section a document purporting to be a copy of the part of the prescribed record which relates to the time and place appointed for the person specified in the record to surrender to custody and to be duly certified to be a true copy of that part of the record is evidence of the time and place appointed for that person

to surrender to custody.

(7) For the purposes of subsection (6)—

(a) **"the prescribed record"** means the record of the decision of the court, officer or police officer made pursuant to section 93C;

(b) a copy of the prescribed record is duly certified if it is certified by the appropriate officer of the court or, as the case may be, by the police officer who took the decision or a police officer designated for that purpose by the officer in charge of the police station from which the person to whom the record relates was released.

Liability to arrest for absconding or breaking conditions of bail

93E. (1) If a person who has been released on bail in criminal proceedings and is under a duty to surrender into the custody of a court fails to surrender to custody at the time appointed for the person to do so, the court may issue a warrant for his or her arrest.

(2) If a person who has been released on bail in criminal proceedings absents himself or herself from the court at any time after he or she has surrendered into the custody of the court but before the court is ready to begin or to resume the hearing of the proceedings, the court may issue a warrant for the person's arrest; but no warrant may be issued under this subsection if the person is absent in accordance with leave given to him or her by or on behalf of the court.

(3) A person who has been released on bail in criminal proceedings and is under a duty to surrender into the custody of a court may be arrested without warrant by a police officer—

(a) if the police officer has reasonable grounds for believing that the person is not likely to surrender to custody;

(b) if the police officer has reasonable grounds for believing that the person is likely to break any of the conditions of his or her bail or for suspecting that the person has broken any of those conditions; or

(c) in a case where the person was released on bail with a surety or sureties, if a surety notifies a police officer in writing that the person is unlikely to surrender to custody and that for that reason the surety wishes to be relieved of his or her obligations as a surety.

(4) A person arrested pursuant to subsection (3)—

(a) must, except where the person was arrested within 24 hours of the time appointed for him or her to surrender to custody, be brought as soon as practicable and in any event within 24 hours after the arrest, before a justice of the peace; and

(b) in the said excepted case must be brought before the court at which the person was to have surrendered to custody.

(5) A justice of the peace before whom a person is brought under subsection (4) may, subject to subsection (6), if of the opinion that the person—

(a) is not likely to surrender to custody; or

(b) has broken or is likely to break any condition of his or her bail,

remand the person in custody or commit the person to custody, as the case may require, or alternatively, grant the person bail subject to the same or to different conditions; but if not of that opinion must grant the person bail subject to the same conditions (if any) as were

originally imposed.

Warrant of arrest may be endorsed for bail

93F. Whenever a warrant is issued for the arrest of any person, the court, magistrate or judge issuing the warrant may (if in all the circumstances it appears just and reasonable so to do) incorporate in it a direction that the officer executing the warrant may, instead of bringing the person arrested before the court, release the person on bail to appear before the court at a time and place specified in the direction.

Charges and indictments

Contents of charge or indictment

94. Every charge or indictment must contain, and is sufficient if it contains, a statement of the specific offence or offences with which the accused person is charged, together with any particulars necessary for providing reasonable information as to the nature of the offence charged.

Joinder of counts

95. (1) Any offences may be charged together in the same charge or indictment if the offences charged are founded on the same facts or form or are a part of a series of offences of the same or a similar character.

(2) If more than one offence is charged in a charge or indictment, a description of each offence so charged must be set out in a separate paragraph of the charge or indictment, and every such separate paragraph is called a count.

(3) If, before trial, or at any stage of a trial, the court is of opinion that–

(a) an accused person may be embarrassed in his or her defence by reason of being charged with more than one offence in the same charge or indictment; or

(b) for any other reason it is desirable to direct that the person should be tried separately for any one or more offences charged in a charge or indictment,

the court may order a separate trial of any count or counts of the charge or indictment.

Joinder of persons

96. The following persons may be joined in one charge or indictment and may be tried together, namely—

(a) persons accused of the same offence committed in the course of the same transaction;

(b) persons accused of an offence and persons accused of abetment, or of an attempt to commit such offence;

(c) persons accused of different offences committed in the course of the same transaction;

(d) persons accused of robbery, aggravated burglary, burglary, or theft (as defined in the Theft Act, 1968 (UK) and persons accused of handling any property alleged to have been stolen in the course of any such offences and also any persons accused of aiding abetting or of attempting to commit any of the before

mentioned offences.

Rules for the framing of charges and indictments: Schedule 1

97. (1) Schedule 1 applies to the framing of all charges and indictments.

(2) Notwithstanding any rule of law or practice, but subject to this Ordinance, a charge or indictment is not open to objection in respect of its form or contents if it is framed in accordance with Schedule 1 and other provisions of this Ordinance.

(3) All indictments must be in the name of and signed by the Attorney General and be in a form the Chief Justice from time to time approves.

Previous conviction or acquittal

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

98. A person who has been once tried by a court of competent jurisdiction for an offence and convicted or acquitted of the offence is, while the conviction or acquittal has not been reversed or set aside, not liable to be tried again on the same facts for the same offence.

Person may be tried again for separate offence

99. A person convicted or acquitted of any offence may afterwards be tried for any other offence with which he or she might have been charged on the former trial under section 95(1).

Consequences supervening or not known at time of former trial

100. A person convicted or acquitted of any act causing consequences which together with such act constitute a different offence from that for which the person was convicted or acquitted may be afterwards tried for that last-mentioned offence, if the consequences had not happened or were not known to the court to have happened at the time when the person was acquitted or convicted.

If original court was not competent to try subsequent charge

101. A person convicted or acquitted of any offence constituted by any acts may, despite the conviction or acquittal, be subsequently charged with and tried for any other offence constituted by the same acts which he or she may have committed, if the court by which the person was first tried was not competent to try the offence with which he or she is subsequently charged.

Previous conviction or acquittal, how proved

102. (1) In any inquiry, trial or other proceeding under this Ordinance, a previous conviction or acquittal may be proved, in addition to any other mode provided by any law for the time being in force—

(a) by an extract certified, under the hand of the officer having the custody of the records of the court in which such conviction or acquittal was had, to be a copy of

the sentence or order; or

(b) in case of a conviction, either by a certificate signed by the officer in charge of the prison in which the sentence or any part of it was served, or by production of the warrant of commitment under which the sentence was imposed,

together with, in each of such cases, evidence as to the identity of the accused person with the person so convicted or acquitted.

(2) A certificate in a form approved by the Governor given under the hand of an officer appointed by the Governor for the purpose, who has compared the finger prints of an accused person with the finger prints of a person previously convicted or acquitted, is *prima facie* evidence of all facts set forth in the certificate, if it is produced by the person who took the finger prints of the accused person or by a police officer present at the same time.

(3) A previous conviction in any place outside St Helena may be proved by the production of a certificate duly signed by an authorised police officer in the country or territory where the conviction was had, containing a copy of the sentence or order and the finger prints, or photographs of the finger prints of the person so convicted, together with evidence to the satisfaction of the court that the finger prints of the person so convicted are those of the accused person. Such a certificate is *prima facie* evidence of all facts set forth in it without proof that the officer purporting to sign it did in fact sign it and was empowered so to do.

Compelling attendance of witnesses

Summons for witness

103. (1) If it appears that material evidence can be given by or is in the possession of any person, a court having cognisance of any criminal proceedings may to issue a summons to the person requiring his or her attendance before the court or requiring him or her to bring and produce to the court for the purpose of evidence all documents, writings or things in his or her possession or power which are specified or otherwise sufficiently described in the summons.

(2) Any thing produced before a court may be retained by the court until 30 days after the conclusion of the trial at which it was produced, and in the event of an appeal for any further period the court to which the appeal is made directs.

Warrant for witness who disobeys summons

104. If, without sufficient excuse, a witness for whose attendance a summons is issued does not appear in obedience to the summons, the court, on proof of the proper service of the summons a reasonable time before the date specified in the summons, may issue a warrant to bring the witness before the court at a time and place specified in the warrant.

Warrant for witness in first instance

105. If the court is satisfied by evidence on oath that a witness will not attend unless compelled to do so, it may at once issue a warrant for the arrest of the person and his or her production before the court at a time and place specified in the warrant.

Mode of dealing with witness arrested under warrant

106. When any witness is arrested under a warrant, the court –

(a) may, if the witness provides security by bond to the satisfaction of the court for his or her appearance at the hearing of the case, may order the witness to be released from custody; or

(b) must, if the witness fails to provide such security, order him or her to be detained in custody for production at such hearing.

Power of court to order prisoner to be brought up for examination

107. (1) A court that wishes to examine as a witness in any case pending before it a person confined in prison may issue an order to the officer in charge of the prison requiring him or her to bring the prisoner in proper custody, at a time specified in the order, before the court for examination.

(2) The officer in charge of a prisoner must, on receipt of an order under subsection (1), act in accordance with it and provide for the safe custody of the prisoner during his or her absence from the prison for the purpose mentioned in that subsection.

Penalty for nonattendance of witness

108. (1) A person summoned to attend as a witness who, without lawful excuse—

(a) fails to attend as directed by the summons;

(b) having attended, departs without having obtained the permission of the court; or

(c) fails to attend after adjournment of the court after being ordered to attend,

is liable by order of the court to a penalty not exceeding £20.

(2) If a penalty imposed under subsection (1) is not paid, it may be levied by attachment and sale of any movable property belonging to the witness within the limits of the jurisdiction of the court imposing the penalty.

(3) In default of recovery of the penalty by attachment and sale, the witness may, by order of the court, be imprisoned as a civil prisoner for a period of 15 days unless the penalty is paid before the end of that period.

(4) For good cause shown, the Supreme Court may remit or reduce any penalty imposed under this section by the Magistrates' Court.

Examination of witnesses

Power to summon material witnesses, or examine person present

109. (1) Any court may, at any stage of any inquiry, trial or other proceeding under this Ordinance, summon or call any person as a witness, or examine any person in attendance though not summoned as a witness, or recall and re-examine any person already examined.

(2) The court must summon and examine or recall and re-examine any such person if his or her evidence appears to it essential to the just decision of the case:

(3) If the court examines any person pursuant to this section, the prosecutor or the advocate for the prosecution or the accused person or his or her advocate has the right to cross examine the person, and the court must adjourn the case for a period it thinks necessary to enable such cross examination to be adequately prepared if, in the court's opinion, either party may be prejudiced by the calling of any such person as a witness.

Evidence to be given on oath

110. (1) Subject as hereinafter provided, every witness in a criminal cause or matter must be examined upon oath and the court before which any witness appears has power and authority to administer the usual oath.

(2) Any witness, upon objecting to being sworn and stating as the grounds for such objection either that he or she has no religious belief or that the taking of an oath is contrary to his or her religious belief, must be permitted to make a solemn affirmation instead of taking an oath, which affirmation is of the same effect as if the person had taken the oath.

(3) If a witness in any criminal cause or matter offers to give evidence on oath or affirmation in any form common amongst, or held binding by persons of the race or persuasion to which the witness belongs, which is not repugnant to justice or decency, and which does not purport to affect any third person, the court may, if it thinks fit, notwithstanding subsection (1) or (2), tender such oath or affirmation to the witness.

(4) If any child of tender years is called as a witness in a criminal cause or matter and does not, in the opinion of the court, understand the nature of an oath, his or her evidence may be received though not given on oath, if in the opinion of the court the child—

(a) is possessed of sufficient intelligence to justify the reception of the evidence; and

(b) understands the duty of speaking the truth.

Effect of defendant's failure to mention facts when questioned or charged

110A. (1) Subsection (2) applies if, in any proceedings against a person for an offence, evidence is given that the defendant—

(a) at any time before he or she 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 or her defence in those proceedings; or

(b) on being charged with the offence or officially informed that he or she might be prosecuted for it, failed to mention any such fact,

being a fact which in the circumstances existing at the time the defendant could reasonably have been expected to mention when so questioned, charged or informed, as the case may be.

(2) If this subsection applies—

(a) a magistrates' court inquiring into the offence as examining justices;

(b) the court, in determining whether there is a case to answer; and

(c) the court or jury, in determining whether the defendant is guilty of the offence charged,

may draw such inferences from the failure as appear proper.

(3) 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 defendant is alleged to have failed to mention.

(4) This section applies in relation to questioning by persons (other than police officers) charged with the duty of investigating offences or charging offenders as it applies in relation to questioning by police officers, and in subsection (1) "officially informed" means informed by a police officer or any such person.

(5) This section does not—

(a) affect the admissibility in evidence of the silence or other reaction of the defendant in the face of anything said in his or her presence relating to the conduct in respect of which he or she 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 defendant which could properly be drawn apart from this section.

(6) This section does not apply in relation to a failure to mention a fact if the failure occurred before the commencement of this section.

Effect of defendant's silence at trial

110B. (1) At the trial of any person for an offence, subsections (2) and (3) apply unless—

(a) the defendant's guilt is not in issue; or

(b) it appears to the court that the physical or mental condition of the defendant makes it undesirable for him or her to give evidence;

but subsection (2) does not apply if, at the conclusion of the evidence for the prosecution, the defendant's legal representative informs the court that the defendant will give evidence or, if the defendant is unrepresented, the court ascertains from him or her that he or she will give evidence.

(2) If this subsection applies, the court must, at the conclusion of the evidence for the prosecution, satisfy itself (in the case of proceedings on indictment, in the presence of the jury) that the defendant is aware that the stage has been reached at which evidence can be given for the defence and that he or she can, if he or she wishes, give evidence and that, if he or she 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 or her failure to give evidence or his or her refusal, without good cause, to answer any question.

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

(4) This section does not render the defendant compellable to give evidence on his or her own behalf, and the defendant does not commit 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 is to be taken to do so without good cause unless–

(a) the person 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 the person 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;

(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 defendant's failure or refusal to account for objects, substances or marks

110C. (1) If—

(a) a person is arrested by a police officer, and there is—

(i) on his or her person;

(ii) in or on his or her clothing or footwear;

(iii) otherwise in his or her possession;

(iv) in any place in which he or she is at the time of his or her 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 officer;

(c) the police officer informs the person arrested that he or she so believes, and requests the person 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) applies.

(2) If this subsection applies–

(a) a magistrates' court inquiring into the offence as examining justices;

(b) the court, in determining whether there is a case to answer; and

(c) the court or jury, in determining whether the defendant is guilty of the offence charged,

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

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

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

(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 defendant to account for the presence of an object, substance or mark or from the condition of clothing or footwear that could properly be drawn apart from this section.

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

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

110D. (1) If–

(a) a person arrested by a police officer was found by the officer at a place at or about the time the offence for which the person 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 or her participation in the commission of the offence;

(c) the police officer informs the person that the officer so believes, and requests him or her 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) applies.

(2) If this subsection applies–

(a) a magistrates' court inquiring into the offence as examining justices;

(b) the court, in determining whether there is a case to answer; and

(c) the court or jury, in determining whether the defendant 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 defendant was told in ordinary language by the police officer when making the request mentioned in subsection (1)(c) what the effect of this section would be if he or she failed or refused to comply with the request.

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

(5) This section does not preclude the drawing of any inference from a failure or refusal of the defendant to account for his or her presence at a place that could properly be drawn apart from this section.

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

Refractory witnesses

111. (1) Whenever any person, appearing either in obedience to a summons or by virtue of a warrant, or being present in court and being verbally required by the court to

give evidence—

(a) refuses to be sworn;

(b) having been sworn, refuses to answer any question put to him or her;

(c) refuses or neglects to produce any document or thing which he or she is required to produce; or

(d) refuses to sign his or her deposition,

without in any such case offering any sufficient excuse for such refusal or neglect, the court may adjourn the case for any period not exceeding 8 days, and may in the meantime commit the person to prison, unless he or she sooner consents to do what is required of him or her.

(2) If a person, upon being brought before the court pursuant to subsection (1) at or before an adjourned hearing, again refuses to do what is required of him or her, the court may, if it sees fit, again adjourn the case and commit the person for the like period, and so again from time to time until the person consents to do what is so required of him or her.

(3) This section does not affect the liability of any such person to any other punishment or proceeding for refusing or neglecting to do what is so required of him or her, nor prevent the court from disposing of the case in the meantime according to any other sufficient evidence taken before it.

Reports by experts

112. (1) A court may receive in evidence in any inquiry, trial or other proceeding under this Ordinance any document purporting to be a report under the hand of an expert upon any matter or thing duly submitted to the expert for examination or analysis: but no such document may be so received unless it contains a statement of the qualifications of the expert to make such examination or analysis.

(2) Without affecting section 109, the court may presume that—

(a) the signature on a report as mentioned in subsection (1) is genuine and that the person signing it held the qualifications which the person professed to hold at the time he or she signed it; and

(b) any matter or thing to which the report relates has been duly submitted for examination.

(3) The examination or analysis, or any part of it, on which a report as mentioned in subsection (1) is based may be made by the person signing the report or by any person acting under his or her direction.

Proof by written statement

112A. (1) In any criminal proceedings, including committal proceedings, a written statement by any person is, if such of the conditions mentioned in the next following subsection as are applicable are satisfied, admissible as evidence to the like extent as oral evidence to the effect by that person.

(2) The conditions mentioned in subsection (1) are—

(a) the statement purports to be signed by the person who made it;

(b) the statement contains a declaration by that person to the effect that it is true to the best of his or her knowledge and belief and that he or she made the statement

knowing that, if it were tendered in evidence, he or she would be liable to prosecution if he or she wilfully stated in it anything which he or she knew to be false or did not believe to be true;

(c) at least 7 days before the hearing at which the statement is tendered in evidence, a copy of the statement is served, by or on behalf of the party proposing to tender it, on each of the other parties to the proceedings; and

(d) none of the other parties within 7 days from the service of the copy of the statement, serves a notice on the party so proposing objecting to the statement being tendered in evidence under this section.

(2A) The conditions mentioned in subsection (2)*(c)* and *(d)* do not apply if the parties agree before or during the hearing that the statement may be so tendered.

(3) The following provisions also have effect in relation to any written statement tendered in evidence under this section, that is to say—

(a) if the statement is made by a person under the age of 21, it must give his or her age;

(b) if it is made by a person who cannot read it, it must be read to the person before he or she signs it and must be accompanied by a declaration by the person who so read the statement to the effect that it was so read; and

(c) if it refers to any other document as an exhibit, the copy served on any other party to the proceedings under subsection (2)*(c)* must be accompanied by a copy of that document or by any information necessary to enable the party on whom it is served to inspect that document or a copy of it.

(4) Even if a written statement made by any person is admissible as evidence by virtue of this section—

(a) the party by whom or on whose behalf a copy of the statement was served may call the person to give evidence; and

(b) the court may, of its own motion or on the application of any party to the proceedings, require that person to attend before the court and give evidence.

