



MONTSERRAT

CHAPTER 4.01

CRIMINAL PROCEDURE CODE

Revised Edition

showing the law as at 1 January 2019

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

CRIMINAL PROCEDURE CODE¹

Act 9 of 2010 .. in force 29 April 2010 (S.R.O. 28/2010)²
in force 1 March 2016 (S.R.O. 8/2016)³

Amended by Act 9 of 2011 .. in force 27 September 2011 (S.R.O. 40/2011)

Page
3

¹ Part 37 (Consequential amendments and repeal) is omitted.

² Sections 183 and 269 to 303.

³ Parts 1 to 22; section 182; sections 184 to 192; Parts 24 to 31; and Parts 36 and 37.



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Page
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CHAPTER 4.01
CRIMINAL PROCEDURE CODE
ARRANGEMENT OF SECTIONS

PART 1

PRELIMINARY

SECTION

1. Short title
2. Interpretation
3. Procedure for offences

PART 2

PROVISIONS RELATING TO POWERS OF INVESTIGATION

A. Entry and search under warrant

4. Search warrants
5. Execution of search warrants

B. Form and validity of search warrant

6. Form and period of validity

PART 3

COURTS, JUDGES AND PARTIES

A. Jurisdiction

7. Criminal jurisdiction of magistrate's court
8. Criminal jurisdiction of High Court
9. Jurisdiction over persons

B. Powers of Magistrate, Justice of the Peace and Judge

10. Powers of magistrate and justice of the peace
11. Powers of judge to issue process
12. Scope of Courts' judicial process
13. Authority of Court to administer oath

C. Sittings of Courts

14. Sittings to be in open court

D. Parties

15. Authority of Director of Public Prosecutions in respect of conduct of prosecutions
16. Conduct of private prosecutions
17. Accused entitled to be present and represented

*E. Discontinuance of and
Judicial Restraint on Criminal Proceedings*

18. Power of Director of Public Prosecutions to enter *nolle prosequi*
19. Withdrawal of complaint

PART 4

CASE MANAGEMENT

20. The duty of the Court
21. Case management powers
22. The duty of the parties

PART 5

PRELIMINARY PROCEEDINGS IN MAGISTRATE'S COURT

A. Procedure for securing presence of the accused

23. Manner of instituting criminal proceedings
24. Charge by police officer
25. Complaint by a person or police officer
26. Charge by magistrate
27. Issue of summons or warrant
28. If summons disobeyed, warrant may issue
29. Magistrate's court may order prisoner to be brought before it

B. Provisions relating to summons and arrest warrant

30. Form and content of complaint
31. Form, content and service of summons
32. Issue and form of arrest warrant
33. Duplicate warrants
34. Execution of warrant
35. Period of validity of warrant

C. When presence of the accused may be dispensed with

36. Guilty plea without appearance

PART 6

ADJOURNMENT AND REMANDS

A. Magistrate's Court

37. During any proceedings

B. High Court

38. Proceedings other than trial
39. Adjournment or postponement of trial for other cause
40. Postponement of trial on application of a party

PART 7

BAIL

41. Police bail before institution of criminal proceedings
42. Bail set when arrest warrant issued
43. Bond on appearance in court
44. Bail during proceedings
45. Discharge from custody when bail is granted
46. Variation of magistrate's court bail by High Court
47. Forfeiture of bond or bail

PART 8

ASSETS RECOVERY

48. Seizure of property obtained by offence

PART 9

**CLASSIFICATION OF OFFENCES AND
DETERMINING MODE OF TRIAL**

A. Classification of offences

49. Classes of offences
50. Meaning of indictable only offence
51. Meaning of offences triable only summarily
52. Meaning of offences triable either way
53. Mode of trial-indictable only offence
54. Mode of trial-offences triable only summarily

55. Mode of trial-offences triable either way

B. Advance Information

56. Defence entitlement to advance information
57. Refusal of request for advance information
58. Adjournment pending furnishing of advance information

C. Determining Mode of Trial

59. Power of magistrate's court to choose mode of trial
60. Accused's right to elect trial on indictment

PART 10

PROCEEDINGS AFTER PRELIMINARY PROCEEDINGS
IN MAGISTRATE'S COURT

61. Judicial proceedings
62. Case management hearings

PART 11

DISCLOSURE

63. Pre-trial disclosure of evidence to be called
64. Pre-trial disclosure of unused information
65. Pre-trial disclosure of information by defence

PART 12

INDICTABLE OFFENCES: SENDING CASES FROM
THE MAGISTRATE'S COURT TO THE HIGH COURT

66. Initial Hearing of either way offences
67. Initial Hearing of indictable only offences
68. Defendant's rights

PART 13

INDICTABLE CASES: DETERMINING WHETHER
INDICTMENT SHOULD BE PREFERRED

A. The Sufficiency Hearing

69. Judge to hold Sufficiency Hearing
70. Attendance of accused and witnesses
71. Disclosure by prosecution

72. High Court to inquire into suspected incapacity of accused
73. Procedure when the defence is one of temporary insanity
74. Accused to be read charge and explained proceedings
75. Manner of adducing evidence
76. Obligation of prosecution to give notice and copy of statements
77. Cross examination
78. Variance between evidence and charge
79. Direction to accused concerning accused's statement
80. Statement of accused person
81. Committal for sentence if offence admitted by accused
82. Address of defence and prosecution
83. Decision to discharge or indict
84. Decision to return case to magistrate's court for trial
85. Transmission of records to Registrar, Director of Public Prosecutions and accused
86. Power of Director of Public Prosecutions to reopen case
87. Trial to be on indictment of Director of Public Prosecutions

*B. Securing attendance of witnesses for trial
before close of Sufficiency Hearing*

88. Remand of accused committed for trial
89. Recording defence witnesses for trial
90. Complainant to enter recognizance
91. Refusal to enter recognizance
92. Binding over of witnesses conditionally

PART 14

INDICTABLE CASES: SECURING EVIDENCE OF
WITNESSES BEFORE TRIAL

93. Statement of witness who is ill or about to leave Montserrat
94. Notice to be given
95. Magistrate to deal with deposition like any other deposition
96. Deposition to be admissible in evidence
97. Accused to have the same privileges as prosecutor under section 93