(5) So much of any statement as is admitted in evidence by virtue of this section must, unless the court otherwise directs, be read aloud at the hearing and, if the court so directs, an account must be given orally of so much of any statement as is not read aloud.

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

(7) A document required by this section to be served on any person may be served—

(a) by delivering it to the person or his or her advocate; or

(b) in the case of a corporate body, by delivering it to the secretary or clerk of the body at its registered or principal office.

Taking evidence of witnesses in absence of the defendant

113. (1) If it is proved that a defendant has absconded and that there is no immediate prospect of arresting him or her, the court competent to try or commit for trial the

person for the offence complained of may, in his or her absence, examine the witnesses, if any, produced on behalf of the prosecution, and record their depositions.

(1A) Depositions taken pursuant to subsection (1) may, on the arrest of the defendant, be given in evidence against him or her on the inquiry into or trial of the offence with which he or she is charged if the deponent is dead or incapable of giving evidence, or his or her attendance cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

(2) If it appears that an offence punishable with imprisonment for a period not less than 7 years has been committed by some person or persons unknown, the Supreme Court may direct that the Magistrates' Court must hold committal proceedings and examine any witnesses who can give evidence concerning the offence; ~~any~~ evidence so taken may be given in evidence against any person who is subsequently accused of the offence if the witness is dead or incapable of giving evidence or outside St Helena.

Evidence for the defence

114. *Repealed.*

Procedure where person charged is the only witness called

115. If the only witness to the facts of the case for the defence is the person charged, he or she must be called as a witness immediately after the close of the evidence for the prosecution.

Right of reply

116. In a case where the right of reply depends upon the question whether evidence has been called for the defence, the fact that the person charged has been called as a witness does not of itself confer on the prosecution the right of reply.

Abolition of right of defendant to make unsworn statement

116A. (1) Subject to subsections (2) and (3), in any criminal proceedings the defendant is not entitled to make a statement without being sworn, and accordingly, if the defendant gives evidence, he or she must do so on oath and is liable to cross examination; but this section does not affect the right of the defendant, if not legally represented to address the court or jury otherwise than on oath on any matter on which, if the defendant were so legally represented, his or her advocate could address the court or jury on his or her behalf.

(2) Subsection (1) does not prevent the defendant making a statement without being sworn if—

(a) the statement is one which the defendant is required by law to make personally; or

(b) the defendant makes it by way of mitigation before the court passes sentence upon him or her.

Procedure in case of mental disorder or other incapacity of a defendant

Inquiry by court as to mental disorder of defendant

117. (1) When in the course of a trial or committal proceedings the court has reason to believe that the defendant is mentally disordered and consequently incapable of making his or her defence, it must inquire into the fact of such unsoundness.

(2) If the defendant is found to be mentally disordered and consequently incapable of making his or her defence, the court must postpone further proceedings in the case.

(3) If the case is one in which bail may be taken, the court may release the defendant on sufficient security being given that he or she will be properly cared for and prevented from doing injury to himself or herself or to any other person, and for his or her appearance before the court or an officer the court appoints for the purpose.

(4) If the case is one in which bail may not be taken, or if sufficient security is not given, the court must order the defendant to be detained in safe custody in a place and manner the court thinks fit and must transmit the court record or a certified copy of it to the Governor.

(5) Upon consideration of the record the Governor may by warrant under his or her hand directed to the court, order that the defendant be confined in a mental hospital or other suitable place of custody, and the court must give any directions necessary to carry out such order.

(6) A warrant of the Governor under subsection (5) is sufficient authority for the detention of the defendant until the Governor makes a further order in the matter or until the court that found the defendant incapable of making his or her defence orders him or her to be brought before it again in the manner provided by sections 118 and 119.

Procedure when defendant certified as capable of making his or her defence

118. (1) If any person confined in a mental hospital or other place of custody under section 117 is found by the medical officer in charge of the mental hospital or place to be capable of making his or her defence, the medical officer must forthwith forward a certificate to that effect to the Crown Prosecutor, who must thereupon inform the court which recorded the finding against the person whether it is the intention of the Crown that the proceedings against the person are to continue or otherwise.

(2) If the Crown Prosecutor informs the court that the proceedings are to continue, the court must thereupon order the removal of the person from the place where he or she is detained and cause him or her to be brought in custody before it in the manner described in section 119. Otherwise, the court must forthwith issue an order for the immediate release from custody of the person.

Resumption of trial or investigation

119. (1) Whenever committal proceedings are, or a trial is, postponed under section 117, the court may at any time, subject to section 118, resume those proceedings or trial and require the defendant to appear before the court, and if upon such appearance the

court considers the person capable of making his or her defence, the investigation or trial must proceed, or begin *de novo*, as to the court may appear expedient.

(2) A certificate given to the Crown Prosecutor under section 118 may be given in evidence in any proceedings under this section without further proof unless it is proved that the medical officer purporting to sign it did not in fact sign it.

(3) If upon the appearance of a defendant before it, the court considers him or her still to be incapable of making his or her defence, it must proceed as if he or she were brought before it for the first time.

Defence of mental disorder at committal proceedings

120. If a defendant appears to be of sound mind at the time of committal proceedings, the court, notwithstanding that it is alleged that at the time when the act in respect of which the defendant is charged was committed, the defendant was by reason of mental disorder incapable of knowing the nature of the act or that it was wrong or contrary to law, must proceed with the case, and, if the defendant ought to be committed for trial by the Supreme Court, the court must so commit him or her.

Defence of mental disorder on trial

121. (1) If any act or omission is charged against any person as an offence, and it is given in evidence on the trial of the person for that offence that the person was mentally disordered so as not to be responsible for his or her action at the time when the act was done or omission made, then if it appears to the Magistrates' Court or, in the case of a trial before the Supreme Court, to the jury before which the person is tried (or the Trial Judge, if there is no jury) that the person did the act or made the omission charged but was mentally disordered as aforesaid at the time when he or she did or made the same, the court or jury or Trial Judge, as the case may be, must make a special finding or return a special verdict to the effect that the defendant is not guilty by reason of mental disorder.

(2) When any such special finding or verdict is made or returned the court must report the case for the orders of the Governor, and meanwhile must order the defendant to be kept in custody in a place and a manner the court directs.

(3) The Governor may upon receiving a report under subsection (2) order the person to be confined in a mental hospital, prison or other suitable place of safe custody either in St Helena or elsewhere.

(4) The superintendent of a mental hospital, prison or other place in which any person is detained by an order of the Governor under subsection (3) must make a report to the Governor on the condition, history and circumstances of every such person at the expiration of a period of 3 years from the date of the order and thereafter at the expiration of periods of 2 years from the date of the last report; and on the consideration of any such report the Governor may order that the person detained be discharged or otherwise dealt with.

(5) Notwithstanding subsection (4), the officer in charge of the prison or the Senior Medical Officer/Clinical Director may, at any time after a person has been detained in any place by an order of the Governor under this section, make a special report to the

Governor on the condition, circumstances and history of any such person, and the Governor, on a consideration of any such report, may order that the person detained be discharged or otherwise dealt with.

(6) The Governor may at any time order that a person detained under this section be transferred from a mental hospital to a prison, or from a prison to a mental hospital, or from any place in which he or she is detained to either a prison or a mental hospital.

Procedure when defendant does not understand proceedings

122. (1) If the Magistrates' Court at any time in a trial or committal proceedings, decides that a defendant, though not mentally disordered. cannot be made to understand the proceedings, it must appoint the Public Solicitor, a lay advocate or other qualified person to represent the defendant. The court must then proceed to hear all the evidence available both for the prosecution and the defence, and—

(a) if the court decides that the defendant did not do the act or make the admission charged - must discharge the defendant;

(b) if the court decides that the defendant did the act or made the omission charged - must not convict the defendant nor commit him or her for trial, but must make a special finding to that effect.

(2) If a Magistrates' Court makes a special finding under subsection (1), then, taking into consideration the need to protect the public and any other relevant factors, the court may order that the defendant be—

(a) discharged, (either conditionally or on conditions the court considers appropriate);

(b) detained in safe custody or released (either conditionally or on conditions the court considers appropriate), pending the receipt by the court of expert evidence concerning the defendant's mental and medical health; after which the court may make any other order under this subsection;

(c) detained in safe custody pending an order made by the Governor under subsection (5), in a place and a manner the court thinks fit; or

(d) released (either unconditionally or on conditions the court considers appropriate), pending an order made by the Governor under subsection (5).

(3) The conditions referred to in subsection (2)*(a), (b)* and *(d)* and in subsection (5) are such conditions as to the Court seem appropriate, including that the defendant must—

(a) keep the peace and be of good behaviour;

(b) avoid certain named locations or persons;

(c) live with a certain person or group of persons or at a certain location;

(d) be cared for by a certain person or group of persons.

(4) If an order has been made under subsection (2)(c) or (d), the court must transmit the court record, or a certified copy of it, to the Governor.

(5) Upon consideration of the record transmitted to the Governor under subsection (4), the Governor may by order under his or her hand direct that the defendant is to be –

(a) detained at Her Majesty's Pleasure or for a period or place of custody specified in the order; or

(c) released, unconditionally or upon conditions the Governor specifies.

(6) An order made under subsection (5), other than an order directing the unconditional release of a person, may at any time be varied or discharged by the Governor and—

(a) the order so made is sufficient authority for the removal of the person to whom it relates to the place of detention specified in the order so made or varied and for his or her detention there;

(b) a person removed or detained under the authority of such an order is deemed to be in lawful custody:

but no such order may be so varied as to increase the period for which the person to whom it relates may be detained under it.

(7) If the defendant breaches any of the conditions made by the Magistrates' Court or the Governor under this section, he or she may be —

(a) brought before the court and the court may make another order under subsection (2); or

(b) detained in custody until the Governor has made another order under subsection (5).

(8) If a person confined, whether in a mental hospital or other place of custody, under this section is found by the medical officer in charge of the hospital or place to be capable of understanding proceedings which might be brought against him or her, the medical officer must forthwith forward a certificate to that effect to the Attorney General, who must thereupon inform the court which recorded the finding against that person whether it is the intention of the Crown that the proceedings against him or her are to continue or otherwise.

(8A) If pursuant to subsection (8) the Attorney General informs the court that the Crown intends that the proceedings against the person are to continue, the court must thereupon order the removal of the person from the place where he or she is detained and cause him or her to be brought in custody before it to be retried or dealt with under subsection (9); otherwise, the court must forthwith issue an order for the immediate release from custody of the person.

(9) If upon the appearance of a defendant before it the court considers him or her still to be incapable of understanding the proceedings, it must make an order under subsection (2).

(10) The person in charge of a place, whether a mental hospital or other place, in which a person is detained by an order made under this section must make a report to the Governor on the condition, history and circumstances of every such person every 6 months, and on the consideration of any such report the Governor may order that the person detained be discharged or otherwise dealt with.

(11) Notwithstanding subsection (10), the officer in charge of any place where a person has been detained by an order made under this section, or a medical officer may, at any time after a person has been detained in the place by that order, make a special report to the Governor on the condition, circumstances and history of the person, and the Governor, on consideration of such a report, may order that the person detained be discharged or otherwise dealt with.

(12) The provisions of this section apply with necessary modifications to proceedings before the Supreme Court.

Costs and compensation

Award of costs

123. (1) A court may order the payment of costs in any of the following circumstances—

(a) to the prosecutor, whether public or private, by a person convicted of any offence by the court;

(b) to any person acquitted of any offence by the court, by the prosecutor, whether public or private, if the court considers that the prosecutor had no reasonable grounds for prosecuting the person;

(c) to the respondent, by an appellant whose appeal fails;

(d) to an appellant, by a respondent, on the success of an appeal;

(e) to any person in any matter of an interlocutory nature, including a request for an adjournment, if the person has been put to any expense when in the opinion of the court the applicant had no reasonable or proper grounds for making the application;

(f) to the trustees of the Legal Assistance Fund, by any person who might otherwise (in accordance with this section) be ordered to pay costs to a party who was assisted or represented by a Lay Advocate under the of the Legal Aid, Assistance and Services Ordinance, 2016

(2) The costs awarded under subsection (1) must be a sum (not exceeding, in the case of the Magistrates' Court, £500) as appears to the court to be just and reasonable in the circumstances of the case.

(3) Costs awarded under this section may be awarded in addition to any compensation awarded under section 124.

(4) An appeal lies to the Supreme Court against any award of costs of over £50 by the Magistrates' Court, but only if the leave of the Magistrates' Court or the Chief Justice is given to the bringing of such appeal, and —

(a) no appeal lies against an order of the Supreme Court either awarding or refusing to award costs;

(b) no appeal lies to the Supreme Court against an order of the Magistrates' Court refusing to award costs:

(5) A court hearing an appeal relating to any other matter than costs may vary any order relating to costs made by the court from whose decision the appeal is made.

Compensation in case of frivolous or vexatious charge

124. If on the dismissal of any charge a court is of the opinion that the charge was frivolous or vexatious, the court may order the prosecutor to pay to the defendant a reasonable sum as compensation for the trouble and expense to which the defendant has been put by reason of the charge, in addition to the defendant's costs.

Power to order convicted person to pay compensation

125. (1) When a defendant is convicted by a court of any offence and it appears from the evidence that –

(a) some other person, whether or not that person is the prosecutor or a witness in the case, has suffered material loss or personal injury in consequence of the offence committed; and

(b) substantial compensation is, in the opinion of the court, recoverable by that person by civil action,

the court may, in its discretion but subsection to subsection (1A), and in addition to any other lawful punishment, order the convicted person to pay to that other person compensation that the court considers fair and reasonable.

(1A) The amount of compensation awarded under subsection (1) must not exceed £2,000.

(2) When a person is convicted of an offence relating to property, the power conferred by subsection (1) includes a power to award compensation to any *bona fide* purchaser of any property in relation to which the offence was committed, for the loss of such property if it is restored to the possession of the person entitled to it.

(3) An order for compensation under this section is subject to appeal and no payment of compensation may be made before the period allowed for presenting the appeal has elapsed, or, if an appeal is presented, before the decision on the appeal.

(4) At the time of awarding any compensation in any subsequent civil action relating to the same matter, the court hearing the civil action must take into account any sum paid or recovered as compensation under this section.

Recovery of costs and compensation and imprisonment in default

126. (1) Sums allowed for costs or compensation under section 123, 124 or 125 must in all cases be specified in the conviction sentence or order.

(2) If the person who has been ordered to pay such costs or compensation fails so to pay, a warrant of distress may be issued in accordance with section 227, and, in default of distress, the court may issue any process necessary for the person's appearance and may sentence him or her to imprisonment in accordance with section 228 or 231, and thereupon all the provisions of section 232 to sentences of imprisonment in default of distress become applicable.

Restitution of property

Property found on accused person

127. If upon the arrest of a person charged with an offence, any property is taken from the person, the court before which he or she is charged may order that the property or a part of it be—

(a) restored to the person who appears to the court to be entitled to it, and, if that person is the person charged, restored either to him or her or to any other person that the person charged directs; or

(b) applied to the payment of any fine or any costs or compensation directed to be paid by the person charged.

Property stolen, etc.

128. (1) If any person charged with an offence of stealing, taking, obtaining, extorting, embezzling, converting, or disposing of any property, or of knowingly receiving any property which has been unlawfully obtained, is prosecuted to conviction or admits any such offence under section 159(2) or section 220, the property must be restored to the owner or the owner's representative.

(2) In every case referred to in subsection (1), the court before which the person is convicted may, subject to subsections (2A) and (2B), make orders for restitution of the property or order the restitution of it in a summary manner.

(2A) If goods as defined in the Sale of Goods Act, 1893 (UK) have been obtained by deception or other wrongful means not amounting to theft, (as defined in the Theft Act, 1968 (UK)) the property in the goods does not re-vest in the person who was the owner of the goods, or that person's personal representative, by reason only of the conviction of the offender.

(2B) This section does not apply to the case of any valuable security which has been in good faith paid or discharged by some person liable to the payment of it; or, being a negotiable instrument, has been in good faith taken or received by transfer or delivery by some person for a just and valuable consideration without any notice or without reasonable cause to suspect that it has been stolen.

(3) On the restitution of any stolen property, if it appears to the court by the evidence that—

(a) the offender has sold the stolen property to any person;

(b) that person has had no knowledge that the property was stolen; and

(c) any money has been taken from the offender on his or her apprehension,

the court may, on the application of the purchaser, order that out of such money a sum not exceeding the amount of the proceeds of the sale be delivered to the purchaser.

(4) The operation of any order under this section must, unless the court by which the conviction is imposed directs to the contrary in any case in which the title to the property is not in dispute, be suspended—

(a) in any case - until the time for appeal has elapsed; and

(b) in cases where an appeal is lodged - until the determination of the appeal,

and in cases where the operation of any such order is suspended until the determination of the

appeal, the order does not take effect as to the property in question if the conviction is quashed on appeal. The Chief Justice or Trial Judge may give directions for securing the safe custody of any property pending the suspension of the operation of any such order.

(5) A person aggrieved by an order made by the Magistrates' Court under this section may appeal to the Supreme Court, and upon the hearing of such an appeal that court may by order annul or vary any order made on a trial for the restitution of any property to any person, even if the conviction is not quashed; and the order, if annulled, does not take effect, and, if varied, takes effect as so varied.

Convictions for offences other than those charged

Person charged may be convicted of a minor offence

129. If a person is charged with an offence and facts are proved which reduce it to a minor cognate offence, the person may be convicted of the minor offence, although not so charged.

Conviction for attempt or being an accessory after the fact

130. A person charged with an offence may be convicted of—

(a) having attempted to commit that offence; or

(b) being an accessory after the fact to the commission of such offence,

although not so charged.

Convictions in respect of charges relating to death of child

131. (1) If a woman is charged with the murder of her child, being a child under the age of 12 months, and the court is of opinion that the woman by any wilful act or omission caused its death, but at the time of the act or omission had not fully recovered from the effect of giving birth to the child and that, by reason thereof or by reason of the effect of lactation consequent upon the birth of the child, the balance of her mind was then disturbed, the woman may be convicted of the offence of manslaughter, although not so charged.

(2) If a person is charged with the murder or manslaughter of any child, or with an offence relating to the procuring of abortion, and the court is of opinion that the person is not guilty of murder or manslaughter or of an offence relating to the procuring of abortion, but is guilty of the offence of killing an unborn child, the person may be convicted of that offence although not so charged.

(3) If a person is charged with the offence of child destruction and the court is of opinion that the person is not guilty of that offence but is guilty of an offence relating to the procuring of abortion, the person may be convicted of that offence although not so charged.