PART 15

INDICTABLE CASES: PREPARING AND PREFERRING INDICTMENT

A. Form and Content of Indictment

98. Form of indictment

99. Charge in indictment
100. Offence to be specific in indictment
101. Joinder of counts in indictment
102. Joinder of two or more accused in one indictment
103. Rules for the framing of indictments
104. Summons for sentencing to accompany indictment
105. Notice for trial to accompany indictment
106. Service of copy of indictment and notice of trial
107. Registrar to preserve indictments and evidence
108. Dismissal for delay in preferring indictment

*B. Restrictions on offences with
which accused may be charged*

109. Persons convicted or acquitted not to be tried again for same offence
110. A person may be tried again for separate offence
111. Consequences supervening or not known at time of former trial
112. Where original Court was not competent to try subsequent charge
113. Proof of previous conviction

C. Amending or quashing the Indictment

114. Objection to indictment on grounds of insufficiency of particulars
115. Amendment of indictment, separate trial and postponement of trial
116. Quashing of indictment
117. Motion in arrest of judgment

PART 16

INDICTABLE CASES: ARRAIGNMENT AND PLEA

A. Attendance of the accused

118. Attendance of the accused

B. Unfitness to plead and other reasons for failing to plead

119. Refusal to plead
120. Incapacity to plead

C. Autrefois Acquit, Autrefois Convict and Pardon

121. Pleas in bar
122. Plea in bar by a person committed for sentence
123. Role of judge in disposing of plea

124. General effect of pleas of *autrefois acquit* and *autrefois convict*
125. Effects where previous offence charged was without aggravation
126. Use of depositions, etc., on former trial, or trial of special plea

D. Change of plea before arraignment

127. Notice by person committed for trial of intention to plead guilty
128. Withdrawal by accused of consent to his committal for sentence

E. Arraignment of accused committed for trial

129. Arraignment
130. Explanation of rights and plea process at arraignment
131. Pleading to the Indictment
132. Charge of previous conviction
133. Proceedings when guilty plea made
134. Proceedings for other pleas
135. Record

F. Arraignment of accused committed for sentence

136. Powers of High Court and judge respecting committals for sentence
137. Arraignment of accused committed for sentence
138. Power of Court to enter not guilty plea

G. Scheduling Order

139. Scheduling Order for trial

PART 17

INDICTABLE CASES: JURIES

140. Procedure relating to jurors
141. Giving prisoner in charge of Court

PART 18

TRIAL ON INDICTMENT: GENERAL MATTERS

A. Attendance of accused

142. Bench warrant where accused does not appear
143. Bringing up prisoner for trial
144. Evidence to be taken in accused's presence

B. Attendance of witnesses

145. Summons for witness
146. Warrant for witness who disobeys summons
147. Warrant for witness in first instance
148. Mode of dealing with witness arrested under warrant
149. Power of High Court to order prisoner to be brought up for examination
150. Penalty for non-attendance of witness
151. Power to summon material witness or examine person present
152. Refractory witness

C. Incapacity of accused

153. High Court to inquire into suspected incapacity of accused
154. Procedure when accused found insane during proceedings
155. Resumption of proceedings if accused ceases to be incapable
156. *Prima facie* evidence of capacity of accused may be given by certificate

D. Objections

157. Time for raising objections

PART 19

TRIAL ON INDICTMENT: THE PROSECUTION CASE

158. Case for the prosecution
159. Additional evidence for the prosecution
160. Cross-examination of prosecution witnesses
161. Witness statement may be read in certain cases
162. High Court to record finding of not guilty
163. High Court to invite the defence to put its case

PART 20

TRIAL ON INDICTMENT: THE DEFENCE CASE

164. Procedure if person charged is the only witness called
165. Statement of witnesses for defence
166. Case for the defence
167. Additional witness for the defence

PART 21

TRIAL ON INDICTMENT: PROCEDURE BETWEEN CLOSE
OF DEFENCE EVIDENCE AND RETIREMENT OF JURY

- 168. Evidence to rebut new and unforeseen matters
- 169. Where accused adduces no evidence
- 170. Right to reply
- 171. High Court may require witness to be called
- 172. Recalling a witness
- 173. Summing up by the judge

PART 22

TRIAL ON INDICTMENT: PROCEDURE RELATING TO VERDICT

- 174. Consideration of verdict
- 175. Verdict of not guilty
- 176. Alternative convictions
- 177. Special verdict where accused found guilty, but insane at date of offence charged
- 178. Recording of verdict
- 179. Mode of delivering judgment
- 180. Contents of judgment
- 181. Accused person entitled to copy of judgment on application

PART 23

TRIAL ON INDICTMENT:
GENERAL SENTENCING PROCEDURE

- 182. Calling on the accused
- 183. Taking offences and evidence into consideration
- 184. Sentence
- 185. Sentences which the High Court may impose
- 186. Reduction in sentence for guilty plea
- 187. Sentences in cases of conviction of several offences at one trial
- 188. Provision for custody of accused person found insane
- 189. Recording of sentence
- 190. Objections cured by verdict
- 191. Property found on accused person
- 192. Disposal of property after completion of trial

PART 24

SUMMARY CASES: COMPLAINT AND CHARGE

A. Form and Content of Charge

- 193. Content of charge
- 194. Joinder of offences in the same charge
- 195. Joinder of two or more accused in one charge
- 196. Rules for the framing of charges

B. Restrictions on offences with which accused may be charged

- 197. Provisions relating to indictments apply with necessary modifications

C. Amendment of Complaint or Charge

- 198. Amendment of charge
- 199. No amendment for error in date of offence
- 200. Adjournment if accused misled

D. Time within which trial should take place

- 201. Limitation of time for proceedings for summary offences

PART 25

SUMMARY CASES: INITIAL HEARING

- 202. Date to be held
- 203. Matters to be dealt with
- 204. Explanation of rights and other relevant information

PART 26

SUMMARY TRIAL: GENERAL MATTERS

A. Attendance of the accused

- 205. Evidence to be taken in accused's presence

B. Failure of parties to appear

- 206. When neither party appears
- 207. Non-appearance of complainant at trial
- 208. Non-appearance of defendant at the trial

C. Attendance of witnesses

209. Provisions in respect of witnesses in trial on indictment apply

D. Incapacity in the context of summary trial

210. Magistrate's court to inquire into suspected incapacity of accused
211. Provisions in respect of incapacity in trial on indictment apply

E. Objections

212. Provisions in respect of objections in trial on indictment apply

PART 27

SUMMARY TRIAL: THE COURSE OF TRIAL

A. Taking of Pleas

213. Appearance of both parties
214. If accused pleads guilty
215. Pleas in other cases

B. The Prosecution Case

216. Procedure after plea of not guilty
217. Opening and closing of cases for prosecution
218. Acquittal of accused person if no case to answer

C. The Defence Case

219. The defence
220. Procedure if person charged is the only witness called
221. Magistrate's court may compel attendance of defence witness
222. Opening and closing of case for defence

D. The Reply

223. Evidence in reply

E. Judgement

224. Decision of the magistrate's court
225. Mode of delivering judgment
226. Contents of judgment
227. Drawing up conviction

- 228. Certificate of acquittal
- 229. Accused person entitled to copy of judgment on application

PART 28

SUMMARY TRIAL: SENTENCING

- 230. Punishments which the magistrate's court may impose
- 231. Sentences in cases of conviction of several offences at one trial
- 232. Where magistrate's court awards imprisonment without option of fine, prisoner shall be committed to prison
- 233. Powers of magistrate when imposing a fine or other monetary penalty
- 234. Property found on accused person
- 235. Disposal of property after completion of trial
- 236. Alternative convictions

PART 29

RECORD OF PROCEEDINGS

A. General

- 237. Practice Directions by Chief Justice

B. Magistrate's Court

- 238. Manner of recording evidence
- 239. Special procedure in cases where the charge is admitted

C. High Court

- 240. Minute of proceedings in trial before High Court
- 241. Recording proceedings of persons committed for sentence

PART 30

MAGISTERIAL APPEALS

- 242. Appeals from decisions of magistrate's court
- 243. Magistrate to inform accused person of right to appeal
- 244. Limitations on right of appeal
- 245. Manner of instituting appeal
- 246. Appeal to operate as a stay
- 247. Recognizance for security to be taken
- 248. Transmission of appeal papers
- 249. Admission of appellant to bail
- 250. Time spent awaiting appeal may be computed as part of sentence

251. Case stated
252. Remedy if case stated refused
253. Duty of magistrate's court as to case stated
254. Appellant entitled to copies of evidence
255. Court of Appeal to set appeal down for argument
256. Appeal not a re-hearing unless the Court of Appeal so directs
257. Procedure on hearing of appeal on motion
258. Court of Appeal on hearing appeal on motion to decide facts and law
259. On appeal by special case Court of Appeal confined to facts and evidence stated
260. Powers of Court of Appeal on hearing appeals
261. Costs
262. Where appeal is abandoned Court of Appeal may give respondent his costs
263. No appeal on point of form or matter of variance
264. Court of Appeal may decide on merits despite defect in form
265. Defect in order or warrant of commitment not to render void
266. Where conviction confirmed, warrant may issue as though no appeal had been made

PART 31

JUVENILES

267. Court in which proceedings involving juveniles to be held
268. Powers of Court and procedure in respect of juveniles

PART 32

VULNERABLE AND INTIMIDATED WITNESSES: SPECIAL MEASURES DIRECTIONS

A. Preliminary

269. Interpretation of Part 32
270. Witnesses eligible for assistance on grounds of age or incapacity
271. Witnesses eligible for assistance on grounds of fear or distress about testifying
272. Special measures direction available to eligible witnesses

B. Special Measures Directions

273. Special measures direction relating to eligible witness
274. Further provisions about direction
275. Special provisions relating to child witnesses

276. Extension of provisions of section 275 to certain witnesses over seventeen

C. Special measures

277. Screening witness from accused
278. Evidence by live link
279. Evidence given in private
280. Removal of gowns
281. Video recorded evidence in chief
282. Video recorded cross-examination or re-examination
283. Examination of witness through intermediary
284. Aids to communication

D. Supplementary

285. Status of evidence given under Part 32
286. Warning to jury

PART 33

VULNERABLE AND INTIMIDATED WITNESSES:
PROTECTION FROM CROSS-EXAMINATION
BY ACCUSED IN PERSON

A. General prohibitions

287. Complainants in proceedings for sexual offences
288. Child complainants and other child witnesses

B. Prohibition imposed by Court

289. Direction prohibiting accused from cross-examining particular witness
290. Further provisions about directions under section 289

C. Cross-examination on behalf of accused

291. Defence representation for purposes of cross-examination
292. Warning to jury

PART 34

VULNERABLE AND INTIMIDATED WITNESSES:
PROTECTION IN PROCEEDINGS FOR SEXUAL OFFENCES

293. Restriction on evidence or questions about complainant's sexual history
294. Interpretation and application of section 293

295. Procedure on applications under section 293

PART 35

VULNERABLE AND INTIMIDATED WITNESSES: REPORTING RESTRICTIONS

A. Reports relating to persons under eighteen

296. Restrictions on reporting alleged offences involving persons under eighteen
297. Power to restrict reporting of criminal proceedings involving persons under eighteen

B. Reports relating to adult witnesses

298. Power to restrict reports about certain adult witnesses in criminal proceedings

C. Reports relating to directions under Part 32 or 33

299. Restrictions on reporting directions under Part 32 or 33

D. Offences

300. Offences under Part 35
301. Defences
302. Offences committed by bodies corporate

E. Supplementary

303. Decisions as to public interest for purposes of Part 35

PART 36

MISCELLANEOUS

304. Powers of High Court in respect of *habeas corpus*, etc.
305. Code not to affect certain powers
306. General power to require recognizance to keep the peace
307. Copies of proceedings
308. Criminal informations abolished
309. Rules
- SCHEDULE 1: Form of Search Warrant
- SCHEDULE 2: Rules for Framing Indictments

CHAPTER 4.01
CRIMINAL PROCEDURE CODE

(Acts 9 of 2010 and 9 of 2011)

AN ACT TO MAKE PROVISION FOR THE PROCEDURE TO BE FOLLOWED IN
CRIMINAL CASES AND FOR RELATED MATTERS.