Persons charged with manslaughter may be convicted of reckless driving, etc.

132. If a person is charged with manslaughter in connection with the driving of a motor vehicle by the person and the court is of opinion that the person is not guilty of that offence but is guilty of an offence under section 30 of the Road Traffic Ordinance, 1985 (which relates to causing death by reckless or dangerous driving) or of section 31 of that

Ordinance (which relates to reckless driving), the person may be convicted of either such offence although he or she was not so charged, whether or not the requirements of section 37 of that Ordinance (which relates to notice of prosecutions) have been satisfied with regard to that offence.

Person charged with rape may be convicted of indecent assault, etc.

133. If an accused person is charged with rape and the court is of opinion that the accused person is not guilty of that offence but is guilty of the offence of indecent assault, unlawful sexual intercourse with a person under the age of 16 years or incest, the accused person may be convicted of one of those offences although not so charged.

Person charged with incest may be convicted of alternative offence

134. A person charged with incest, although acquitted of that offence, may be found guilty of any alternative offence as provided in the Sexual Offences Act, 2003 (UK) as applied to St Helena, although not so charged.

Person charged with unlawful sexual intercourse of a girl under 16 years can be convicted of indecent assault

135. If an accused person is charged with unlawful sexual intercourse with a person under the age of 16 years and the court is of opinion that the accused person is not guilty of that offence but is guilty of the offence of indecent assault, the accused person may be convicted of that offence although not so charged.

Alternative convictions on charge of theft

136. If a person is charged with the theft of anything and it is proved that—

(a) the person handled stolen goods knowing or believing them to be stolen goods – the person may be convicted of the latter offence, although not so charged;

(b) the person obtained the thing in any such manner as would amount to obtaining it by deception – the person may be convicted of the offence of obtaining it by deception although not so charged.

Alternative conviction on charge of obtaining by deception

137. If a person is charged with obtaining by deception anything capable of being stolen, and it is proved that the person stole the thing, the person may be convicted of the offence of theft although not so charged.

Construction of sections

138. Sections 129 to 137 are in addition to and do not derogate from any other written law or other provisions of this Ordinance, and sections 130 to 137 do not limit section 129.

PART V
MODE OF TAKING AND RECORDING EVIDENCE IN INQUIRIES AND TRIALS

General

Evidence to be taken in presence of defendant

139. (1) Except as otherwise expressly provided, all evidence taken in any inquiry or trial under this Ordinance must be taken in the presence of the defendant.

(2) If the conduct of the defendant is such that, even after warning, the defendant continues to impede the course of the inquiry or trial, it is permissible to proceed with the inquiry or trial without the presence of the defendant; but the circumstances must be noted on the record.

The Magistrates' Court

Record of evidence in Magistrates' Court

140. (1) The presiding magistrate must ensure that a record is kept of all of the evidence heard or received during the course of any trial or inquiry in the Magistrates' Court.

(2) Every statement tendered in evidence under section 112A must be retained by the court and forms part of the record, and such retention is sufficient compliance with subsection (1).

(3) Every exhibit produced in evidence must, subject to subsection (3A), be retained by the court and forms part of the record; and such retention is sufficient compliance with subsection (1).

(3A) If an exhibit is of such a nature that it cannot be retained in the court, the court must give any directions that appear necessary or expedient for the preservation of the exhibit or a sufficient record of it, in order to comply with subsection (1).

(4) The record of any oral evidence must be either—

(a) a written record of the evidence, made by or under the personal superintendence of the presiding magistrate, which must normally be recorded in the form of a narrative; or

(b) a sound recording of the evidence.

(4A) If the record is made by way of a sound recording, the following provisions apply[2]—

(a) the recording must be of the whole of the evidence given by each witness, including the taking of the oath and the evidence of the witness's identity;

(b) the recording must be retained as part of the record for a period of at least 6 months or until any appeal against the decision of the court has been finally

[2] See also the Sound Recording Rules, 1989 (L.N.13 of 1989) published under the Courts (Appeals & Rules) Ordinance, 2017.

determined, whichever is longer.

(5) Nothing in this section affects—

(a) the procedure for recording the depositions of witnesses in committal proceedings; or

(b) the practice whereby each member of the court makes his or her own notes of the principal parts of the evidence.

Interpretation of evidence to defendant or advocate

141. (1) Whenever any evidence in an inquiry or trial is given in a language not understood by the defendant, it must be interpreted to the defendant in open court in a language understood by him or her.

(2) If the defendant appears by advocate and the evidence is given in a language other than English, and is not understood by the advocate, it must be interpreted to the advocate in English.

Interpretation of documents

142. When a document is put in evidence for the purpose of formal proof it is in the discretion of the court to interpret as much of the document as appears necessary.

Supreme Court

Record of evidence in Supreme Court

143. The Chief Justice may, from time to time, give directions as to the manner in which evidence is to be taken down in cases coming before the Supreme Court, and the evidence or the substance of it must be taken down in accordance with such directions.

PART VI
PROCEDURE IN TRIALS BEFORE THE MAGISTRATES' COURT

Provisions relating to the hearing and determination of cases

Nonappearance of prosecutor at hearing

144. (1) If, in any case which the Magistrates' Court has jurisdiction to hear and determine, the defendant appears in obedience to the summons served at the time and place appointed in the summons for the hearing of the case, or is brought before the court under arrest, then, if the prosecutor, having had notice of the time and place appointed for the hearing of the case, does not appear, the court must dismiss the charge, unless for some reason it thinks it proper to adjourn the hearing of the case until some other date, in which event it may, upon terms it thinks fit, pending the adjourned hearing –

(a) admit the defendant to bail;

(b) remand the defendant to prison; or

(c) take such security for the defendant's appearance as the court thinks fit.

(2) The dismissal of a charge under this section does not operate as a bar to

subsequent proceedings against the defendant on account of the same facts.

Appearance of both parties

145. If at any time appointed for the hearing of the case both the prosecutor and the defendant appear before the court, the court must proceed to hear and determine the case.

Adjournment

146. (1) Before or during the hearing of any case, the court may in its discretion adjourn the hearing to a time and place then appointed and stated in the presence and hearing of the party or parties or their respective advocates (if any) then present. In the meantime the court may –

(a) allow the defendant to be at liberty;

(b) by warrant remand the defendant to some prison, remand home, or other suitable place; or

(c) release the defendant upon the defendant entering into a bond with or without sureties, at the discretion of the court, conditioned for the defendant's appearance at the time and place to which the hearing or further hearing is adjourned.

(1A) An adjournment pursuant to subsection (1) must not be for more than 30 clear days, or if the defendant has been committed to prison or some other place of security, for more than 15 clear days, the day following that on which the adjournment is made being counted as the first day.

(2) If it appears that the court will not be able to deal with any case on the day on which a person has been summoned to appear in connection with it, or on the date on which a person granted bail is required to surrender to custody, it the Clerk of the Peace may cause written notice to be served on the person to the effect that the person's attendance is not required on that date but that the person should attend on a later date specified in the notice.

(3) If a notice has been served on a person under subsection (2), the effect is as if—

(a) the original summons served upon the person had required the person's attendance on the later date specified in the notice; or

(b) the person had been granted bail with a duty to surrender to custody on that later date,

as the case may be.

Nonappearance of parties after adjournment

147. (1) If at any time and place to which a hearing or further hearing has been adjourned—

(a) the defendant appears and the prosecutor fails to appear - the court may dismiss the charge and make any order as to costs it thinks fit;

(b) the prosecutor appears and the defendant fails to appear – the court may proceed with the hearing or the further hearing, as the case may be, as if the defendant were present;

(c) both the prosecutor and the defendant fail to appear - the court may dismiss the

charge and make any order as to costs it thinks fit, or further adjourn the case to a time and place appointed.

(2) If the court convicts the defendant in the absence of the defendant, it may, upon being satisfied that the absence was occasioned by causes over which the defendant had no control, and that the defendant had a probable defence on the merits, set aside the conviction, and in that event the hearing must be resumed and further proceedings taken on it in all respects as if the court had not exercised the powers under subsection (1)*(b)*.

(3) Any sentence of imprisonment imposed under subsection (1)*(b)* is deemed to commence on the date of arrest of the defendant, and the person who made the arrest must endorse the date of it on the back of the warrant of commitment.

(4) If the court, in its discretion, refrains from convicting the defendant in the absence of the defendant, the court may issue a warrant for the arrest of the defendant and cause him or her to be brought before the court.

Defendant to be called upon to plead

148. (1) At the commencement of a trial, the substance of the charge must be stated to the defendant by the court, and the defendant must be asked whether the defendant admits or denies the truth of the charge.

(2) If the defendant admits the truth of the charge, the court must convict the defendant and pass sentence upon or make an order against the defendant, unless there appears to it sufficient cause to the contrary.

(3) If the defendant does not admit the truth of the charge, the court must record a plea of not guilty and proceed to hear the case as in this Ordinance provided.

(4) If the defendant refuses to plead, the court must order a plea of not guilty to be entered for the defendant.

(5) If the defendant pleads that the defendant has—

(a) been previously convicted or acquitted, as the case may be, of the same offence; or

(b) obtained a pardon for his or her offence,

the court must try the issue as to whether the plea is true in fact or not, and if the court finds that the facts alleged by the defendant do not establish the plea, or if it finds that it is false in fact, the defendant must be required to plead to the charge.

Nonappearance of defendant in petty cases

149. (1) If a person is charged with an offence to which this section applies and—

(a) the person fails to appear before the court at the time and place appointed in the summons directed to the person; and

(b) the court is satisfied by evidence on oath that the summons was duly served upon the defendant,

the court may, in the absence of the defendant and on the application of the prosecutor, hear

the evidence for the prosecution and, if is satisfied after hearing such evidence that the defendant committed the offence, may convict and sentence the defendant in the defendant's absence.

(1A) If the court sentences a person in the person's absence, it must not sentence the person –

(a) to a term of imprisonment either directly or in default of the payment of a fine; or

(b) to a fine exceeding £5.

(2) If the court convicts a defendant in the defendant's absence under subsection (1), it may, upon being satisfied that the absence was occasioned by causes over which the defendant had no control, and that the defendant had a probable defence on the merits, set aside the conviction and in that event the court must hear and determine the charge in all respects as if it had not exercised the powers under subsection (1).

(3) The offences to which this section applies are—

(a) an offence under the Road Traffic Ordinance, 1985 except as provided in section 150; and

(b) any other offence which the Governor in Council by order published in the *Gazette* declares to be an offence which can be tried under this section.

Plea of guilty in writing

150. (1) A person accused of an offence under the Road Traffic Ordinance, 1985 may plead guilty in writing and the court may, on proof of such written plea and on the application of the prosecutor, convict and sentence the accused person in the person's absence:

(2) A person must not be sentenced to imprisonment (immediate or suspended) or to any punishment for which the person's consent is required, nor be disqualified for holding or obtaining a driving licence, unless the person is present in court at the time of sentence; and the court may issue a summons or a warrant of arrest to secure the person's attendance for this purpose.

Procedure on plea of not guilty

151. (1) If a defendant, after being called upon to plead, does not admit the truth of the charge, the court must proceed to hear the witnesses for the prosecution.

(2) The defendant or the defendant's advocate, if any, may cross examine each witness for the prosecution.

(3) If the defendant does not employ an advocate, the court must, at the close of the examination of each witness for the prosecution, ask the defendant whether the defendant wishes to cross examine that witness and must record the defendant's answer.

(4) If the defendant cross examines any witness for the prosecution, the prosecutor may re-examine the witness on any matter arising out of such cross examination.

Discharge of defendant when no case to answer

152. If at the close of the evidence for the prosecution in support of the charge it appears to the court that a case is not made out against the defendant sufficiently to require the defendant to make a defence, the court must dismiss the case and forthwith acquit the defendant.

Reply to claim of no case to answer

152A. If a defendant or the defendant's advocate makes a submission, at the close of the prosecution case, to the effect that section 152 is applicable to the case, or if the court proposes, of its own motion, to proceed as provided in that section –

(a) the prosecutor must be allowed to address the court; and

(b) if the prosecutor addresses the court, the defendant or the defendant's advocate has the right to reply.

Defence

153. (1) If, at the close of the evidence for the prosecution in support of the charge, it appears to the court that a case is made out against the defendant sufficiently to require the defendant to make a defence, the court must—

(a) explain the substance of the charge to the defendant;

(b) inform the defendant that the defendant has the right to—

(i) give evidence on oath, in which case the defendant will be liable to cross examination; or

(ii) remain silent;

(c) ask the defendant whether the defendant has any witnesses to examine or other evidence to adduce in defence; and

(d) proceed to hear the defendant and the defendant's witnesses and other evidence, if any.

(2) In any case where there is more than one defendant, the court may—

(a) hear each defendant and the defendant's witnesses, if any, in turn; or

(b) if it appears more convenient, hear all the defendants and then hear all their witnesses.

(3) If the defendant states that the defendant has witnesses to call but that they are not present in court, and the court is satisfied that the absence of such witnesses is not due to any fault or neglect of the defendant, and that there is a likelihood that they could, if present, give material evidence on behalf of the defendant, the court may adjourn the trial and issue process, or take other steps, to compel the attendance of such witnesses.

(4) Section 151 as to cross-examination and re-examination of witnesses applies, with necessary modifications, to witnesses for the defence as they apply to witnesses for the prosecution.

Evidence in reply

154. If the defendant adduces evidence ~~in his or her defence~~ introducing new matter

which the prosecutor could not by the exercise of reasonable diligence have foreseen, the court may allow the prosecutor to adduce evidence in reply to contradict that new matter.

Opening and close of case for prosecution and defence

155. **(1)** The prosecutor and the defendant are entitled to address the court at the commencement of their respective cases for the purpose of—

(a) explaining the nature of the evidence or the order in which witnesses are to be called; or

(b) dealing with any point or points of law which appear to be relevant.

(2) After the close of the case for the defendant, the prosecutor is entitled to address the court, and the defendant is then entitled to address the court. If any issue of law is raised by the defendant, the prosecutor may reply to that issue, but the defendant then has the right to address the court in answer to such reply.

(3) If a right of address or reply is conferred by this section upon a prosecutor or any defendant, it may be exercised by an advocate representing the prosecutor or defendant.

Amendment of charges

156. **(1)** If, at any stage of a trial, it appears to court that—

(a) the evidence discloses an offence other than the offence with which the defendant is charged;

(b) the charge is defective in a material particular; or

(c) the defendant desires to plead guilty to an offence other than the offence with which the defendant is charged,

the court, if it is satisfied that no injustice will be caused thereby, and subject to subsection (1A), may make any order for the alteration of the charge by way of amendment or by the substitution or addition of a new charge as the court thinks necessary to meet the circumstances of the case.

(1A) If a charge is altered under subsection (1)—

(a) the court must thereupon call upon the defendant to plead to the altered charge;

(b) the defendant may demand that the witnesses for the prosecution or any of them be recalled and be further cross examined by the defendant or the defendant's advocate, whereupon the prosecutor has the right to re-examine any such witnesses on matters arising out of such further cross examination; and

(c) the defendant has the right to give or to call such further evidence on the defendant's behalf as the defendant wishes.

(2) If an alteration of a charge is made under subsection (1), the court must, if it is of the opinion that the defendant may be thereby prejudiced, adjourn the trial for such period as is reasonably necessary.

(3) The court must inform the defendant of the defendant's right to demand the recall of witnesses under subsection (1A), and that the defendant may apply to the court for an adjournment under subsection (2).

(4) In any case where a charge is altered under subsection (1) the court may make

any order as to the payment by the prosecution of any costs incurred on account of the alteration of the charge that it thinks fit.

Judgment

157. (1) The court, having heard both the prosecutor and the defendant and their witnesses and evidence must then, or at some subsequent time to be notified to the prosecutor and the defendant, deliver judgment.

(2) The judgment in every trial in the Magistrates' Court must be pronounced, or the substance of it be explained, in open court either immediately after the termination of the trial or at some subsequent time of which notice must be given to the parties and their advocates, if any.

(2A) The whole judgment must be read out by the presiding magistrate if he or she is requested to do so either by the prosecution or defence.

(3) The defendant must, if in custody, be brought up, or, if not in custody, be required to attend to hear judgment delivered.

(4) A judgment delivered by the court is not invalid by reason only—

(a) of the absence of any party or the party's advocate on the day notified for the delivery of the judgment, or of any omission to serve, or defect in serving, on the parties or their advocates, or any of them, the notice of such day; or

(b) of the absence at the time of the delivery of the judgment of one or more of the magistrates constituting the court at the trial.

(5) This section does not limit section 266.

Contents of judgment

158. (1) Every judgment delivered under section 157 must –

(a) except as otherwise expressly provided by this Ordinance, be written by, or written down under the direction and superintendence of the presiding magistrate;

(b) contain the point or points for determination, the decision on them and the reason for the decision; and

(c) be dated and signed by the presiding magistrate as on the date on which it is pronounced in open court.

(2) In the case of a conviction, the judgment must specify the offence of which, and the section of the written law, if any, under which, the defendant is convicted.

(3) In the case of an acquittal the judgment must state the offence of which the defendant is acquitted and, in the case of an individual, direct that he or she be set at liberty.

(4) On the application of the defendant and upon payment for it, a copy of the judgment must be given to the defendant without delay.

Antecedents and other offences

159. (1) The court, having delivered its judgment, must in the case of the conviction of the defendant pass sentence upon or make an order against the defendant according to law.

(2) The court, before passing sentence, may –

(a) make any inquiries it thinks fit in order to determine the sentence proper to be passed;

(b) inquire into the character and antecedents of the defendant; and

(c) take into consideration, ~~either~~ at the request of either the prosecution or the defendant, in assessing the proper sentence to be passed, such character and antecedents, including any other offences admitted by the defendant, whether or not the defendant has been convicted of them.

(3) The defendant must be given an opportunity to confirm, deny or explain any statement made about him or her and in any case of doubt the court must in the absence of legal proof of it statement ignore such statement.

(4) An offence of which the defendant has not been convicted must not be taken into consideration in assessing the proper sentence unless in respect of each such offence the details of it, including the time, place and nature of it have been recorded and the defendant specifically requests in respect of each such offence that it be so taken into consideration and a note of such request is recorded in the proceedings.

(5) If for any reason the sentence passed by the court is set aside, the defendant is not entitled to plead *autrefois convict* in respect of any offence taken into consideration in assessing the sentence that was set aside.

Drawing up conviction or order

160. The conviction or other order may, if required be afterwards drawn up and must be signed by the presiding magistrate of the court making the conviction or order, or by the appropriate officer.