Commencement

[29 April 2010 and 1 March 2016]

PART 1

PRELIMINARY

Short title

1. This Act (hereinafter referred to as **“this Code”**) may be cited as the Criminal Procedure Code.

Interpretation

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

“Commissioner of Police” means the person appointed as such under the Police Act;

“committed for trial” means committed for trial before the High Court;

“complaint” means an allegation that some person has committed an offence;

“counsel” means a legal practitioner entitled to practise in Montserrat instructed to represent any party in criminal proceedings before a Court;

“Court” means the High Court or the magistrate’s court;

“Court of Appeal” means the Court of Appeal established by the Supreme Court Order, 1967 (S.I. 1967 No. 223);

“High Court” means the High Court established by the Supreme Court Order, 1967 (S.I. 1967 No. 223);

“indictable offence” means an indictable-only offence or an offence triable either way;

“indictable-only offence” means an offence defined in section 50;

“Initial Hearing” means, in respect of indictable offences, the Initial Hearing under Part 12, and in respect of summary offences, an Initial Hearing under Part 25;

“judge” means a judge of the High Court;

“justice of the peace” means a person appointed as such under section 7 of the Magistrate’s Court Act;

“juvenile” has the meaning as in the Juveniles Act;

“legal practitioner” means any person authorised to practise as an attorney at law before the High Court under the Supreme Court Act;

“magistrate” means a person appointed as such under section 4 of the Magistrate’s Court Act;

“magistrate’s court” means the court continued under section 3 of the Magistrate’s Court Act;

“offence” means any contravention of any law in force in Montserrat which is punishable or enforceable either on indictment or on summary conviction by fine, penalty or imprisonment and for the purpose of Parts 32 to 35 includes attempting or conspiring to commit, or of aiding, abetting, counselling, procuring or inciting the commission of, the substantive offence;

“offence triable either way” has the meaning assigned in section 52;

“offence triable only summarily” has the meaning assigned in section 51;

“place” includes any building, ship, vehicle, aircraft, box, receptacle or locality whatsoever in any part of Montserrat;

“Practice Direction” means a Practice Direction issued by the Chief Justice under section 237;

“private prosecution” means a prosecution instituted by a person other than—

(a) a person who appears on behalf of the Crown, the Commissioner of Police or any department of the Government; or

(b) a public officer acting in his official capacity or a person who appears on his behalf;

“public officer” means any person holding any office in the public service of the Government;

“Registrar” means the Chief Registrar of the Eastern Caribbean Supreme Court acting in his or her capacity as Registrar of the Court of Appeal or of the High Court (as the case may be) and includes a Deputy Registrar or other officer discharging the duties of Registrar or Deputy Registrar;

“rules of court” means rules made under section 309;

“search warrant” means a warrant issued under section 4;

“sexual offence” means an offence in Part 9 of the Penal Code;

“**Sufficiency Hearing**” means proceedings conducted by a judge under Part 13, with a view to the committal of an accused person for trial before the High Court;

“**summary offence**” means an offence which, if committed by an adult, is triable only summarily;

“**young person**” has the meaning as in the Juveniles Act.

Procedure for offences

3. Subject to the express provisions of any other law, all offences shall be dealt with according to this Code.

PART 2

PROVISIONS RELATING TO POWERS OF INVESTIGATION

A. Entry and search under warrant

Search warrants

4. (1) If a Court or magistrate or justice of the peace is satisfied by evidence on oath that there is reasonable cause to believe that property with respect to which an offence has been committed is in any place, the Court, magistrate or justice of the peace may issue a warrant directed to a police officer or other person to enter and search the place in any part of Montserrat, by reasonable force if necessary, at any time.

(2) If the property or any part of it is found, the police officer or person shall seize it and bring the same and the person in whose possession the place is, or a person in the place reasonably suspected of being privy to the property being therein, before the magistrate’s court to be dealt with according to law.

Execution of search warrants

5. (1) If a place liable to search under a search warrant, issued under section 4, is closed, a person who resides in or is in charge of the place shall, on demand of the police officer or other person executing such warrant and on production to him of the warrant, allow such police officer or person free ingress and egress and afford all reasonable facilities for a search.

(2) If ingress or egress from the place cannot be obtained or the person in charge cannot be found, the police officer or other person may use force that is reasonably necessary to break open any outer or inner door or window of the place in order to enter or leave.

(3) If a person in or about the place is reasonably suspected of concealing about his person any article for which search should be made, the person may be searched by a person of the same sex and with strict regard to decency.

(4) If anything is seized and brought before a Court under powers conferred by any search warrant, it may be retained until the conclusion of the case of investigation in respect of which its seizure was authorised, reasonable care being taken for its preservation.

(5) If an appeal is made in the case or if a person is committed for trial, a Court may order the thing to be retained further for the purpose of the appeal or trial.

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

B. Form and validity of search warrant

Form and period of validity

6. (1) A search warrant shall be in the form set out in Schedule 1 and shall be under the hand of the person issuing it and when issued by a Court shall bear the seal of the Court. A search warrant may be issued on any day including a Sunday.

(2) A search warrant shall remain in force until it is executed or until it is cancelled by the person or Court who issued it.

(3) A search warrant may be directed to one or more persons and may be executed by all or any one or more of them.

(4) A search warrant directed to a police officer may be executed by another police officer whose name is endorsed on the warrant by the officer to whom it is directed or endorsed.

(5) A search warrant is valid and may be executed in any part of Montserrat, unless otherwise stated in the warrant, and on any day including a Sunday.

PART 3

COURTS, JUDGES AND PARTIES

A. Jurisdiction

Criminal jurisdiction of magistrate's Court

7. The criminal jurisdiction of the magistrate's court is set out in sections 22 and 23 of the Magistrate's Court Act.

Criminal jurisdiction of High Court

8. The criminal jurisdiction of the High Court is set out in sections 6 and 7 of the Supreme Court Act.

Jurisdiction over persons

9. (1) The Court has authority to cause to be brought before it a person who is within Montserrat and who is charged with an offence—

- (a) committed within Montserrat; or
- (b) which according to law may be tried as if it had been committed within Montserrat,

and to deal with the accused person according to law and subject to the jurisdiction of the Court concerned.

(2) The Court has jurisdiction over a person accused of committing an offence immediately when, in accordance with Part 5, a summons is served on the person or immediately when the person is arrested either with or without warrant.

B. Powers of Magistrate, Justice of the Peace and Judge

Powers of magistrate and justice of the peace

10. (1) In respect of its criminal jurisdiction, the magistrate has the powers set out in this Code relating to—

- (a) the administration of oaths;
- (b) the receipt of complaints;
- (c) the issue of criminal process to secure the attendance of persons before it;
- (d) the issue of search warrants;
- (e) the conduct of hearings before trial and the sending of an accused person to the High Court for a Sufficiency Hearing;
- (f) the enforcement of judgments; and
- (g) the making of orders for the forfeiture of any vessel or thing liable to be forfeited on the committing by any person of an offence triable summarily.

(2) The magistrate also has the power—

- (a) to place a person on a bond to keep the peace and be of good behaviour; and
- (b) to exercise the jurisdiction and powers given to a magistrate, a justice of the peace or two Justices of the Peace, as the case may be, under an enactment of the Parliament of the United Kingdom relating to fugitive offenders or to merchant shipping in force in Montserrat.

(3) The powers of a justice of the peace in respect of criminal proceedings are set out in section 13 of the Magistrates Court Act.

Powers of judge to issue process

11. In addition to the powers conferred on the judge by this Code or any other law, a judge is deemed to have all the powers conferred by this Code or any other law on a magistrate or justice of the peace to issue a summons, arrest warrant, search warrant or other judicial process.

Scope of Courts' judicial process

12. A summons, arrest warrant, search warrant or other judicial process issued in due form under law by a Court, judge, magistrate or justice of the peace is valid in all parts of Montserrat without the need for further authentication, backing or endorsement by a person before execution, and shall remain valid although the person who issued it died or ceased to hold office.

Authority of Court to administer oath

13. (1) The Court before which a witness appears may administer the appropriate oath or affirmation in accordance with the Evidence Act.

(2) The Court may at any time, if it thinks it just and expedient (for reasons to be recorded in the proceedings), take without oath the evidence of a person declaring that the taking of any oath whatever is according to his religious belief unlawful, or who by reason of immature age or want of religious belief ought not, in the opinion of the Court, to be admitted to give evidence on oath and the fact of the evidence having been so taken shall be recorded in the proceedings.

C. Sittings of Courts

Sittings to be in open court

14. The place in which any Court sits for the purpose of trying any offence is deemed to be an open Court to which the public generally may have access, so far as the same can conveniently contain them:

Provided that the judge or the presiding magistrate, as the case may be, if he thinks fit at any stage of the trial of any particular case, may order that the public generally or any particular person shall not have access to or remain in the room or building used by the Court.

D. Parties

Authority of Director of Public Prosecutions in respect of conduct of prosecutions

15. (1) The Director of Public Prosecutions and any legal practitioner instructed for the purpose by the Director of Public Prosecutions may appear to prosecute on behalf of the Crown, the Commissioner of Police or any other

public officer, public authority or department of Government in any criminal proceedings before any Court.

(2) Subject to such directions as may be given by the Director of Public Prosecutions from time to time, a police officer may conduct criminal proceedings in the magistrate's court on behalf of the Crown or the Commissioner of Police, and any such police officer may appear and conduct the prosecution notwithstanding that he is not the officer who made the complaint or charge in respect of which such proceedings arose.

(3) The Director of Public Prosecutions may in writing authorise any public officer to conduct prosecutions in the magistrate's court in respect of particular matters or categories of offences or in relation to the activities or functions of a particular department of the Government.

(4) Any *nolle prosequi* or authority purporting to be signed by the Director of Public Prosecutions and issued under section 18 or this section, as the case may be, shall be admitted and deemed to be *prima facie* valid for the purpose for which it was issued without proof of the signature.

(5) Notwithstanding any power conferred on any person under this section to institute or conduct any criminal proceedings, any such person shall at all times in respect thereof be subject to the express directions of the Director of Public Prosecutions who may in any case himself institute or conduct any criminal proceedings or may take over and continue or direct any legal practitioner or, in case of proceedings in the magistrate's court, any public officer, to take over and continue in accordance with his instructions any criminal proceedings instituted or undertaken by any person, including a private prosecutor.

(Amended by Act 9 of 2011)

Conduct of private prosecutions

16. A person conducting a private prosecution may do so in person or may be represented by a legal practitioner instructed by him in that behalf.

Accused entitled to be present and represented

17. (1) A person accused of a criminal offence is entitled to be present in Court during the whole of his trial and any pre-trial hearings whether judicial or non judicial, unless he so conducts himself in the hearing or trial as to render the continuance of the proceedings in his presence impossible.

(2) The Court may, however, in its discretion and subject to section 179, allow any part of any trial to take place in the absence of the accused with the consent of the accused, and may permit the accused to be absent in the cases and on the terms that it thinks proper.

(3) For the purposes of this section the consent of the accused person to the conduct of the hearings or trial in his absence is considered to have been given—

- (a) in a case in which he enters a written plea of guilty under this Code or any other law; or
- (b) in a case in which the Court is satisfied that, having been duly summoned to appear before the Court, a reasonable time before the date appointed, the accused person wilfully refuses to attend at any time appointed by the Court.

(4) A person accused of a criminal offence, whether present in person or absent in accordance with this section, may be represented before any Court by a legal practitioner.

E. Discontinuance of and Judicial Restraint on Criminal Proceedings

Power of Director of Public Prosecutions to enter *nolle prosequi*

18. (1) In any proceedings against any person, and at any stage thereof before the verdict or judgment, as the case may be, the Director of Public Prosecutions may enter a *nolle prosequi*, either by stating in Court or by informing the Court in writing that the Crown intends that the proceedings, whether undertaken by himself or by any other person or authority shall not continue, whereupon the accused person shall be at once discharged in respect of the charge for which the *nolle prosequi* is entered, and if he has been committed to prison shall be released, or if on bail his recognizances shall be discharged, but such discharge of an accused person shall not operate as a bar to any subsequent proceedings against him on account of the same facts. (Amended by Act 9 of 2011)

(2) If the accused person is not before the Court when the *nolle prosequi* is entered, the registrar or the clerk of the Court, shall as soon as possible cause notice in writing of the entry of the *nolle prosequi* to be given to the officer in charge of the prison in which the accused person is detained and also, if the accused person has been committed for trial, the registrar shall cause a similar notice in writing to be given to a person bound over to prosecute or give evidence and to their sureties (if any) and also to the accused and his sureties in case he shall have been admitted to bail.