Order of acquittal bar to further proceedings

161. The production of a copy of an order of acquittal, certified by the appropriate officer, is without other proof a bar to any subsequent proceedings against the same defendant for the same offence.

Miscellaneous provisions relating to trials before the Magistrates' Court

Limitation of time in certain cases

162. (1) An offence in respect of which the punishment prescribed by law does not exceed imprisonment for 6 months or a fine of £50, or both, is not triable by the Magistrates' Court unless the charge or complaint relating to the offence is laid within 12 months from the time when the matter of the charge or complaint arose.

(2) If by any written law a different period of limitation is prescribed in respect of any such offence from that prescribed by this section, this section has effect as if for the period of 12 months therein specified there were substituted that different period.

Procedure in case of offence proving unsuitable for summary trial

163. If in the course of a trial before the Magistrates' Court it appears to the court at any stage of the proceedings that the case is one which ought to be tried by the Supreme Court, the proceedings must be stayed and the defendant must be committed for trial upon indictment before the Supreme Court in accordance with the procedure prescribed in Part VII in relation to committal proceedings for offences triable by the Supreme Court.

PART VII
PROVISIONS RELATING TO THE COMMITTAL OF DEFENDANTS FOR TRIAL BEFORE THE SUPREME COURT

Committal proceedings in the Magistrates' Court

Power to commit for trial

164. The Magistrates' Court may commit any defendant for trial by the Supreme Court in accordance with this Part.

Offences triable summarily or on indictment

164A. Unless otherwise specified in the provision creating it –

(a) an offence for which a person is liable to be sentenced to a term of imprisonment of 14 years or more is triable only on indictment;

(b) an offence for which a person is liable to be sentenced to a term of imprisonment of less than 14 years, or to an unlimited fine, is triable either summarily or on indictment as provided by section 165.[3]

Mode of trial of 'either way' offences

165. (1) Subject to subsection (2), if an offence is triable either summarily or on indictment, the offence must be tried summarily unless the Attorney General directs, in writing, that it be tried on indictment.

(2) If, in the case of an offence for which a person is liable to be sentenced to a term of imprisonment exceeding 5 years, or to an unlimited fine, the Attorney General does not give such a direction as is mentioned in subsection (1), the defendant may make an application to the Chief Justice that the case be removed into and tried in the Supreme Court; and the Chief Justice may make such order in respect of it as he or she considers appropriate.

(3) In a case in which the Attorney General makes a direction as mentioned in subsection (1), the Magistrates' Court must forthwith commit the defendant (either in custody or on bail) to the Supreme Court for trial and must transmit the record of its proceedings to

[3] Added by Ord. 14 of 2017 w.e.f. 18 September 2017. For the Magistrates' Court's sentencing powers, see section 19 of the Magistrates' Court Ordinance, 2011

the Chief Justice.

(3A) In a case to which subsection (2) applies, the Magistrates' Court must not call upon the defendant to enter a plea unless it first advises the defendant of the right under that subsection and affords the defendant an adequate opportunity (by adjournment if necessary) to exercise that right:

Procedure in relation to offences triable only upon indictment

166. (1) If a person is charged before the Magistrates' Court with an offence triable only upon indictment, the Attorney General must, as soon as is practicable after the investigation of the case is complete, and in any event within 2 months (or any longer time the Court allows in exceptional circumstances), certify in writing to the Magistrates' Court either—

(a) that he or she is satisfied that there is a case to answer and that it is the intention of the Crown that the matter proceed to trial; or

(b) that the Crown does not intend to proceed to trial.

(2) In a case in which the Attorney General certifies as specified in subsection (1)*(a)*, the Magistrates' Court must forthwith commit the defendant (either in custody or on bail) to the Supreme Court for trial and transmit the record of its proceedings to the Chief Justice.

(3) In a case in which the Attorney General certifies as specified in subsection (1)*(b)*—

(a) the proceedings in the Magistrate's Court must forthwith cease, without any further order of the court;

(b) if the defendant is remanded in custody, the Attorney General must cause a copy of his or her certificate to be delivered forthwith to the Superintendent of Prisons and such certificate is sufficient authority for the prisoner to be forthwith released from custody;

(c) if the defendant is on bail, the Attorney General must cause a copy of his or her certificate to be served upon the defendant and the defendant, if on bail, thereupon ceases to be bound by any conditions upon the bail and is released from his or her obligation to surrender to custody.

Election for trial by jury or by judge alone[4]

167. (1) When a defendant is committed for trial, one of the magistrates or the Clerk of the Peace must explain to the defendant that he or she has the right, subject to subsections (5) and (6), to elect whether to be tried by jury or by the Trial Judge sitting alone and must call on the defendant to make an election.

(2) An indication of election may be given by the defendant's legal representative.

(3) An election under subsection (1), once made, may not be changed except for

[4] For the equivalent provision in Ascension, see the trials Without A Jury Ordinance, 2016, Ord. A5 of 2016.

good reason and with the leave of the Trial Judge, but may be set aside as provided by subsections (5) and (6).

(4) Subject to subsections (5) and (6) –

(a) if the defendant refuses to elect or remains silent - the trial must be with a jury;

(b) if there is more than one defendant to an indictment, and one of them elects trial by jury - the trial must be with a jury.

(5) The prosecution may apply to the Trial Judge for the trial to be conducted without a jury on the grounds that the nature of the case or the character of the defendant(s) render it improbable that an impartial jury could be selected.[5]

(6) Upon such an application, and after hearing representations from each of the defendants, the Trial Judge may in his or her discretion order the trial to be by a judge sitting alone.

Remand

168. If for any reasonable cause the court considers it necessary to adjourn committal proceedings, it may do so and remand the defendant either on bail or (subject to section 93B) in custody.

Preservation of testimony in certain cases

Taking the depositions of witnesses

169. **(1)** Whenever it appears to any magistrate that—

(a) a person who is dangerously ill or hurt and not likely to recover is able and willing to give material evidence relating to any offence triable by the Supreme Court; or

(b) a person who is able to give material evidence relating to any offence triable by the Supreme Court is unwilling to do so in the form of a written statement in accordance with section 112A,

and (in either case) it is in the interests of justice to obtain and preserve the evidence of such person, the magistrate –

(i) may take in writing the statement on oath or affirmation of the person;

(ii) must subscribe the writing and certify that it contains accurately the whole of the statement made by the person;

(iii) must add a statement of his or her reason for taking the same, and of the date and place when and where the same was taken; and

(iv) must preserve such statement and file it for record.

(2) If the statement relates to an offence for which proceedings have been instituted against any person, reasonable notice of the intention to take it must, if practicable, be given to the prosecutor and the defendant, and if the defendant is in custody he or she must be brought by the person in whose charge he or she is, under an order in writing of the magistrate, to the place where the statement is to be taken and be given full opportunity to cross examine the person making the statement.

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[5] For the equivalent provision in Ascension, see the trials without a Jury ordinance, 2016.

(3) If the statement relates to an offence for which any person is then or subsequently committed for trial, it must be transmitted to the Registrar, and a copy of it be transmitted to the Crown Prosecutor.

(4) For the purposes of taking a deposition in the circumstances described in subsection (1)*(b)*, the magistrate may secure the attendance of the witness before him or her by issuing a summons or a warrant of arrest.

Use of statement in evidence

170. A statement taken under section 169 may afterwards be used in evidence on the trial of any person accused of an offence to which the statement relates if—

(a) the person who made the statement is dead; or

(b) the court is satisfied that for any sufficient cause his or her attendance cannot be procured,

and if reasonable notice of the intention to take the statement was, if practicable, given to the person (whether the prosecutor or the defendant) against whom it is proposed to be read in evidence, and he or she had or might have had, if he or she had been present, full opportunity of cross examining the person making it.

Proceedings after committal for trial

Filing of indictment and evidence

171. (1) Within 21 days (or any longer time the Chief Justice allows) of the order committing a defendant to the Supreme Court for trial, the Attorney General must draw up an indictment in accordance with this Ordinance and cause it to be filed (together with copies of the statements of evidence of the witnesses upon whose evidence the Crown intends to rely) in the registry of the Supreme Court, and a copy of it to be served on the defendant.

(2) In any such indictment the Attorney General may charge the defendant with any offence which, in his or her opinion, is disclosed by the statements of evidence which he or she files with it, either in addition to, or in substitution for, the offence upon which the defendant has been committed for trial.

(3) In this section and section 172, **"statement of evidence"** includes a statement of a kind which is capable of being admitted in evidence under section 112A, a deposition taken in accordance with section 169, and any exhibit referred to in any such statement or deposition.

(4) The defendant may, within 21 days of the service upon the defendant of the indictment and copy statements in accordance with subsection (1), file in the Supreme Court any representations which the defendant wishes the Chief Justice or Trial Judge to consider in relation to the indictment or the admissibility of any of the statements.

Submission to Chief Justice

172. (1) Every indictment filed in the registry of the Supreme Court must be submitted by the Registrar, together with the record of the committal proceedings and the

statements of evidence filed with the indictment, and any representations filed by the defendant under section 171(4), to the Chief Justice or Trial Judge in chambers, for perusal and consideration.

(2) If, upon consideration of an indictment pursuant to subsection (1), it appears to the Chief Justice or Trial Judge that—

(a) the offence with which the defendant is charged in the indictment is, after any amendment authorised by him or her, an offence disclosed by the evidence of the witnesses whose statements have been filed in accordance with section 171(1) - the Chief Justice or Trial Judge must direct that the defendant be brought to trial upon the indictment at the next convenient sessions of the Supreme Court;

(b) the case is one which may suitably be tried by the Magistrates' Court – the Chief Justice or Trial Judge she may direct that the case is to be heard and determined by that court in the same manner as if the person had not been committed for trial, and thereupon the Magistrates' Court must proceed in accordance with that direction;

(c) no probable ground or cause is disclosed by the evidence for bringing the accused person to trial upon that indictment, whether amended or not = the Chief Justice or trial Judge must disallow the indictment, and upon any such disallowance must order the defendant to be discharged.

(3) The discharge of a defendant under subsection (2)*(c)* is not a bar to any subsequent charge in respect of the same facts.

Notice of trial

173. In every case where, pursuant to section 172, the Chief Justice or Trial Judge directs that a defendant be brought to trial upon an indictment, the Registrar must endorse on or annex to the indictment, and to every copy of it delivered to an officer of the court, a police officer or a prison officer for service, a notice of trial, specifying the particular session of the Supreme Court at which the defendant is to be tried on that indictment, which notice must be in a form the Chief Justice from time to time approves.

Copy of indictment and notice of trial to be served

174. (1) The Registrar must deliver or cause to be delivered to the officer of the court, police officer or prison officer serving the indictment a copy of it with the notice of trial endorsed on it or annexed to it, and, if there is more than one defendant committed for trial, as many copies as there are such defendants.

(2) The officer of the court, police officer, or prison officer must, as soon as practicable after having received the copy or copies of the indictment and notice or notices of trial, and (in any event) at least 10 days before the day specified in the notice for trial, by himself or herself or his or her deputy or other officer, deliver to the defendant or defendants committed for trial the copy or copies of the indictment and the notice or notices.

(3) If a defendant has been admitted to bail and cannot readily be found, the officer of the court or police officer must affix the said copy and notice to the outer or principal door of the dwelling house of the defendant.

(4) This section does not prevent any person committed for trial, and in custody at the opening of or during any sessions of the Supreme Court, from being tried at that session, if the person expresses his or her assent to be so tried and no objection is made on the part of the Crown Prosecutor.

Return of service

175. The person who serves the copy or copies of the indictment and notice or notices of trial must forthwith make to the court a return of the mode of service.

Postponement of trial

176. (1) If the Supreme Court considers that there is sufficient cause for the delay, it may (of its own motion or upon the application of the prosecutor or the defendant) –

(a) postpone the trial of a defendant to the next sessions of the court or to a subsequent sessions; and

(b) extend the bonds of any witnesses who have entered into bonds to appear at the trial, in which case the extended bonds have the same force and effect as fresh bonds to appear and give evidence at any subsequent sessions.

(2) The Supreme Court may give such directions for the amendment of the indictment and the service of any notices as the court considers necessary in consequence of any order made under subsection (1).

Indictment to be in name of Attorney General

177. *Omitted*[6]

178 to 183. *Repealed*

PART VIII
PROCEDURE IN TRIALS BEFORE THE SUPREME COURT

General

Practice of Supreme Court in its criminal jurisdiction

184. Subject to this Ordinance, the practice of the Supreme Court in its criminal jurisdiction is to be assimilated as nearly as circumstances will admit to the practice of Her Majesty's High Court of Justice in England in its criminal jurisdiction.

Mode of trial

185. (1) All trials before the Supreme Court must be by—

(a) the Chief Justice or Trial Judge and a jury of 9 persons; or

(b) the Chief Justice or Trial Judge sitting alone.

(2) The Juries Ordinance 1979 applies to trials by jury, and to juries and the

[6] See section 97(3)

members of them.

Arraignment

Pleading to indictment

186. The defendant to be tried before the Supreme Court upon an indictment must be placed at the bar unfettered, unless the court otherwise orders, and the indictment must be read over to the defendant by the Registrar or other officer of the court, and explained if need be by that officer, and the defendant must be required forthwith to plead to the indictment, unless the defendant objects to the want of service of the copy of the indictment and notice of trial in accordance with section 179, and the court finds that the defendant has not been duly served therewith.

Orders for amendment of indictment, separate trial, and postponement of trial

187. (1) Every objection to an indictment for any formal defect on the face of it must be taken immediately after the indictment has been read over to the defendant and not later.

(2) If, before a trial upon indictment or at any stage of the trial, it appears to the Trial Judge that the indictment is defective, the ~~court~~ Trial Judge must make any order for the amendment of the indictment he or she thinks necessary to meet the circumstances of the case, unless, having regard to the merits of the case, the required amendments cannot be made without injustice. Any such amendment must be made upon such terms as to the court seem just.

(3) If an indictment is so amended in accordance with subsection (2), a note of the order for amendment must be endorsed on the indictment and the indictment must be treated for all purposes as having been filed in the amended form.

(4) If, before a trial upon indictment or at any stage of the trial, the Trial Judge is of opinion that the defendant may be prejudiced or embarrassed in the conduct of the defence by reason of being charged with more than one offence in the same indictment, or that for any other reason it is desirable to direct that the defendant should be tried separately for any one or more offences charged in an indictment, the Trial Judge may order a separate trial of any count or counts of the indictment.

(5) If, before a trial upon indictment or at any stage of the trial, the Trial Judge is of opinion that the postponement of the trial of the defendant is expedient as a consequence of the exercise of any power of the court under this Ordinance, the Trial Judge must make such order as to the postponement of the trial as appears necessary.

(6) If the Trial Judge makes an order under this section for a separate trial or for postponement of a trial—

(a) he or she may order that the jury be discharged from giving its verdict on the count or counts the trial of which is postponed, or on the indictment, as the case may be;

(b) the procedure on the separate trial of a count must be the same in all respects as if the count had been found in a separate indictment, and the procedure on the

postponed trial must be the same in all respects (provided that the jury has been discharged) as if the trial had not commenced; and

(c) the Trial Judge may make any order as to admitting the defendant to bail, and as to the enlargement of bonds and otherwise as he or she thinks fit.

(7) Any power of the Trial Judge under this section is in addition to and does not derogate from any other power of the court for the same or any similar purpose.

Quashing of indictment

188. (1) If any indictment does not state, and cannot by any amendment authorised by section 187 be made to state, any offence of which the defendant has had notice, it must be quashed—

(a) on a motion made before the defendant pleads;

(b) on a motion made in arrest of judgment; or

(c) by the court, of its own motion.

(2) A written statement of every motion to be made under subsection (1)*(a)* or *(b)* must be delivered to the Registrar or other officer of the court by or on behalf of the defendant and must be entered on the record.

Procedure in case of previous convictions

189. (1) If an indictment contains a count charging a defendant with having been previously convicted of any offence, the procedure is—

(a) the part of the indictment stating the previous conviction must not be read out in court, nor must the defendant be asked whether the defendant has been previously convicted as alleged in the indictment, unless and until the defendant has either pleaded guilty to or been convicted of the subsequent offence;

(b) if the defendant pleads guilty to or is convicted of the subsequent offence, the defendant must then be asked whether the defendant has previously been convicted as alleged in the indictment;

(c) if the defendant answers that the defendant has been so previously convicted, the Trial Judge may proceed to pass sentence on the defendant accordingly; but if the defendant denies that the defendant has previously been so convicted, or, refuses to or does not answer such question, the Trial Judge must then hear evidence concerning such previous conviction.

(2) If upon the trial of any person for any subsequent offence as mentioned in subsection (1) the person gives evidence of the person's own good character, the prosecutor, in answer thereto, may adduce evidence of the conviction of the person for the previous offence or offences before a finding of guilty is entered, and the court must inquire concerning such previous conviction or convictions at the same time as it inquires concerning such subsequent offence.

Plea of not guilty

190. A defendant who, upon being arraigned upon an indictment, pleads generally to it a plea of not guilty is deemed, without further form, to have put the defendant upon trial.

Plea of *autrefois acquit* and *autrefois convict*

191. (1) A defendant against whom an indictment is filed may plead that the defendant has—

(a) previously been convicted or acquitted, as the case may be, of the same offence; or

(b) obtained a pardon for the offence,

and if either of such pleas is pleaded in any case and denied to be true in fact, the Trial Judge must try whether the plea is true in fact or not.

(2) If the Trial Judge finds that the facts alleged by the defendant do not establish the plea, or if he or she finds that it is false in fact, the defendant must be required to plead to the indictment.

Refusal to plead

192. If a defendant while being arraigned upon any indictment stands mute of malice, or either will not, or by reason of infirmity is unable to, answer directly to the indictment, the Trial Judge –

(a) if he or she thinks fit, must enter a plea of not guilty on behalf of the defendant, and the plea so entered has the same force and effect as if the defendant had actually pleaded the same; or

(b) if he or she has reason to believe that the defendant is ~~of unsound mind~~ mentally disordered or cannot be made to understand the nature of the proceedings, may find that—

(i) the defendant is mentally disordered, in accordance with section 117; or

(ii) the defendant cannot be made to understand the nature of the proceedings, in accordance with section 122, as if the defendant had been committed for trial and an indictment filed under section 122(1)*(b)*.

Plea of guilty

193. If a defendant pleads guilty, the plea must be recorded and the defendant may be convicted on it.

Plea of guilty to offence other than charged

194. If a defendant is arraigned on an indictment for an offence, and can lawfully be convicted on that indictment of some other offence not charged in it, the defendant may plead not guilty to the offence charged in the indictment, but guilty of that other offence; but the Trial Judge is not bound to accept any such plea of guilty.