Withdrawal of complaint

19. (1) With the leave of the magistrate's court and despite the other provisions in this Part, the prosecutor may at any time before a final order is passed, in a case for an offence triable summarily and in which the accused person has pleaded not guilty, withdraw the complaint.

- (2) On any withdrawal as aforesaid—
 - (a) where the withdrawal is made after the accused person is called on to make his defence, the magistrate's court shall acquit the accused;
 - (b) where the withdrawal is made before the accused person is called on for his defence, the magistrate's court shall, subject

to section 218, at its discretion, make one of the following orders—

- (i) an order acquitting the accused; or
- (ii) an order discharging the accused.

(3) An order discharging the accused under subsection (2)(b)(ii) shall not operate as a bar to subsequent proceedings against the accused person on account of the same facts.

(4) This section is without prejudice to the power of the Director of Public Prosecutions to enter a *nolle prosequi* under section 18. (*Amended by Act 9 of 2011*)

PART 4

CASE MANAGEMENT

The duty of the Court

20. After jurisdiction is exercised in accordance with section 9(2), the Court shall actively manage the case in accordance with this Code and the rules of court. This includes—

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

Case management powers

21. (1) In fulfilling its duty under section 20, the Court may give any direction and take any step actively to manage a case unless that direction or step would be inconsistent with any enactment, including the rules of court.

(2) In particular, the Court may—

- (a) nominate a case manager to manage the case including conducting any case management conferences prescribed by the rules of court;
- (b) give a direction on its own initiative or on application by a party;
- (c) ask or allow a party to propose a direction;
- (d) for the purpose of giving directions, receive applications and representations by letter, by telephone or by any other means of electronic communication, and conduct a hearing by such means;
- (e) give a direction without a hearing;
- (f) fix, postpone, bring forward, extend or cancel a hearing;
- (g) shorten or extend (even after it has expired) a time limit fixed by a direction;
- (h) require that issues in the case should be determined separately, and decide in what order they will be determined; and
- (i) specify the consequences of failing to comply with a direction.

(3) A magistrate's court may give a direction that applies in the High Court if the case is to continue there.

(4) The High Court may give a direction that applies in a magistrate's court if the case is to continue there.

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

The duty of the parties

22. A party must—

- (a) comply with directions given by the Court;
- (b) take every reasonable step to make sure his or her witnesses will attend Court when they are needed;
- (c) promptly inform the Court and the other party or parties of anything that may affect the date of trial or the progress of the case in any way;
- (d) monitor compliance with directions;
- (e) ensure that the Court is kept informed of events that may affect the progress of the case;
- (f) ensure that he or she can be contacted promptly about the case during ordinary business hours;

- (g) act promptly and reasonably in response to communications about the case; and
- (h) if his or her counsel will be unavailable for a scheduled hearing, appoint substitute counsel for the purpose and inform the other party or parties.

PART 5

PRELIMINARY PROCEEDINGS IN MAGISTRATE'S COURT

A. Procedure for securing presence of the accused

Manner of instituting criminal proceedings

23. Criminal proceedings are instituted by making a charge against a person either—

- (a) under section 24; or
- (b) under section 26.

Charge by police officer

24. A police officer who arrests an accused without a warrant may institute criminal proceedings against him by preparing and signing a formal charge in accordance with the provisions relating to form and content of charge in Part 24 and shall—

- (a) bring the accused before a magistrate within seventy two hours; or
- (b) subject to the Police Act, release the accused on bail to attend the magistrate's court on a specified date.

Complaint by a person or police officer

25. (1) A person 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 to a magistrate.

(2) A complaint shall be for one matter only, but the complainant may lay one or more complaints against the same person at the same time.

(3) Where there is more than one defendant, a separate complaint shall be filed with respect to each defendant.

Charge by magistrate

26. On receiving a complaint, a magistrate, shall draw up or cause to be drawn up and shall sign a formal charge in accordance with the provisions relating to the form and content of a charge in Part 24.

Issue of summons or warrant

27. (1) After drawing up the charge, the magistrate may issue either a summons or an arrest warrant to compel the attendance of the accused before the magistrate's court.

(2) An arrest warrant shall not be issued in the first instance unless the complaint has been supported by an oath, either by the complainant or by a witness.

(3) A magistrate shall not refuse to issue a summons unless he believes that the application for a summons is frivolous, vexatious or an abuse of the process of the Court and if he so refuses the person applying for it may require the magistrate to give him a written certificate of refusal and may apply to the High Court for an order directing the magistrate to issue the summons sought or any other summons that the High Court may direct.

If summons disobeyed, warrant may issue

28. (1) If an accused served with a summons does not appear at the time and place mentioned in the summons and it is proved to the satisfaction of the magistrate's court that the summons was duly served within a reasonable time before the date appointed for the appearance of the person before the magistrate's court, the magistrate's court after taking such evidence on oath to substantiate the matter of the complaint as it may in any particular case consider necessary, may issue a warrant to apprehend the person so summoned as aforesaid and to bring him before the magistrate's court to be dealt with according to law.

(2) However, a warrant shall not be issued in a case in which the summons is one to which section 36 applies and in which a written plea of guilty has been entered and the penalty paid in accordance with that section.

Magistrate's court may order prisoner to be brought before it

29. (1) Where any person for whose appearance or arrest a magistrate's court is empowered to issue a summons or warrant is confined in prison, the magistrate's court may issue an order to the officer in charge of such prison requiring him to bring such prisoner in proper custody, at a time to be named in the order, before the magistrate's court.

(2) The officer to whom an order issued under subsection (1) is directed, on receipt of the order, shall act in accordance with it, and shall provide for the safe custody of the prisoner during his absence from the prison for the above purpose and shall afterward return him to the prison unless otherwise ordered by a Court of competent jurisdiction, and the prisoner shall for all purposes be deemed to be in lawful custody during such absence.