195. *Repealed.*

Power to postpone or adjourn proceedings

196. (1) If, from the absence of witnesses or any other reasonable cause to be recorded in the proceedings, the Trial Judge considers it necessary or desirable to postpone the commencement of or to adjourn any trial, he or she may from time to time postpone or

adjourn the proceedings for such time as he or she considers reasonable and may by warrant remand the defendant in prison or some other place of security.

(2) During a remand the Trial Judge may at any time order the defendant to be brought before him or her.

(3) The Trial Judge may on a remand admit a defendant to bail, or allow the defendant to be at liberty.

Empanelling and instruction of jury

Selection of jury

197. (1) If, subject to section 167(5) and (6), the defendant has elected to be tried by jury, or has refused to elect, or has remained silent when called upon to elect, and pleads not guilty, or a plea of not guilty is entered on the defendant's behalf in accordance with section 192, jurors must be chosen and the trial must begin.

(2) Every jury in a criminal trial must be chosen in accordance with the procedure prescribed by the Juries Ordinance, 1979.

Peremptory challenge and challenges for cause

198. (1) The prosecutor and every defendant is entitled to challenge, without assigning any reason for such challenge, not more than 5 persons whose names are drawn from the jurors' box.

(2) In addition to the peremptory challenges for which provision is made by subsection (1), the prosecutor and every defendant is entitled to any number of challenges for cause on any of the following grounds, and no other, namely that—

(a) the name of the person called as a juror does not appear in the list prepared under the Juries Ordinance, 1979 and in that Ordinance called a "panel": but no misnomer or misdescription in the panel is a ground of challenge if it appears to the Trial Judge that the description given in that panel sufficiently identifies the person called as a juror;

(b) the person called as a juror might not be impartial between the Crown and the defendant; or

(c) the person called as a juror is disqualified or is not qualified for jury service under the provisions of any law in force.

(3) Every challenge must be made before the person called as a juror takes his or her seat in the place provided for the jury.

(4) If a challenge for cause is made, the prosecutor or the defendant, as the case may be, making the challenge must inform the Trial Judge of the grounds of the challenge, and the Trial Judge must inquire into and determine the issue and for such purpose may inspect the panel, and hear any evidence he or she thinks fit to receive.

(5) If upon an inquiry under subsection (4) the Trial Judge finds that the grounds upon which the challenge is made have been established, the person who has been called as a

juror must not be sworn, but if the Trial Judge finds that the grounds have not been established, the person must be sworn.

(6) Every defendant must be informed of the rights of a defendant under this section before the choice of jurors is commenced.

(7) The provisions of this section are in addition to and do not derogate from the provisions of the Juries Ordinance, 1979.

Jury to be sworn, etc.

199. (1) When the jury has been chosen the members of it must select one of their number to be the foreman.

(2) When the foreman of the jury has been selected, each member of the jury, including the foreman, must take an oath in the following form—

"I swear by Almighty God that I will faithfully try the defendant and give a true verdict according to the evidence."

(3) When the jury has been sworn pursuant to subsection (2), the Trial Judge, or an officer of the court under his or her supervision, must—

(a) explain to the jury the substance of the indictment in respect of which the defendant is charged;

(b) inform the jury that the defendant has pleaded not guilty to the charge; and

(c) explain to the jury the nature of the duties imposed on each member of it,

and thereupon the defendant is deemed to be in the charge of the jury.

Adjourned trial

200. (1) If for any reason a trial is adjourned, the jurors must be required to attend at the adjourned sitting, and at any adjourned sitting of the court until the conclusion of the trial.

(2) Notwithstanding subsection (1), if for any reason a trial is adjourned and the Trial Judge is of the opinion that it is in the interests of justice to do so, he or she may, on the application of the defendant or of his or her own motion, discharge the jury and postpone the trial.

Case for the prosecution

Opening of case for prosecution

201. When—

(a) in a case to be tried by jury - the jury has been sworn; or

(b) in any other case - a plea of not guilty has been recorded,

the prosecutor must open the case against the defendant, and must call witnesses and adduce evidence in support of the charge.

Additional witnesses for prosecution

202. **(1)** A person who did not give evidence at the committal proceedings may not be called as a witness by the prosecutor at any trial unless the defendant has received reasonable notice in writing of the intention to call such witness.

(2) The notice must state the name and address of the witness and the substance of the evidence which he or she intends to give. The Trial Judge must determine what notice is reasonable, regard being had to the time when and the circumstances in which the prosecutor becomes acquainted with the nature of the witness's evidence and decides to call him or her as a witness. No such notice need be given if the prosecutor first becomes aware of the evidence which the witness could give on the day on which the witness is called.

(3) Notwithstanding subsection (1), if it is proposed to tender in evidence the evidence of a witness under section 204, evidence may be given of any of the matters set forth in subsection (2)*(a)* of that section without the notice required by this section.

(4) If the court is of the opinion that the defendant is taken by surprise in a manner likely to be prejudicial to the defendant's defence by the production of a witness who did not give evidence at the committal proceedings and of the intention to call whom no or insufficient notice has been given, the Trial Judge may, on the application of the defendant or of his or her own motion, adjourn the trial.

Cross examination of witnesses for the prosecution

203. The witnesses called for the prosecution must be subject to cross examination by the defendant or any advocate for the defendant, and to re-examination by the prosecutor.

Evidence in committal proceedings may be read as evidence in certain cases

204. **(1)** When any person has been committed for trial for any offence, the evidence in committal proceedings of any person taken before the Magistrates' Court may, if the conditions specified in subsection (2) are satisfied, without further proof be read as evidence on the trial of that person, whether for that offence or for any other offence arising out of the same transaction, or set of circumstances, as that offence.

(2) The conditions referred to in subsection (1) are:

(a) the evidence must be the evidence of a witness of whom it is proved at the trial that –

(i) the witness cannot be found;

(ii) his or her attendance cannot be procured without an amount of delay, expense or inconvenience which, in the circumstances of the case, would be unreasonable;

(iii) he or she is dead;

(iv) he or she is mentally disordered;

(v) he or she is so ill as not to be able to travel; or

(vi) he or she is kept out of the way by the procurement of the defendant person or on the defendant's behalf; and

(b) it is proved at the trial, by a certificate purporting to be signed by the magistrate presiding over the court before which the evidence in committal proceedings was taken or by an officer of that court or by the oath of a credible witness, that the evidence was taken in the presence of the defendant and that the defendant or any

advocate for the defendant had full opportunity of cross-examining the witness; and

(c) the record of the evidence must purport to be signed by one of the examining magistrates.

(2A) **I**f the defendant, or any advocate for the defendant, had no opportunity of cross-examining the witness, the condition in subsection (2)(b) is deemed to be satisfied if the Trial Judge is of the opinion that the defendant is not prejudiced by the lack of such opportunity.

(3) This section has no effect in any case in which it is proved that the evidence aforesaid, or, where the proof required by subsection (2)*(b)* is given by means of a certificate, the certificate was not in fact signed by the magistrate by whom it purports to have been signed.

(4) In a case where committal proceedings were held under section 167A, subsection (2) applies apply with the substitution of the following paragraph *(b)*—

"(b) the witness whose evidence it is proposed to read was made the subject of a conditional witness order in accordance with section 170;".

Evidence of medical witness

205. **(1)** The evidence in committal proceedings of a medical officer or other medical witness, taken and attested by a magistrate in the presence of the defendant person, may be read as evidence, although the deponent is not called as a witness.

(2) The Trial Judge may, if he or she thinks fit, on the application of the prosecutor or the defendant, or of his or her own motion, summon any such medical officer or medical witness for the purpose of examination or cross examination as a witness.

Statement or evidence of defendant

206. Any statement or evidence of the defendant may, whether signed by the defendant or not, be given in evidence without further proof of it, unless it is proved that the magistrate purporting to certify the statement did not in fact certify it.

Close of case for prosecution

207. **(1)** When the evidence of the witnesses for the prosecution has been concluded, and any statement or evidence of the defendant before the committing court has been given in evidence, the Trial Judge, if he or she considers that there is not sufficient evidence that the defendant or any one of several defendants committed the offence, after hearing the defendant and the prosecutor –

(a) in a trial by jury - must withdraw the case from the jury and acquit the defendant;

(b) in a trial without a jury - may at any time acquit the defendant.

(2) When the evidence of the witnesses for the prosecution has been concluded, and any statement or evidence of the defendant before the committing court has been given in evidence, the Trial Judge, if he or she considers that there is sufficient evidence that the defendant or any one or more of several defendants might have committed the offence, must

inform each defendant of the right of the defendant—

(a) to give evidence on the defendant's behalf; and

(b) to call witnesses in the defendant's defence.

(3) The Trial Judge must then –

(a) ask the defendant or any advocate for the defendant, whether the defendant intends to exercise any of the rights conferred upon the defendant under paragraph *(a)* or *(b)* in subsection (2) and must record the answer; and

(b) call on the defendant to enter on the defendant's defence, unless the defendant does not wish to exercise any of such rights, in which event the prosecutor may sum up the case for the prosecution.

Case for the defence

Defence

208. In any case where there is more than one defendant the court may either hear each defendant and any witnesses for the defendant in turn, or may, if it appears to the Trial Judge more convenient, hear all the defendants and then hear all their witnesses.

Additional witnesses for the defence

209. The defendant must be allowed to examine any witness not previously bound over to give evidence at the trial, if such witness is in attendance, but the defendant is not entitled as of right to have any witness summoned other than a witness whom the defendant named to the court that committed the defendant for trial as a witness whom the defendant desired to be summoned.

Evidence in reply

210. If the defendant adduces evidence in the defendant's defence introducing new matter which the prosecution could not by the exercise of reasonable diligence have foreseen, the Trial Judge may allow the prosecutor to adduce evidence in reply to contradict that new matter.

Verdict

Summing up to the jury

211. In a case being tried by a jury, when the case on both sides is closed the Trial Judge—

(a) must direct the jury on the law which is applicable to the case; and

(b) may sum up and comment on the evidence which has been given for the prosecution and for the defence, if any,

and must then direct the jury to consider its verdict.

Retirement of jury

212. **(1)** If the jury retires to consider its verdict, the jurors must remain together under the charge of an officer of the court in a private place, and must not be

allowed to separate, except on terms imposed by the Trial Judge, until the jury has considered and returned a verdict or is discharged for failure to agree upon a verdict.

(2) No person other than the officer of the court who has charge of the jurors may be permitted to speak or communicate in any way with any juror without the leave of the Trial Judge.

(3) The breach of any of the foregoing provisions of this section does not affect the validity of the proceedings: but if it is discovered before the verdict of the jury is returned, the Trial Judge, if of the opinion that the breach has occasioned a substantial miscarriage of justice, may—

(a) discharge the jury and direct a new jury to be chosen and sworn; or

(b) postpone the trial of the defendant for a period and on terms the Trial Judge thinks fit.

(4) The jury may during any period of retirement for the purpose of considering its verdict communicate with the Trial Judge in order to obtain—

(a) a direction on a point of law relevant to any issue between the prosecution and the defence; or

(b) information as to any matter given in evidence for the prosecution or the defence.

(4A) Any communication authorised by subsection (4) must be made in open court and in the presence of the defendant any advocate for the defendant.

(5) If it appears to the court that the jury have had a period of time for deliberation that the Trial Judge thinks reasonable having regard to the nature and complexity of the case, and the jury is unable to agree upon a unanimous verdict, section 15 of the Juries Ordinance, 1979 applies as to a majority verdict.

Verdict of jury

213. (1) The verdict of the jury must be returned in open court and in the presence of the defendant by the foreman of the jury.

(2) The verdict of the jury may be—

(a) a general verdict that the defendant is guilty or not guilty;

(b) a special verdict under section 121;

(c) a special verdict in which the jury finds the facts which have been established by the evidence; or

(d) a finding under section 122 that the defendant did or did not do the act or make the omission charged,

and if the jury returns a special verdict under paragraph *(c)* the Trial Judge must determine the question whether the defendant is guilty of the offence with which he or she is charged.

(3) If an indictment contains more counts than one the jury must, unless the Trial Judge otherwise directs, return a separate verdict on each count in the indictment.

Reconsideration of verdict

214. (1) Notwithstanding the foregoing provisions, the Trial Judge may, for

reasons to be recorded by him or her, direct a jury which has returned a general verdict to reconsider the verdict in any case where—

(a) such verdict is not in accordance with the law;

(b) such verdict is not unequivocal as to the guilt or otherwise of the defendant;

(c) the verdicts are in the opinion of the Trial Judge inconsistent,

and if upon any such reconsideration the jury returns a different verdict from that first returned, that different verdict is the verdict of the jury.

(2) This section does not entitle the Trial Judge to require a jury to reconsider its verdict more than once on any one count of an indictment.

Recording verdict

215. When the verdict of the jury is returned it must be recorded and the defendant be convicted or acquitted, as the case may be, in accordance with the verdict.

Judgment

Judgment

215A. (1) In a case being tried by a Trial Judge sitting alone, the Trial Judge must, when the case on both sides is closed, deliver judgment.

(2) Judgment must be pronounced in open court either immediately or at some subsequent time of which notice must be given to the parties and their advocates, if any.

(3) The defendant must, if in custody, be brought up, or, if not in custody, be required by the court to attend, to hear judgment delivered.

(4) **A** judgment is not invalid by reason only of the absence of any party or the party's advocate on the day or from the place notified for the delivery of the judgment, or of any omission to serve, or defect in serving, on the parties or their advocates, or any of them, the notice of such day and place.

Passing sentence

Calling upon the defendant

216. If the defendant is found guilty or pleads guilty, the Trial Judge must ask the defendant whether the defendant has anything to say why sentence should not be passed upon the defendant according to law, but the omission to make such inquiry does not affect the validity of the proceedings.

Motion in arrest of judgment

217. (1) The defendant may, at any time before sentence, whether on the defendant's plea of guilty or otherwise, move in arrest of judgment on the ground that the indictment does not, after any amendment which the Trial Judge is willing and has power to make, state any offence which the court has power to try.

(2) The court may, in the discretion of the Trial Judge, either hear and determine the matter during the same sitting, or adjourn the hearing of it to a future time to be fixed for that purpose.

(3) If on a motion on arrest of judgment under subsection (1) the Trial Judge decides in favour of the defendant, the defendant must be acquitted, but the acquittal does not operate as a bar to another indictment founded on the same facts.

Sentence

218. If no motion in arrest of judgment is made, or if the Trial Judge decides against the defendant on such a motion, the Trial Judge may pass sentence upon the defendant or make an order against the defendant at any time during the session.

Objections cured by verdict

219. No judgment is to be stayed or reversed on the ground of any objection, which if stated after the indictment was read over to the defendant, or during the progress of the trial, might have been amended by the court, nor for any informality in swearing the witnesses or any of them.

Inquiry may be made prior to passing sentence

220. (1) The Trial Judge, before passing any sentence, may make such inquiries as he or she thinks fit, in order to inform himself or herself as to the sentence proper to be passed, and may inquire into the character and antecedents of the defendant either at the request of the prosecution or the defendant and may take into consideration in assessing the proper sentence to be passed such character and antecedents including any other offences committed by the defendant, whether or not the defendant has been convicted of such offences.

(1A) In relation to the character and antecedents of the defendant—

(a) the defendant must be given an opportunity to confirm, deny or explain any statement made about the defendant and in any case of doubt the Trial Judge must in the absence of legal proof thereof ignore such statement;

(b) subject to subsection (2), no offence of which the defendant has not been convicted is to be taken into consideration in assessing the proper sentence unless the defendant specifically requests that such offence ~~is to~~ be taken into consideration and details of such request as set out in section 159 have been recorded in the proceedings; and

(c) if for any reason the sentence passed by the court is set aside the defendant is not entitled to plead *autrefois convict* in respect of any offence taken into consideration in assessing the sentence that was set aside.

(2) If a defendant has committed a series of offences over a period of time, and has been convicted upon an indictment charging the defendant with having committed one or more of these offences, the Trial Judge may pass a sentence which is appropriate to the whole of the defendant's involvement in that series of offences, and it is not necessary to record the particulars of such offences in the manner prescribed in section 159: but the Trial Judge may take into account any such series of offences only to any extent to which the defendant admits

guilt of it.

PART IX
SENTENCES AND THEIR EXECUTION

Custodial sentences

Warrant in case of sentence of imprisonment

221. (1) If any person has been sentenced to imprisonment by the Supreme Court or the Magistrates' Court, a warrant under the hand of the Trial Judge or of the magistrate presiding over the court, as the case may be, ordering that the sentence is to be carried out in a prison is full authority to the Superintendent of Prisons and to all other persons for carrying into effect the sentence described in the warrant.

(2) Subject to any provision of this or any other written law to the contrary, every sentence is deemed to commence from and to include the whole of the day on which it was pronounced.

(2A) If a court sentences an offender to imprisonment for a term in respect of any offence and the offender has been remanded in custody in connection with the offence, or any other related offence the charge for which was founded on the same facts or evidence, the days for which the offender was so remanded in custody in connection with such offence or related offence are to count as time served by him or her as part of the sentence.

(3) If on appeal the Court of Appeal or the Supreme Court, as the case may be, makes an order which has the effect of requiring a person to commence or resume a sentence of imprisonment, any time during which the person has been at liberty, whether on bail or otherwise, after the sentence was first passed upon him or her does not count as part of the sentence, which is deemed to commence or, if the person has already served part of the sentence, to be resumed on the day on which the person is first received into prison after the making of the order.

(4) Subsection (3) is in addition to, and does not derogate from section 256(2) as to time spent on bail.

Prisons in which sentences are to be served

222. (1) Subject to subsections (2) and (3) and any other law, every sentence of imprisonment must be served in a prison in St Helena.

(2) The Governor may, in any case in which he or she thinks fit, direct that the sentence be served in a prison in Ascension or Tristan da Cunha.

(3) If a court sentences a person to imprisonment for 14 days or less, whether awarded as a substantive sentence or in default of the payment of money, the court may, if it thinks fit, order the sentence to be served in any suitable place.

Imprisonment: discretionary powers

223. **(1)** A person liable to imprisonment for life or any other fixed period may be sentenced for any shorter term.

(2) A person liable to imprisonment may be sentenced to pay a fine instead of imprisonment.

Detention of young offenders

224. **(1)** If a court –

(a) convicts of an offence punishable with imprisonment a person who in its opinion is under the age of 16 years, (in this section referred to as a **"young offender");** and

(b) is satisfied, for reasons to be stated by it in writing, that there would be, but for this section, no suitable alternative to sentencing the young offender to a term of imprisonment to be served in a prison,

the court must order the young offender to be detained in safe custody pending an order by the Governor under subsection (2) in a place and in a manner the court thinks fit and must send the court record, or a certified copy of it, to the Governor.