B. Provisions relating to summons and arrest warrant

Form and content of complaint

30. Subject to section 25, a complaint shall be in the form prescribed by rules of court.

Form, content and service of summons

31. (1) A summons shall be in the form and shall contain the information and shall be signed in the manner set out in the rules of court.

(2) Service and proof of service shall be in the manner prescribed by rules of court.

(3) The magistrate's court shall transmit a copy of every summons to the Director of Public Prosecutions and the Commissioner of Police.

(Amended by Act 9 of 2011)

Issue and form of arrest warrant

32. (1) An arrest warrant may be issued at any time on any day, and shall be under the hand and seal of the magistrate or justice of the peace by whom it is issued and shall contain the information prescribed by rules of court.

(2) The magistrate's court shall transmit a copy of every warrant to the Director of Public Prosecutions and the Commissioner of Police.

(Amended by Act 9 of 2011)

Duplicate warrants

33. (1) The magistrate or justice of the peace who issues a warrant may, at the same time or a subsequent time, issue one or more duplicate warrants.

(2) The Commissioner of Police may also certify and issue copies of any warrant received by him.

(3) A duplicate warrant or certified copy has the same force and effect as the original.

Execution of warrant

34. (1) A warrant may be executed by any one or more police officers.

(2) In the exercise of the powers conferred by an arrest warrant, a police officer may enter (if need be, by reasonable force) and search any place where that person is or where the police officer, with reasonable cause, believes him to be.

Period of validity of warrant

35. (1) A warrant shall not be made returnable at any particular time but shall remain in force until executed or cancelled by the magistrate or justice

of the peace who issued it or by order of a Court which has jurisdiction in the matter.

(2) A Court may discharge an unexecuted arrest warrant for good cause shown.

(3) Where there are arrest warrants that are unexecuted for more than thirty days a magistrate or a judge may enquire of the Commissioner of Police as to the status of the unexecuted warrants.

C. When presence of the accused may be dispensed with

Guilty plea without appearance

36. (1) The personal attendance of an accused person before the Court to answer a summons alleging an offence may be dispensed with in the circumstances set out in this section, in the case of an offence prescribed as being an offence to which this section applies.

(2) An accused person who desires to plead guilty and be convicted of any such offence in his absence may within seven days of the service on him of the summons sign the same in the appropriate place in acknowledgement of his guilt and return such summons by hand or by registered post to the Registrar or Clerk together with the full amount in cash specified therein by way of penalty.

(3) A summons issued in respect of any such offence shall contain a notification to the accused person of his rights under subsection (2) and shall specify the amount fixed by the judge or magistrate issuing the same as the penalty for that offence by that accused person.

(4) On receiving from an accused person the amount of the penalty and the summons duly signed and returned in accordance with this section the Registrar or Clerk shall issue his official receipt for the amount of such penalty and shall place the summons before the presiding judge or magistrate who shall thereon formally convict the accused person of the offence and enter such conviction and the amount of the penalty in the records of the Court.

(5) In any case in which an accused person does not desire to plead guilty to an offence under this section, his personal attendance shall be required in answer to the summons and the ordinary provisions of this Code in respect of a summons shall apply.

(6) The Governor acting on the advice of Cabinet, after consultation with the Chief Justice, may by order prescribe the offences to which this section applies.

PART 6

ADJOURNMENTS AND REMANDS

*A. Magistrate's Court***During any proceedings**

37. (1) At any stage before the case is sent to the High Court, or before or during a summary trial, a magistrate's court may, if it considers it necessary or advisable, adjourn proceedings to a certain time and place appointed in the hearing of the parties or of their counsel or solicitors.

(2) On the adjournment under subsection (1), if the accused is in custody, the magistrate may—

(a) admit him to bail; or

(b) remand him to prison—

(i) by his warrant for eight clear days or less at any one time, to a prison or other place of security; or

(ii) by word of mouth, order the officer or person in whose custody the accused person is to be kept, to keep him in custody for three clear days or less and to produce him before the magistrate's court on the day appointed for the adjourned hearing.

(3) The magistrate's court shall not grant a remand or sequence of remands exceeding in the aggregate fifteen clear days, except at the request or with the consent of the prosecutor.

(4) During a remand the magistrate's court may at any time order the defendant to be brought before it.

*B. High Court***Proceedings other than trial**

38. (1) If, from the absence of witnesses or any other sufficient cause, to be recorded in the proceedings, the High Court considers it necessary or advisable to adjourn a hearing other than the trial, the High Court may—

(a) admit the accused to bail; or

(b) remand the accused to prison—

(i) by warrant, for eight clear days or less at any one time, to a prison or other place of security; or,

(ii) by word of mouth, order the officer or person in whose custody the accused is to be kept, or any other fit officer or person, to keep the accused in his custody for three clear days or less, and to bring him up at the time appointed for the commencement or continuance of the proceedings.

(2) The High Court shall not grant a remand or sequence of remands exceeding in the aggregate fifteen clear days, except at the request or with the consent of the prosecutor.

(3) During a remand the High Court may at any time order the defendant to be brought before it.

Adjournment or postponement of trial for other cause

39. (1) If, from the absence of witnesses or any other reasonable cause to be recorded in the proceedings, the High Court considers it necessary or advisable to postpone the commencement of or to adjourn a trial, the High Court may postpone or adjourn it on the terms that it thinks fit for the time that it considers reasonable, and may remand the accused to the prison or other place or security, or may admit the accused to bail.

(2) During a remand the High Court may at any time order the accused to be brought before it.

(3) Subject to subsection (1), when a trial commences in the High Court, the trial shall proceed continuously subject to such adjournment from day to day as the length of the proceedings requires.

Postponement of trial on application of a party

40. (1) The High Court, on the application of the prosecutor or the accused person, if the High Court considers that there is sufficient cause for the delay, may postpone the trial of any accused person to the next sessions of the High Court or to a subsequent session and may respite the recognizances of the prosecutor and witnesses, in which case the respited recognizances shall have the same force and effect as fresh recognizances to prosecute and give evidence at such subsequent sessions would have had.

(2) The High Court may give such directions for the amendment of the indictment and the service of any notices which the High Court may deem necessary in consequence of any order made under subsection (1).