(2) Upon consideration of a record sent to him or her under subsection (1), the Governor must by order under his or her hand direct that the young offender is to be detained in a prison or other place of custody the Governor specifies in the order: but a prison must not be so specified in relation to any young offender unless, in the opinion of the Governor, no other place of custody is suitable for that offender.

(3) An order made under subsection (2) must state the maximum period during which is to be of effect and the periods at which it is to be reviewed, and may at any time, whether or not it has been varied under subsection (5), be varied or discharged by the Governor, subject to subsection (3A).

(3A) An order made under subsection (2) must not direct or be varied so as to direct, the detention of any young offender for a period which exceeds the maximum period of imprisonment to which the young offender could, but for the provisions of this section, have been sentenced in respect of the offence for which he or she was convicted.

(4) If an order is made, or varied, under this section—

(a) the order so made or varied is sufficient authority for the removal of the young offender to whom it relates to the place of detention specified in the order so made or varied and for his or her detention therein;

(b) any young offender removed or detained under the authority of any such order is deemed to be in lawful custody; and

(c) any written law in force for regulating and controlling a place where a young offender is detained under this section applies to that young offender, subject to any rules made under subsection (6).

(5) If any person in charge of a place of custody, other than a prison, where a young offender is detained under this section, is of the opinion that the young offender is beyond control, the person may bring the young offender before the Magistrates' Court, and the court, if satisfied that the young offender is beyond control, may after hearing the young offender order the young offender to be detained in a prison specified by it, and may make a

recommendation to the Governor accordingly.

(6) The Governor in Council may make rules—

(a) empowering a court, when a young offender is detained by virtue of an order made under subsection (2), to make, after giving to the parent or guardian of, or other person liable by law to maintain, the young offender an opportunity to be heard, an order requiring the parent, guardian or other person to make periodic payments to be applied for the maintenance of the young offender, providing for any payments so made to be so applied, prescribing the maximum amount of each such payment and the maximum period for which such payments are to be made and regulating the manner in which, and the periods at which, such payments are to be made;

(b) providing for the education and training of young offenders, regulating visits to, and communications with, young offenders and prescribing generally the conditions under which they may be detained;

(c) establishing committees of visitors for the purpose of visiting and inspecting places where young offenders are detained and hearing complaints from young offenders and regulating the manner in which such committees are to carry out their duties; and

(d) generally for the better carrying into effect of this section.

Suspended sentences of imprisonment

224A. (1) A court which passes a sentence of imprisonment for a term of not more than 2 years may order that the sentence or a part of it be suspended on the condition that, during the period specified in the order, being at least one year but not more than 2 years from the date of the order (in this Part referred to as **"the operational period"**), the offender does not commit another offence in St Helena which is punishable with imprisonment.

(2) A court must not deal with an offender by means of a suspended sentence unless the case appears to the court to be one in which a sentence of imprisonment would have been appropriate in the absence of any power to suspend such a sentence by an order under subsection (1).

(3) A court which passes a suspended sentence on any person for an offence must not make a probation order in his or her case in respect of another offence of which he or she is convicted by or before the court or for which he or she is dealt with by the court.

(4) On passing a suspended sentence the court must explain to the offender in ordinary language his or her liability under section 224B of this Ordinance if during the operational period he or she commits an offence punishable with imprisonment.

(5) Subject to any provision to the contrary in this or any other Ordinance, a suspended sentence which has not taken effect under section 224B must be treated as a sentence of imprisonment for the purposes of all Ordinances.

Power of court on conviction of further offence to deal with suspended sentence

224B. (1) If an offender is convicted of an offence punishable with imprisonment which was committed during the operational period of a suspended sentence and he or she is

so convicted by or before a court having power under section 224C to deal with him or her in respect of the suspended sentence or he or she subsequently appears or is brought before such a court, that court must consider his or her case and, subject to subsection (1A), order that the suspended sentence (or the part of it which has not already been served, as the case may be) is to take effect with the original term unaltered.

(1A) If in a situation contemplated by subsection (1) the court is of the opinion that, in view of all the circumstances which have arisen since the suspended sentence was passed, including the facts of the subsequent offence, it would be unjust to make an order referred to in that subsection, the court must state its reasons for that opinion and may—

(a) order that the sentence is to take effect with the substitution of a lesser term for the original term;

(b) by order vary the original order under section 224A(1) by extending the operational period by a further period expiring not later than 2 years from the date of the variation; or

(c) make no order with respect to the suspended sentence.

(2) If a court orders that a suspended sentence is to take effect, with or without any variation of the original term, the court may order that it is to take effect immediately or that the term of it is to commence on the expiration of another term of imprisonment passed on the offender by that or another court.

(3) In proceedings for dealing with an offender in respect of a suspended sentence which take place before the Supreme Court, any question whether the offender has been convicted of an offence punishable with imprisonment committed during the operational period of the suspended sentence must be determined by the Supreme Court and not by the verdict of a jury.

(4) If a court deals with an offender under this section in respect of a suspended sentence, the appropriate officer of the court must notify the appropriate officer of the court which passed the sentence of the method adopted.

(5) If on consideration of the case of an offender a court makes no order with respect to a suspended sentence, the appropriate officer of the court must record that fact.

(6) For the purposes of any enactment conferring rights of appeal in criminal cases, any order made by a court with respect to a suspended sentence is to be treated as a sentence passed on the offender by that court for the offence for which the suspended sentence was passed.

Court by which suspended sentence may be dealt with

224C. (1) An offender may be dealt with in respect of a suspended sentence by the Supreme Court or the Magistrates' Court.

(2) If an offender is convicted by the Magistrates' Court of an offence punishable with imprisonment and that court is satisfied that the offence was committed during the operational period of a suspended sentence passed by the Supreme Court—

(a) the Magistrates' Court may, if it thinks fit, commit him or her in custody or on bail to the Supreme Court; and

(b) if it does not, must give written notice of the conviction to the Registrar of the Supreme Court.

(3) For the purposes of this section and of section 224D, a suspended sentence passed on an offender on appeal is to be treated as having been passed by the court by which he or she was originally sentenced.

Procedure if court convicting of further offence does not deal with suspended sentence

224D. (1) If it appears to the Supreme Court, or to a justice of the peace, that an offender has been convicted in St Helena of an offence punishable with imprisonment committed during the operational period of a suspended sentence and that the offender has not been dealt with in respect of the suspended sentence, that court or justice may, subject to this section, issue a summons requiring the offender to appear at the place and time specified in it, or a warrant for his or her arrest.

(2) A justice of the peace must not issue a summons under this section except on information and must not issue a warrant under this section except on information in writing and on oath.

(3) A summons or warrant issued under this section must direct the offender to appear or be brought before the court by which the suspended sentence was passed.

Community service orders

Community service orders

224E. (1) If a person of or over 14 years of age is convicted of an offence punishable with imprisonment, the court by or before which he or she is convicted may, instead of dealing with him or her in any other way (but subject to subsection (2)) make an order (**"a community service order"**) requiring the person to perform unpaid work in accordance with the following provisions for the number of hours (being in total not less than 40 nor more than 240) specified in the order.[7]

(2) A court must not make a community service order in respect of any offender unless the offender consents and the court is satisfied—

(a) after considering a report by a probation officer about the offender and his or her circumstances and, if the court thinks it necessary, hearing a probation officer, that the offender is a suitable person to perform work under such an order; and

(b) that provisions can be made under the arrangements for him or her to do so.

(3) If a court makes community service orders in respect of 2 or more offences of which the offender has been convicted by or before the court, the court may direct that the hours of work specified in any of those orders is to be concurrent with or additional to those specified in any other of those orders, but so that the total number of hours which are not

[7] By the St Helena Criminal Procedure (Modification) Ordinance, 2010, the figure "40" is replaced by"20" in the application of this section to Ascension.

concurrent do not exceed the total mentioned in subsection (1).

(4) A community service order must specify the functions conferred by the following provisions of this Ordinance on a probation officer.

(5) Before making a community service order the court must explain to the offender in ordinary language—

(a) the purpose and effect of the order (and in particular the requirements of the order as specified in section 224F);

(b) the consequences which may follow under section 224G if he or she fails to comply with any of those requirements; and

(c) that the court has under section 224H the power to review the order on the application either of the offender or of a probation officer.

(6) The court by which a community service order is made must forthwith give copies of the order to a probation officer and he or she must give a copy to the offender.

(7) The Governor in Council may by order amend subsection (1) by substituting for the maximum number of hours specified in it as originally enacted or as previously amended under this subsection, the number of hours specified in the order.

(8) Subsection (1) does not prevent a court which makes a community service order in respect of any offence from making an order for costs against, or imposing any disqualifications on, the offender.

Obligations of person subject to community service order

224F. (1) An offender in respect of whom a community service order is in force must—

(a) report to the probation officer and subsequently from time to time notify him or her of any change of address; and

(b) perform for the number of hours specified in the order any work directed by the probation officer, at times so directed.

(2) Subject to section 224H(1), the work required to be performed under a community service order must be performed during the period of 12 months beginning with the date of the order but, unless revoked, the order remains in force until the offender has worked under it for the number of hours specified in it.

(3) The instruction given by the probation officer under this section must, so far as practicable, be such as to avoid –

(a) any conflict with the offender's religious beliefs; and

(b) any interference with the times, if any, at which the offender normally works or attends a school or other educational establishment.

Breach of community service order

224G. (1) If at any time while a community service order is in force in respect of an offender it appears on information to a justice of the peace that the offender has failed to comply with any of the requirements of section 224F (including any failure satisfactorily to

perform the work which he or she has been instructed to do), the justice may issue a summons requiring the offender to appear at the place and time specified in it, or may, if the information is in writing and on oath, issue a warrant for his or her arrest.

(2) A summons or warrant issued under this section must direct the offender to appear or be brought before the Magistrates' Court.

(3) If it is proved to the satisfaction of the Magistrates' Court before which an offender appears or is brought under this section that he or she has failed without reasonable excuse to comply with any of the requirements of section 224F the court may, without prejudice to the continuance of the order, impose on him or her a fine not exceeding £1,000 or may—

(a) if the community service order was made by the Magistrates' Court - revoke the order and deal with the offender for the offence in respect of which the order was made in any manner in which he or she could have been dealt with for that offence if the order had not been made;

(b) if the order was made by the Supreme Court - commit him or her to custody or release him or her on bail until he or she can be brought or appear before the Supreme Court.

(4) If the Magistrates' Court deals with an offender's case under subsection (3)*(b)* it must send to the Supreme Court a certificate signed by a justice of the peace certifying that the offender has failed to comply with the requirements of section 224F in the respect specified in the certificate, together with any other particulars of the case that are desirable; and a certificate purporting to be so signed is admissible before the Supreme Court as evidence of the failure.

(5) If by virtue of subsection (3)*(b)* the offender is brought or appears before the Supreme Court and it is proved to the satisfaction of the court that he or she has failed to comply with any of the requirements of section 224F the court may either—

(a) without prejudice to the continuance of the order, impose on him or her a fine not exceeding £1,000; or

(b) revoke the order and deal with him or her for the offence in respect of which the order was made in any manner in which he or she could have been dealt with for that offence if the order had not been made.

(6) A person sentenced under subsection (3)*(a)* for an offence may appeal to the Supreme Court against the sentence.

(7) In proceedings before the Supreme Court under this section any question of whether the offender has failed to comply with the requirements of section 224F must be determined by the court and not by the verdict of the jury.

(8) A fine imposed under this section is deemed for the purpose of any enactment to be a sum adjudged to be paid on a conviction.

Alteration of community service orders

224H. (1) If a community service order is in force in respect of any offender and, on the application of the offender or a probation officer, it appears to the Magistrates' Court

that it would be in the interests of justice to do so having regard to circumstances which have arisen since the order was made, the court may extend, in relation to the order, the period of 12 months specified in section 224F(2).

(2) If a community service order is in force and on any such application it appears to the Magistrates' Court that, having regard to such circumstances, it would be in the interests of justice that the order should be revoked or that the offender should be dealt with in some other manner for the offence in respect of which the order was made, the court may—

(a) if the order was made by the Magistrates' Court - revoke the order or revoke it and deal with the offender for the offence in respect of which the order was made in any manner in which he or she could have been dealt with for that offence if the order had not been made;

(b) if the order was made by the Supreme Court - commit him or her to custody or release him or her on bail until he or she can be brought or appear before the Supreme Court,

and if the court deals with his or her case under paragraph *(b)* it must send to the Supreme Court any particulars of the case that are desirable.

(3) If an offender in respect of whom a community service order is in force—

(a) is convicted of an offence before the Supreme Court; or

(b) by virtue of subsection (2)*(b)* is brought or appears before the Supreme Court,

and it appears to the Supreme Court to be in the interests of justice to do so, having regard to circumstances which have arisen since the order was made, the Supreme Court may revoke the order or revoke the order and deal with the offender for the offence in respect of which the order was made in any manner in which he or she could have been dealt with for that offence if the order had not been made.

(4) A person sentenced under subsection (2)*(a)* for an offence may appeal to the Supreme Court against the sentence.

(5) If the Magistrates' Court proposes to exercise its powers under subsection (1) or (2) otherwise than on the application of the offender it must summon him or her to appear before the court and, if he or she does not appear in answer to the summons, may issue a warrant for his or her arrest.

Monetary penalties

Fines

225. (1) If a fine is imposed under any written law, then in the absence of express provisions relating to such fine in such law the following provisions apply—

(a) if no sum is expressed to which the fine may extend, the amount of the fine which may be imposed is unlimited, but must not be excessive;

(b) in the case of an offence punishable with a fine or a period of imprisonment, the imposition of a fine or a period of imprisonment is a matter for the discretion of the court;

(c) in the case of an offence punishable with imprisonment as well as a fine, in which the offender is sentenced to a fine with or without imprisonment, and in every case of an offence punishable with fine only in which the offender is sentenced to

a fine, the court passing sentence may, in its discretion—

(i) direct by its sentence that in default of payment of the fine the offender is to suffer imprisonment for a certain period, which imprisonment is in addition to any other imprisonment to which he or she is sentenced; and

(ii) issue a warrant for the levy of the amount on the immovable and movable property of the offender by distress and sale under warrant.

(1A) If the sentence directs that in default of payment of the fine the offender is to be imprisoned, and if the offender has undergone the whole of the imprisonment in default, a court must not issue a distress warrant unless for special reasons to be recorded in writing it considers it necessary to do so.

(2A) The period of imprisonment ordered by a court in respect of the non-payment of any sum of money adjudged to be paid on a conviction must be such term as in the opinion of the court will satisfy the justice of the case, but must not exceed in any case the maximum fixed by the scale set out in Schedule 2.

(2B) The imprisonment which is imposed in default of payment of a fine must terminate whenever the fine is either paid or levied by process of law.

(2) When following the trial of a child or young person for any offence a fine is imposed upon or any costs or compensation are ordered to be paid by the child or young person –

(a) the court imposing the fine or making the order may, and if the offender is a child must, order that the total amount so imposed or ordered to be paid be recovered from the parent or guardian of the child or young person;

(b) if such an order is made the provisions of this Ordinance relating to the payment and default in payment of fines and to the recovery of costs and compensation apply in all respects as if the parent or guardian had himself or herself been sentenced to a fine or ordered to pay costs or compensation of the respective amounts imposed upon or ordered to be paid by the child or young person.

(2A) No order may be made under subsection (2) unless the court is satisfied—

(a) that the parent or guardian of the child or young person can be found and is within the jurisdiction of the court; and

(b) that the neglect of the parent or guardian to exercise due care and control of the child or young person conduced to the commission of the offence.

(3) Any parent or guardian aggrieved by an order made under this section by the Magistrates' Court may appeal to the Supreme Court and the provisions of Part X (Appeals, etc.) apply to any such appeal.

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

"child" means a person under the age of 14 years;

"young person" means a person who has attained the age of 14 years and is under the age of 17 years.

Order for disposal of property regarding which offence committed

226. (1) During or at the conclusion of any trial the court may make any order it

thinks fit for the disposal, whether by way of forfeiture, confiscation or otherwise, of any property produced before it regarding which any offence appears to have been committed or which has been used for the commission of or to facilitate the commission of any offence.

(2) In any case where no evidence has been called, if the prosecutor wishes any property to be disposed of under subsection (1), he or she must after the conviction of the defendant produce the property before the court, which may thereupon make an order under subsection (1).

(3) If the court orders the forfeiture or confiscation of any property as provided in subsection (1) but does not make an order for its destruction or for its delivery to any person, the court may direct that the property is to be kept or sold and that the property is (or, if it is sold, the proceeds of sale are) to be held as the court directs until some person establishes to the satisfaction of the court a right to the property or the proceeds. If no person establishes such a right within 6 months from the date of forfeiture or confiscation, the property or proceeds must be paid into and form part of the Consolidated Fund.

(4) The power in relation to property or the proceeds of sale of property conferred upon the court by subsections (1) and (3) includes the power to make an order for the forfeiture or confiscation of the property or for its destruction or delivery to any person, but must be exercised subject to any special provisions regarding forfeiture, confiscation, destruction, detention or delivery contained in the written law under which the conviction was made or in any other written law applicable to the case.

(5) If an order is made under this section, or under Part V of the Police Service Ordinance, 1975, the order must not, except when the property is livestock or is subject to speedy and natural decay, be carried out until the period allowed for presenting an appeal has passed or, if such an appeal is entered, until the disposal of it.

(6) In this section, **"property"** includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any person, but also any property into or for which the same has been converted or exchanged and anything acquired by such conversion or exchange, whether immediately or otherwise.

Non-payment of fine, etc.

227. (1) If it appears that a fine or other payment ordered to be made by a defendant has not been paid, the Magistrates' Court must inquire into the circumstances and may make one or more of the orders mentioned in subsection (2).

(2) The orders which may be made under subsection (1) are—

(a) if there are exceptional circumstances in which the court judges it in the interests of justice to do so - remit the outstanding payment (or any part of it) and discharge the debtor from further liability in respect of it;

(b) make such fresh order as appears to be just as to the date by which or the instalments by which the outstanding amount is to be paid;

(c) make an attachment of earnings order in accordance with section 227A;

(d) in the case of a fine - revoke the original order for payment and substitute for it any alternative sentence that meets the justice of the case.

(3) A justice of the peace may issue a summons or a warrant to secure the attendance of any person whose attendance before the court is necessary for the purposes of this section.

(4) If the original sentence or order was imposed in the Supreme Court, the Magistrates' Court must not make an order under subsection (2)(d) but may commit the debtor, either in custody or on bail, to the Supreme Court.

Attachment of earnings

227A. (1) Without affecting any other power to enforce payment of money, the Supreme Court and the Magistrates' Court both have power to make an attachment of earnings order to enforce the payment of any sum ordered to be paid by way of fine, costs, compensation or otherwise.

(2) In this section **"attachment of earnings order"** means an order directed to a person (**"the employer"**) who appears to the court to be the employer of the person (**"the debtor"**) ordered to pay the sum the payment of which is to be enforced.

(3) An attachment of earnings order must direct the employer to deduct from the salary or other remuneration of the debtor the periodical sums specified in the order, and to remit such sums to the appropriate officer of the court.

(4) *Omitted*

(5) Rules made under the Superior Courts (Appeals and Rules) Ordinance, 2017, may prescribe the form and contents of an attachment of earnings order, and generally provide for the effective use of attachment of earnings orders.

228. *Repealed*

Payment in full after commitment

229. Any person committed to prison for non-payment of money ordered to be paid may pay the sum mentioned in the warrant, with any amount of expenses authorised in it, to the person in whose custody he or she is and that person must thereupon discharge him or her if he or she is in custody for no other matter.

Part payment after commitment

230. (1) If any person committed to prison for non-payment of money ordered to be paid pays any sum in part satisfaction of the sum adjudged to be paid, the period of his or her imprisonment must be reduced by a number of days bearing as nearly as possible the same proportion to the total number of days for which the person was committed, as the sum so paid bears to the sum for which he or she is liable.

(2) If a person is confined in a prison and wishes to make a payment in part satisfaction under subsection (1) –

(a) the Superintendent of Prisons must, on application being made to him or her by

the person, at once take him or her before a magistrate; and

(b) the magistrate must certify the amount by which the period of imprisonment originally awarded is reduced by the payment in part satisfaction, and must make such order as is required in the circumstances.

231. *Repealed.*

Power to allow time for payment of money adjudged to be paid

232. **(1)** If a court—

(a) sentences a convicted person to a fine and, at the same time or by a subsequent order, to imprisonment in default of payment of the fine; or

(b) sentences to imprisonment for want of or *in lieu* of distress any person against whom an order for the payment of money has been made,

the court must, before committing the person to prison pursuant to the sentence, consider whether he or she will be able, if not committed to prison, to pay the amount due, either by instalments or otherwise, within a reasonable time.

(1A) When a court is considering the question contemplated by subsection (1) –

(a) if the court is satisfied that such person will not be able to pay the amount due within a reasonable time as aforesaid, it must forthwith commit him or her to prison;

(b) if it appears to the court that the person will be able to pay the amount due, by instalments or otherwise, within a reasonable time as aforesaid, the court must make an order with regard to the time and manner of payment that it thinks fit, and must, subject to subsection (2), forthwith release him or her;

(c) if the person is employed, whether in the public service or otherwise, the court may, by order (an **"attachment order"**) to be served upon the person's employer, direct that the amount due is to be deducted from the person's salary or wages and paid to the court either in one payment or by such monthly instalments as the court directs, and court must, subject to subsection (2), forthwith release such person.

(1B) An attachment order must not include a direction to make a payment or monthly instalment exceeding one half of the monthly rate of salary or wages of the person to whom it relates.

(2) Before releasing any person under subsection (1A)(b) or (c), the court may, if it thinks fit, require him or her to enter into a bond, with or without sureties, conditioned for his or her appearance on a date or dates the court appoints and, in default of his or her so entering into such bond, the court must forthwith commit him or her to prison.

(3) If a person who has been allowed time for payment under subsection (1A)*(b)* fails to pay the amount due, or any instalment of it, in accordance with the order made by the court, the court may, after making inquiry into his or her means in his or her presence, commit him or her to prison.

(4) If the court has ordered payment by instalments and default is made in the payment of any such instalment, the whole of the amount then remaining unpaid becomes immediately due and payable.

(5) Upon making inquiry in accordance with subsection (3) the court may, in its discretion, instead of issuing a warrant of commitment to prison forthwith, make an order extending the time allowed for payment, or varying the amount of the instalments or the times at which the instalments were, by the previous order of the court, directed to be paid, as the case may be.

(6) For the purpose of enabling inquiry to be made under subsection (3) the court may –

(a) issue a summons to the person ordered to pay the money to appear before it and, if he or she does not appear in obedience to the summons, may issue a warrant for his or her arrest; or

(b) without issuing a summons, issue in the first instance a warrant for his or her arrest.

Objections to attachment

233. (1) Any person claiming to be entitled to or to have a legal or equitable interest in the whole or part of any property attached in execution of a warrant issued under section 227(3) may, at any time prior to the receipt by the court of the proceeds of sale of such property, give notice in writing to the court of his or her objection to the attachment of the property, and thereupon all further proceedings in connection with the objection are to be regulated by the procedure prescribed by any Ordinance or rules of court relating to objections to attachment of property in execution of a civil judgment.

234. *Repealed*.

Probation orders

Power of court to permit conditional release of offenders on probation

235. (1) In any case in which an individual is found guilty by any court of any offence and no previous conviction is proved against him or her, or if it appears to the court by which he or she is found guilty that, having regard to the youth, character, antecedents, health or mental condition of the offender, or to the trivial nature of the offence, or to any extenuating circumstances under which the offence was committed, no sentence of imprisonment or fine should be imposed, the court may, with or without convicting the offender, make a probation order:

(1A) Before making a probation order, the court must explain to the offender in ordinary language the effect of the order and that if he or she fails in any way to comply therewith or commits another offence, he or she will be liable to be sentenced or to be convicted and sentenced for the original offence, and the court must not make a probation order unless the offender expresses his or her willingness to comply with the provisions of the order.

(1B) For the purposes of sections 123(1), 125 and 128, an order made under this section is deemed to be a conviction.

(2) A probation order –

(a) has effect for a period of not less than 12 months and of not more than 3 years from the date of the order as specified in it;

(b) must require the probationer to submit during that period to the supervision of a probation officer or other suitable person; and

(c) must contain any provisions the court considers necessary for securing the supervision of the offender, and any additional conditions as to residence and other matters that the court, having regard to the circumstances of the case, considers necessary for securing the good conduct of the offender or for preventing a repetition of the same offence or the commission of other offences.

(3) The court by which a probation order is made must provide 2 copies of the order, one of which must be given to the probationer and the other to the person under whose supervision he or she is placed.

(4) A court which has made a probation order may at any time—

(a) if it appears to it upon the application of any interested party that it is expedient that the terms or the conditions of the order should be varied - summon the probationer to appear before it;

(aa) if the probationer fails to show cause why such variation should not be made, vary the terms of the order by extending or diminishing its duration, subject to subsection (5), or by altering its conditions or by inserting additional conditions;

(b) on application being made by any interested party, and on being satisfied that the conduct of the probationer has been such as to make it unnecessary that he or she should be under supervision for any further period - discharge the probation order.

(5) In no case may a probation order be extended in such a manner that the total period of probation exceeds 3 years;

Misconduct by probationers

236. (1) If a probationer is convicted of an offence committed while the probation order was in force the court which made the order may issue a summons requiring the probationer to appear at the place and time specified in the summons or may issue a warrant for his or her arrest.

(2) If a probationer is convicted by a court of an offence committed while the probation order was in force, any court may commit the probationer to custody or release him or her on bail, with or without sureties, until he or she can be brought or appear before the court by which the probation order was made.

(3) If it is proved to the satisfaction of the court by which the probation order was made that the probationer has been convicted of an offence while the probation order was in force —

(a) if the probationer was not convicted of the original offence in respect of which the probation order was made - the court may convict him or her of that offence and pass any sentence which it could pass if the probationer had then been convicted before that court of that offence;

(b) if the probationer was convicted of the original offence in respect of which the probation order was made - the court may pass any sentence which it could pass

if the probationer had then been convicted before that court of that offence.

(4) If it appears to a court that a probationer has failed to comply with any of the provisions of a probation order, it may issue a summons to the probationer requiring him or her to appear at the place and time specified in the summons or may issue a warrant for his or her arrest: but a court must not issue such a summons or such a warrant except on information on oath.

(5) If it is proved to the satisfaction of the court by which the probation order was made that the probationer has failed to comply with any of the provisions of the probation order—

(a) without prejudice to the continuance in force of the probation order, the court may, subject as hereinafter provided, impose on the probationer a fine not exceeding £1,000; or

(b) if the probationer—

(i) was not convicted of the original offence in respect of which the probation order was made - the court may convict him or her and pass any sentence which it could pass if the probationer had then been convicted before that court of that offence;

(ii) was convicted of the original offence in respect of which the probation order was made - the court may pass any sentence which it could pass if the probationer had then been convicted before that court of that offence.

(6) If a court has under subsection (5)(a) imposed a fine on the probationer then, on any subsequent sentence being passed upon the probationer under subsection (4), the imposition of the fine must be taken into account in fixing the amount of the sentence.

Appointment, selection and duties of probation officers

236A. (1) The Governor may from time to time appoint persons of either sex to be probation officers, and may appoint such number as appears to the Governor to be necessary.

(2) A probation officer has the powers and must discharge the duties conferred or imposed on a probation officer by or under this or any other Ordinance; and in particular a probation officer must–

(a) supervise the probationers placed the officer's supervision, having regard to the requirements of the probation order made in each respective case;

(b) advise, assist and befriend probationers placed under the officer's supervision;

(c) inquire, without prejudice to any special directions that may be given by the court, into the circumstances and past and present environment of any accused or convicted person, with a view to assisting the court in determining the most suitable way of dealing with such person's case;

(d) assist the court by which a probation order was made in determining how best to exercise its powers in relation to a probationer; and

(e) advise, assist and befriend persons who, on release from custody, have been placed under the officer's supervision.

(3) The Director of Health and Social Welfare, subject to any general or special directions given to that officer by the Governor, must provide for the efficient carrying out of

the work of probation officers and review the work of probation officers in individual cases.

(4) The probation officer who is to be responsible for the supervision of a probationer must be selected under arrangements made by the Director of Health and Social Welfare from among the available probation officers, so, however, that the probation officer under whose supervision a female is placed must be a female.

(5) If the probation officer selected under subsection (4) is unable for any reason to carry out his or her or her duties, or if the Director of Health and Social Welfare thinks it desirable that another probation officer should take his or her or her place, another probation officer must be selected in like manner from among the available probation officers.

Probation of offenders rules

237. The Governor in Council may make rules prescribing any matter relating to the probation of offenders which the Governor in Council thinks necessary.

Miscellaneous sentencing provisions

Discharge of an offender without punishment

238. (1) If, in any trial for an offence the sentence for which is not fixed by law, the court finds that the charge against the defendant is proved but is of opinion that, having regard to the defendant's character, antecedents, age, health or mental condition, to the trivial nature of the offence, or to the extenuating circumstances in which the offence was committed, it is inexpedient to inflict any punishment and that a probation order is not appropriate, the court may convict the defendant and—

(a) make an order discharging the defendant absolutely; or

(b) make an order discharging the defendant subject to the condition that the defendant commits no offence during a period, not exceeding 12 months from the date of the order, specified in it.

(2) At the time of making an order on a person under subsection (1)*(b)* (**"an order of conditional discharge"**), the court must inform the person that if the person commits another offence during the period specified in such order the defendant will be liable to be sentenced for the original offence.

(3) If a person in respect of whom an order of conditional discharge has been made is convicted of another offence committed during the period specified in the order, the court which made the order may pass in respect of the original offence any sentence which it could pass if the person had then been convicted of that original offence.

(4) When an order is made by the court under this section is it deemed to be a conviction for the purposes of sections 123(1), 125 and 128.

Sentences cumulative unless otherwise ordered

239. (1) If a person after conviction for an offence is convicted of another offence, either before sentence is passed under the first conviction or before the expiration of that sentence, any sentence of imprisonment which is passed upon the person under the

subsequent conviction must be executed after the expiration of the former sentence, unless the court directs that it is to be executed concurrently with the former sentence or of any part of it.

(1A) A court must not direct that a sentence of imprisonment in default of payment of a fine is to be executed concurrently with a former sentence under section 225(1)*(c)*(i) or of any part of it.

(2) If a person is convicted of more than one offence at the same time and is sentenced to pay a fine in respect of more than one of such offences, the court may order that all or any of such fines may be non-cumulative.

Escaped convicts to serve unexpired sentences when recaptured

240. When sentence is passed under this Ordinance on an escaped convict, the sentence, if of imprisonment, does not take effect until the convict has served a period of imprisonment equal to the portion of his or her period of imprisonment that remained unexpired at the date of his or her escape from prison.

Penalties on conviction

241.[8] If an Ordinance, or any English Law applied to St Helena by or pursuant to the English Law (Application) Ordinance, 2005 provides for different penalties for an offence according to whether conviction for the offence is summary or on indictment, or according to any other difference of circumstance, the Ordinance or Law is to be read as providing that the maximum penalty that a court may impose on conviction is (subject to any rule of law limiting the powers of courts subordinate to the Supreme Court) the higher or the highest of the penalties so provided.[9]

PART X
APPEALS, Etc.

Appeals from Magistrates' Court

Appeal to Supreme Court

242. (1) Except as hereinafter provided, any person convicted on a trial by the Magistrates' Court may appeal to the Supreme Court, and must be so informed by the presiding magistrate at the time when sentence is passed.

(2) An appeal to the Supreme Court may be on a matter of fact as well as on a matter of law.

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[8] This is the effect of the Criminal Justice (Sentencing) Ordinance, 2012. For previous section 241, see now 267A ('Errors and omissions in orders and warrants')

[9] See section 19 of the Magistrates' Court Ordinance, 2011 for the limits on sentencing powers of the Magistrates' Court

No appeal on plea of guilty

243. No appeal lies in the case of any person who has pleaded guilty and has been convicted on such plea by the Magistrates' Court, except as to the extent or legality of the sentence.

Right of appeal against acquittal

244. **(1)** The prosecutor may appeal to the Supreme Court against a decision or determination of the Magistrates' Court on any of the following grounds, namely:

(a) that the decision or determination was erroneous in law;

(b) that the decision or determination was one which no reasonable court, properly directing itself in law, could have reached;

(c) that the sentence imposed was so lenient as to be one which no reasonable court, properly directing itself in law, could have passed.

(2) An appeal on the ground mentioned in subsection (1)*(c)* may not be instituted except by or with the consent of the Attorney General.

Petition of appeal

245. **(1)** Every appeal must be –

(a) made in the form of a petition in writing presented by the appellant; and

(b) lodged with the Registrar within 14 days after the date of the judgment or order appealed against, unless the Supreme Court extends the time for good cause shown.

(2) When the appellant is represented by an advocate or is the Crown Prosecutor, the petition must contain particulars of the matters of law or of fact in regard to which the Magistrates' Court is alleged to have erred.

(3) A petition of appeal by the Crown Prosecutor must be presented and signed by the Crown Prosecutor.

(4) Unless waived or reduced, the fee prescribed for filing an appeal must be paid at the time of lodging a petition of appeal, and if any such fee is not paid the petition is not to be received.[10]

Appellant in prison

246. If the appellant is in prison, he or she may present his or her petition of appeal to the Superintendent of Prisons, who must thereupon forward the petition to the Registrar.

Application for extension of time, and abandonment of appeal

247. **(1)** An application to extend the time for lodging a petition of appeal must

[10] See the Supreme Court (Fees) Rules published under the Superior Courts (Appeals and Forms) Ordinance, 2017

be made in writing to the Registrar and be supported by an affidavit specifying the grounds for the application.

(2) The Supreme Court may summarily reject an application of the kind mentioned in subsection (1) without hearing the applicant or the applicant's advocate if, on perusing the supporting affidavit, it is of the opinion that no grounds for granting the application are disclosed.

(3) An appellant may, at any time after having lodged a petition of appeal or an application to extend the time for lodging such petition, abandon the appeal by giving notice in writing of such abandonment to the Registrar, and upon such notice being given the appeal is deemed to have been dismissed by the Supreme Court.

Summary dismissal of appeal

248. On receiving a petition made under section 245, the Chief Justice must peruse the same and after perusing the record of the Magistrates' Court—

(a) in the case of an appeal against sentence only – if the Chief Justice considers that the sentence is not excessive;

(b) in any other case – if the Chief Justice considers that no question of law is raised proper for consideration by the court, or that there is no material in the circumstances of the case which could raise a reasonable doubt whether the conviction was right or lead the court to consider that the sentence ought to be reduced,

the Chief Justice may dismiss the appeal summarily without hearing the appellant or the appellant's advocate.

Notice of hearing

249. (1) If the Chief Justice does not dismiss an appeal summarily, the Supreme Court must cause notice to be given to the appellant and to the respondent or to their advocates, if any, of the time and place at which the appeal will be heard and must provide the appellant with a copy of the proceedings and the respondent with a copy of the proceedings and of the petition of appeal.

(2) At the hearing of an appeal the Supreme Court must hear the appellant and the respondent or their advocates, if any.

(3) The Supreme Court may hear and dispose of an appeal from the Magistrates' Court while sitting outside St Helena and in the absence of the parties and their advocates, if both the appellant and the respondent so agree and if the Chief Justice considers it a proper case in which so to proceed.

(4) If the Supreme Court is proceeding to hear an appeal under subsection (3) in the absence of the parties and their advocates, the Chief Justice may order the parties to deliver written submissions at times and in a manner specified in the order.

Powers of Supreme Court on appeal against conviction

250. (1) On an appeal against conviction, the Supreme Court, subject to

subsection (1A), must allow the appeal if it is of the opinion that—

(a) the judgment should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence;

(b) the judgment should be set aside on the ground of a wrong decision on any question of law if the decision has in fact caused a miscarriage of justice; or

(c) on any other ground there has been a miscarriage of justice,

and in any other case must dismiss the appeal.

(1A) The court must, notwithstanding that it is of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers no substantial miscarriage of justice has actually occurred.

(2) Subject to subsection (1), the Supreme Court on any appeal may—

(a) reverse the finding and sentence, and acquit or discharge the appellant, or order a new trial;

(b) alter the finding and find the appellant guilty of another offence, maintaining the sentence, or with or without altering the finding, reduce or increase the sentence; or

(c) with or without such reduction or increase and with or without altering the finding, alter the nature of the sentence or make any order which the Magistrates' Court could have made.

Powers of Supreme Court on appeal against acquittal

251. On an appeal against an acquittal or dismissal, the Supreme Court may remit the case together with its judgment on it to the court of trial for determination, whether or not by way of rehearing, with any directions the Supreme Court thinks necessary.

Powers of Supreme Court on appeal against other orders

252. The Supreme Court may on any appeal ~~from~~ against any order other than a conviction, acquittal or dismissal alter or reverse any such order.

Appellant's right to be present at appeal

253. An appellant who is in custody is entitled to be present at the hearing of the appeal.

Delivery of judgment

254. (1) At the conclusion of the hearing of an appeal the Supreme Court must, subject to subsection (2), either at once or at some future date which must either then be appointed or of which notice must subsequently be given, deliver judgment in open court.

(2) In the absence of the Chief Justice or Trial Judge from St Helena another Trial Judge or the Registrar may in open court read the judgement of the Supreme Court on an appeal.

(3) In the case of an appeal against a conviction, if the Supreme Court is of the opinion that the appeal should be allowed and the appellant discharged, it may at the

conclusion of the hearing of the appeal order the release of the appellant if he or she is in custody.

Supreme Court to make orders conformable with judgment

255. When a case is decided on appeal by the Supreme Court it must thereupon make such orders as are conformable to the judgment or order and must if necessary cause the record of the lower court to be amended in accordance with such judgment or order.

Admission of appellant to bail pending appeal

256. (1) The Supreme Court or the Magistrates' Court may, if it sees fit, admit an appellant to bail pending the determination of the appeal.

(1A) An application for bail under subsection (1) must be made in the first instance to the Magistrates' Court.

(2) The time during which an appellant, pending the determination of his or her appeal, is admitted to bail does not count as part of any term of imprisonment under his or her sentence and the sentence of the appellant, whether it is the sentence passed by the court of trial or the sentence passed by the Supreme Court on appeal, is, subject to any directions given by the court as aforesaid, deemed to be resumed or to begin to run, as the case requires –

(a) if the appellant is in custody - as from the day on which he or she was first confined to prison under the sentence;

(b) if the appellant is not in custody - as from the day on which he or she is received into prison under the sentence.

Further evidence

257. (1) If in an appeal from the Magistrates' Court the Supreme Court thinks additional evidence is necessary, it must record its reasons, and may either take such evidence itself or direct it to be taken by the Magistrates' Court.

(2) When the additional evidence is taken by the Magistrates' Court, that court must certify the evidence to the Supreme Court, which must thereupon proceed to dispose of the appeal.

(3) Unless the Supreme Court otherwise directs, the defendant or any advocate for the defendant must be present when the additional evidence is taken.

(4) Evidence taken pursuant to this section must be taken as if it were evidence taken at a trial before the Magistrates' Court.

(5) In an appeal from the Magistrates' Court, the Supreme Court may, if it thinks fit, call for and receive from that court a report on any matter connected with the appeal.

Abatement of appeals

258. Every appeal from the Magistrates' Court, except an appeal from a sentence of

a fine, finally abates on the death of the appellant.

Second appeal

259. (1) Either party to an appeal from the Magistrates' Court may appeal against the decision of the Supreme Court in its appellate jurisdiction to the Court of Appeal on a matter of law, not including severity of sentence, but not on a matter of fact or of mixed fact and law.

(2) On any such appeal, the Court of Appeal may, if it thinks that the judgment of the Magistrates' Court or of the Supreme Court should be set aside or varied, make any order which the Magistrates' Court or the Supreme Court could have made; or may remit the case, together with its judgment or order on it, to the Supreme Court or to the Magistrates' Court for determination, whether or not by way of rehearing, with any directions the Court of Appeal thinks necessary.

(2A) In the case of an appeal against conviction, if the Court of Appeal dismisses the appeal and confirms the conviction appealed against, it must not, save as provided in subsection (3), increase, reduce or alter the nature of the sentence imposed in respect of that conviction, whether by the Magistrates' Court or by the Supreme Court, unless the Court of Appeal is of the opinion that such sentence was an unlawful one, in which case the court may impose any sentence in substitution for the sentence that it thinks proper.

(3) If it appears to the Court of Appeal that a party to an appeal, though not properly convicted on some count, has been properly convicted on some other count, the Court of Appeal may, in respect of the count on which the court considers that the appellant has been properly convicted, either affirm the sentence passed by the Magistrates' Court or by the Supreme Court, or pass any other sentence, whether more or less severe, in substitution for the sentence that the court thinks proper.

(4) If a party to an appeal has been convicted of an offence and the Magistrates' Court or the Supreme Court could lawfully have found the party guilty of some other offence and, on the finding of the Magistrates' Court or of the Supreme Court, it appears to the Court of Appeal that the court must have been satisfied of facts which proved the party guilty of that other offence, the Court of Appeal may, instead of allowing or dismissing the appeal –

(a) substitute for the conviction entered by the Magistrates' Court or by the Supreme Court a conviction of that other offence;

(b) pass in substitution for the sentence passed by the Magistrates' Court or by the Supreme Court any lawful sentence for that other offence.

(5) On an appeal under this section the Court of Appeal, even if it is of the opinion that the point raised in the appeal might be decided in favour of the appellant, may dismiss the appeal if it considers that no substantial miscarriage of justice has occurred.

(6) For the purposes of this section the proceedings of the Supreme Court on a revision under section 262 are deemed to be an appeal.

(7) **S**ection 256(2) applies to a convicted appellant appealing under this section with the modification that that section is to be construed as if for the words "Supreme Court" occurring in it there were substituted the words "Court of Appeal".

Admission to bail pending second appeal

260. The Supreme Court may in its discretion, in any case in which an appeal from a decision of that court in its appellate jurisdiction to the Court of Appeal is filed, grant bail pending the hearing of the appeal.

Revision

Power of courts to call for records

261. (1) The Supreme Court may call for and examine the record of any criminal proceedings before the Magistrates' Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such court.

(2) In every case coming before the Magistrates' Court in which a person is convicted and is sentenced to a total period of more than 6 months imprisonment, the Magistrates' Court must as soon as possible submit its record of the proceedings to the Supreme Court for consideration.

Powers of Supreme Court on revision

262. (1) In the case of any proceedings in the Magistrates' Court the record of which has been called for or which has been submitted for consideration under section 261(2), or which otherwise comes to its knowledge, if it appears that in such proceedings an error material to the merits of any case or involving a miscarriage of justice has occurred, the Supreme Court may—

(a) in the case of a conviction - exercise any of the powers conferred on it as a court of appeal by sections 250 and 257 and enhance the sentence;

(b) in the case of any other order other than an order of acquittal - alter or reverse the order.

(2) An order under this section must not be made to the prejudice of a person convicted of an offence unless the person has had an opportunity of being heard either personally or by an advocate.

(3) In exercising its powers under this section in relation to sentence, the Supreme Court must not impose a higher penalty for the offence which in the opinion of the Supreme Court the offender has committed, than could legally have been imposed by the Magistrates' Court.

(4) This section does not authorise the Supreme Court to convert a finding of acquittal into one of conviction: but if a person is acquitted of the offence with which the person was charged but is convicted of another offence, whether charged with the other offence or not, the Supreme Court may, if it reverses the finding of conviction, itself convert the finding of acquittal into one of conviction.

(5) If an appeal lies from any finding, sentence or order, and no appeal is brought, no proceeding by way of revision may be entertained at the instance of the party who could

have appealed.

(6) In exercising the powers of revision under this section, the Supreme Court may, pending the final determination of the case, release any convicted person on bail: but if the convicted person is ultimately sentenced to imprisonment the time he or she has spent on bail must be excluded in computing the period for which he or she is sentenced.

(7) In exercising its powers under this section, the Supreme Court may, if it thinks fit, call for and receive from the Magistrates' Court a report on any matter connected with the case.

Discretion of court as to hearing parties

263. Except as provided in section 262, no party has any right to be heard either personally or by advocate by the Supreme Court when it is exercising its powers of revision: but the court may, if it thinks fit, when exercising such powers hear any party either personally or by advocate, or receive a written submission.

Supreme Court order to be certified to lower court

264. When a case is revised by the Supreme Court, the Supreme Court must certify its decision or order to the Magistrates' Court, and that court must thereupon make any orders that are conformable to the decisions so certified, and, if necessary, the record must be amended in accordance with that decision.

Appeals from the Supreme Court

Appeals from Supreme Court to Court of Appeal

265. (1) Subject as hereinafter provided, a person convicted on a trial held by the Supreme Court and sentenced to a term of imprisonment exceeding 12 months or to a fine exceeding £50, may appeal to the Court of Appeal—

(a) against that conviction on a question of law or of fact or of mixed law and fact; and

(b) with the leave of the Supreme Court or the Court of Appeal, against the sentence, unless the sentence is one fixed by law.

(2) Subject as hereinafter provided, a person convicted on a trial held by the Supreme Court and sentenced to a term of imprisonment for 12 months or less, or to a fine exceeding £10 but not exceeding £50 may, with the leave of the Court of Appeal, or upon the certificate of the Supreme Court that it is a fit case for appeal, appeal against the conviction on any ground which appears to the Court of Appeal or to the Supreme Court to be a sufficient ground of appeal.

(2A) Even if the sentence imposed is a fine not exceeding £10, the Court of Appeal or the Supreme Court may pursuant to subsection (2) grant such leave or certificate, as the case may be, if either court is of opinion that the case involves a question of law of general or public importance.

(3) An appeal against conviction must not be allowed in the case of a person who

has pleaded guilty and has been convicted on such a plea.

(4) The Supreme Court or the Court of Appeal may in its discretion, in any case in which an appeal to the Court of Appeal is lodged under this section, grant bail, pending the hearing and determination of the appeal.

(5) **Se**ction 256(2) applies to a convicted appellant appealing under this section with the modification that that section is to be construed as if for the words "Supreme Court" occurring in it there were substituted the words "Court of Appeal".

(6) The prosecutor may appeal to the Court of Appeal against a decision or determination of the Supreme Court on any of the following grounds, namely:

(a) that the decision or determination was erroneous in law;

(b) that the decision or determination was one which no reasonable court, properly directing itself in law, could have reached;

(c) that the sentence imposed was one which the court had no power to impose or was so lenient as to be one which no reasonable court, properly directing itself in law, could have passed.

(7) The grounds of appeal mentioned in subsection (6)*(a)* and *(b)* do not enable the prosecutor to appeal against the verdict of a jury unless it is alleged that the jury was misdirected in law by the trial judge.

(8) An appeal on the ground mentioned in subsection (6)*(c)* may not be instituted except by or with the consent of the Attorney General.

PART XI
SUPPLEMENTARY PROVISIONS

Irregular proceedings

Finding or sentence when reversible by reason of error or other proceedings

266. (1) Subject to the provisions of this Ordinance relating to appeals and to revision, no finding, sentence or order passed by a court of competent jurisdiction may be reversed or altered on appeal or revision on account of any error, omission, irregularity or misdirection in the complaint, summons, warrant, charge, indictment, proclamation, order, judgment or other proceedings before or during the trial or in any inquiry or other proceedings under this Ordinance, unless the court in which the matter is raised determines that the error, omission, irregularity or misdirection has in fact occasioned a failure of justice.

(2) In determining whether any error, omission, irregularity or misdirection has occasioned a failure of justice the court must have regard to the question whether the objection could and should have been raised at an earlier stage in the proceedings.

Distress not illegal nor distrainer a trespasser for defect or want of form in proceedings

267. No distress made under this Ordinance is to be deemed unlawful, nor is any person making distress to be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress or other proceedings relating to the distress.

Errors and omissions in orders and warrants[11]

267A. The court may at any time amend any defect in substance or in form in any order or warrant, and no omission or error as to the time and place, and no defect in form in any order or warrant given under this Ordinance, renders void or unlawful any act done or intended to be done by virtue of such order or warrant, provided that –

(a) it is mentioned in the order or warrant, or may be inferred from it, that the act is founded on a conviction or judgment; and

(b) there is a valid conviction or judgment to sustain the same.

Directions in the nature of habeas corpus

Power to issue directions in the nature of *habeas corpus*

268. (1) The Supreme Court may whenever it thinks fit direct that—

(a) any person within the limits of St Helena be brought up before the court to be dealt with according to law;

(b) any person illegally or improperly detained in public or private custody within those limits be set at liberty;

(c) any prisoner detained in any prison situated within those limits be brought before the court to be there examined as a witness in any matter pending or to be inquired into in such court;

(d) any prisoner detained as aforesaid be brought before a court-martial or any commissioners acting under the authority of any commission from the Governor for trial or to be examined touching any matter pending before such court-martial or commissioners respectively;

(e) the body of a defendant within those limits be brought in on a return of *cepi corpus* to a writ of attachment.

(2) The Chief Justice may from time to time make rules to regulate the procedure in cases under this section.

Miscellaneous

Appearances and representations

269. (1) Notwithstanding anything contained in the articles of association, by-laws or other document governing the constitution of a corporation, and notwithstanding anything contained in any other written law, an officer of a corporation (as defined in section 66 of this Ordinance) appearing in court on behalf of the corporation is deemed so to appear with the full authority of the corporation, and to have full power to represent it.

(2) If any person is charged before any court with the commission of an offence, the person may be represented at the trial of the offence by an advocate or, with the leave of the court, by any other person who is not a legal practitioner, or may personally conduct his or her own defence.

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[11] This was previously section 241.

Affidavits

270. Affidavits and affirmations to be used before the Supreme Court may be sworn or affirmed, as the case may be, before the Chief Justice, the Trial Judge, the Registrar or any magistrate or before a commissioner for oaths.

Copies of proceedings

271. A person affected by any judgment or order passed in any proceedings under this Ordinance who desires to have a copy of the judgment or order or any deposition or other part of the record, must on applying for such a copy be provided with one, if the person pays for it, unless the court for special reasons thinks fit to provide the copy free of cost.

Forms

272. Forms approved by the Chief Justice from time to time, with any variations that the circumstances of each case require, may be used for the respective purposes mentioned in them, and if so used are be sufficient for any such purpose.

Power to make rules, etc.

273. **(1)** The Governor in Council may make rules prescribing—

(a) the fees to be paid by appellants under this Ordinance;

(b) the manner in which such fees should be paid;

(c) the persons who may be exempted from the payment of such fees;

(d) the fees to be paid, if any are payable, for copies of proceedings held under this Ordinance;

(e) the amount of expenses payable to complainants, witnesses and jurors attending before any court for the purpose of any inquiry, trial or proceedings held under this Ordinance.

(2) Notwithstanding subsection (1)*(e)* or any rules made under it, a court may in its discretion disallow the payment of or reduce the expenses payable to any person.

SCHEDULE
(Section 97)

Rules for the framing of charges and indictments

1. *(a)* A count of a charge or indictment must commence with a statement of the offence charged, called the statement of offence, which must describe the offence shortly in ordinary language, avoiding as far as possible the use of technical terms, and without necessarily stating all the essential elements of the offence, and if the offence charged is one created by written law must contain a reference to the section of the enactment creating the offence.

(b) After the statement of the offence, particulars of the offence must be set out in ordinary language, in which the use of technical terms is not necessary: but if any rule of law or any written law limits the particulars of an offence which are required to be given in a charge or indictment, paragraph does not require any more particulars to be given than those so required.

(c) If a charge or indictment contains more than one count, the counts must be

numbered consecutively.

2. *(a)* If an enactment constituting an offence states the offence to be the commission or the omission of any one of any different acts in the alternative, or the commission or the omission of any act in any one of any different capacities, or with any one of different intentions, or states any part of the offence in the alternative, the acts, omissions, capacities or intentions, or other matters stated in the alternative in the enactment, may be stated in the alternative in the count charging the offence.

(b) It is not necessary, in any count charging an offence constituted by an enactment, to negative any exception to, exemption from or qualification of the operation of the enactment creating the offence.

3. *(a)* The description of property in a charge or indictment must be in ordinary language, and such as to indicate with reasonable clarity the property referred to; and, if the property is so described, it is not necessary, except when required for the purpose of describing an offence depending on any special ownership of property or special value of the property, to name the person to whom the property belongs or the value of the property.

(b) If property is vested in more than one person, and the owners of the property are referred to in a charge or indictment, it is sufficient to describe the property as owned by one of those persons by name with the others, and if the persons owning the property are a body of persons with a collective name, such as a joint stock company or "Inhabitants", "Trustees", "Commissioners" or "Club" or other such name, it is sufficient to use the collective name without naming any individual.

(c) Property belonging to or provided for the use of any public establishment, service or department may be described as the property of the Government.

(d) Coin, bank notes and currency notes may be described as money; and any allegation as to money, so far as regards the description of the property, may be sustained by proof of any amount of coin or of any bank or currency note (~~although~~ even if the particular species of coin of which such amount was composed, or the particular nature of the bank or currency note, are not proved); and, in cases of theft and obtaining property or pecuniary advantage by deception (as defined in the Theft Act 1968 (UK)) by proof that the accused person dishonestly appropriated or obtained any coin or any bank or currency note, or any portion of the value thereof, ~~although~~ even if such coin or bank or currency note was delivered to the person in order that some part of the value of it should be returned to the party delivering it or to any other person and such part has been returned accordingly.

4. The description or designation in a charge or indictment of the accused person, or of any other person to whom reference is made in it, must be such as is reasonably sufficient to identify the person, without necessarily stating his or her correct name, or his or her abode, style, degree or occupation; and if, owing to the name of the person not being known, or for any other reason, it is impracticable to give such a description or designation, such description or designation must be given as is reasonably practicable in the circumstances, or the person may be described as "a person unknown".

5. If it is necessary to refer to any document or instrument in a charge or indictment it is sufficient to describe it by any name or designation by which it is usually known, or by the purport of it, without setting out a copy of it.

6. subject to this section, it is sufficient to describe any place, time, thing, matter, act or omission whatsoever to which it is necessary to refer in any charge or indictment in ordinary

language in such a manner as to indicate with reasonable clarity the place, time, thing, matter, act or omission referred to.

7. It is not necessary in stating any intent to defraud, deceive or injure, to state an intent to defraud, deceive or injure a particular person unless an intent to defraud, deceive or injure a particular person is an essential ingredient of the offence.

8. If a previous conviction of an offence is charged in a charge or indictment, it must be charged at the end of the charge or indictment by means of a statement that the accused person has been previously convicted of that offence at a certain time and place without stating the particulars of the offence.

9. Figures and abbreviations may be used for expressing anything which is commonly expressed by them.

SCHEDULE 2

(Section 225(2A))

Maximum periods of imprisonment in default of payment of a fine

Amount	Maximum period
Not exceeding £100	7 days
Exceeding £100 but not exceeding £250	14 days
Exceeding £250 but not exceeding £500	21 days
Exceeding £500 but not exceeding £1,000	1 month
Exceeding £1,000, but not exceeding £2,000	2 months
Exceeding £2,000	3 months