PART 7

BAIL

Police bail before institution of criminal proceedings

41. At any time on or before the institution of criminal proceedings in accordance with section 23, a police officer may, in accordance with section 26 and the Police Act, release a person on bail, requiring the person to attend a police station or to attend a magistrate's court, on the terms and conditions that the police officer sets.

Bail set when arrest warrant issued

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

(2) The terms and conditions shall be endorsed on the warrant and the officer in charge of the police station to which the defendant is taken shall arrange for the defendant's release on bail in accordance with those terms and conditions.

(3) This section does not apply to cases where the defendant is alleged to have committed treason, murder, genocide, or any other offence which the Director of Public Prosecutions may specify by notice published in the *Gazette*. (Amended by Act 9 of 2011)

Bond on appearance in court

43. (1) If a person for whose appearance or arrest a Court is empowered to issue a summons or warrant is present in the Court, the Court may require the person to execute a bond, with or without sureties, or make a deposit of money instead of the bond, for his appearance in court on the appointed date.

(2) If any person who is bound by any bond taken under this section, or under any other provisions of this Code, to appear before a Court, or who has made a deposit of money instead of executing such bond, does not so appear, the Court may issue a warrant directing that such person be arrested and brought before the Court.

Bail during proceedings

44. (1) If a person, other than a person accused of treason, murder or genocide applies for bail in the form prescribed by the rules of court at any time or at any stage in the proceedings, the person may in the discretion of the Court be admitted to bail, with or without a surety or sureties.

(2) The amount of bail referred to in subsection (1) shall not be excessive, and a Court may, in its discretion, accept a deposit of cash instead of security.

(3) Despite any provisions of this Part, the High Court may in any case and at any stage of proceedings direct that a person be admitted to bail.

Discharge from custody when bail is granted

45. (1) As soon as the recognizance, with or without sureties as the case may be, has been entered into, a person admitted to bail shall be released, and if he is in prison, the Court admitting him to bail shall issue an order of release to the officer in charge of the prison and the officer on receipt of the order shall release him.

(2) This section does not require the release of a person liable to be detained for some matter other than that in respect of which the recognizance was entered into.

Variation of magistrate's court bail by High Court

46. The High Court may in any case and at any stage of proceedings direct that bail required by the magistrate's court be varied.

Forfeiture of bond or bail

47. (1) The Forfeited Recognizances Act applies to the recognizances given under this Part in the form of a bond or on bail.

(2) For the purpose of section 2 of the Forfeited Recognizances Act, the magistrate or justice of the peace shall certify that a person's recognizance in the form of a bond or on bail is forfeited once there is default in the fulfillment of the obligation secured by the recognizance.

PART 8

ASSETS RECOVERY

Seizure of property obtained by offence

48. (1) A Court may order the seizure of property which there is reason to believe has been obtained by or is the proceeds or part of the proceeds of an offence, or into which the proceeds of any offence have been converted, and may direct that the same shall be kept or sold and that the same, or the proceeds if sold, shall be held as the Court directs until a person establishes a right to it to the satisfaction of such Court.

(2) If no person establishes such a right within twenty four months from the date of such seizure, the property, or the proceeds of it, shall vest in the Accountant General for the use of Montserrat and shall be paid into the Consolidated Fund established under the Public Finance (Management and Accountability) Act.

(3) A Court may order the seizure of any instruments, materials, or things which there is reason to believe are provided or prepared or being prepared with a view to the commission of any offence and may direct them to be held and dealt with in the same manner as property seized under subsection (1).

(4) An order made under this section may be enforced by means of a search warrant which, on being satisfied by evidence on oath that there is reasonable cause for the issue of such warrant, any such Court is authorised to issue for the purpose.

PART 9

CLASSIFICATION OF OFFENCES AND
DETERMINING MODE OF TRIAL*A. Classification of offences***Classes of offences**

49. As regards modes of trial, there are three classes of offences—

- (a) those triable only on indictment;
- (b) those triable only summarily; and
- (c) those triable either way.

Meaning of indictable only offence

50. An indictable only offence is an offence—

- (a) that any law states is to be tried by the High Court; or
- (b) that does not so state and does not fall under section 51 or 52.

Meaning of offences triable only summarily

51. An offence is triable only summarily if any law states that the offence is to be—

- (a) tried by the magistrate's court; or
- (b) tried summarily.

Meaning of offences triable either way

52. An offence is triable either way if—

- (a) any law states that the offence is punishable on summary conviction or conviction on indictment;
- (b) any law expressly gives the magistrate's court a discretion as to whether to try the offender summarily or to send him or her to the High Court for committal and trial on indictment; or
- (c) the offence is punishable, on summary conviction only, by imprisonment for a term not exceeding six months.

Mode of trial-indictable only offence

53. Parts 10 to 23 and 29 apply in respect of indictable only offences.

Mode of trial-offences triable only summarily

54. Parts 10, 11, 24 to 30 apply in respect of offences triable only summarily.

Mode of trial-offences triable either way

55. (1) Divisions B and C of this Part apply in respect of the determination of the mode of trial of an offence triable either way.

(2) If the mode of trial determined is trial on indictment, then Parts 10 to 23 and 29 apply.

(3) If the mode of trial determined is summary trial, then Parts 10, 11, 24 to 30 apply.

*B. Advance Information***Defence entitlement to advance information**

56. (1) If an accused is charged with an offence triable either way and, before the determination of the mode of trial, he or she requests the prosecutor to furnish him or her with advance information, then, the prosecution shall, subject to section 57, furnish him or her as soon as practicable with a copy of those parts of every written statement which contain information as to the facts and matters of which the prosecutor proposes to adduce evidence in the proceedings.

(2) In subsection (1), 'written statement' means a statement made by a person on whose evidence the prosecutor proposes to rely in the proceedings and, where the person has made more than one written statement one of which contains information as to all the facts and matters in relation to which the prosecutor proposes to rely on the evidence of that person, only that statement is a written statement for purposes of subsection (1).

(3) Where in any part of a written statement reference is made to a document on which the prosecutor proposes to rely, the prosecutor shall, subject to section 57, when furnishing the part of the written statement, also furnish either a copy of the document or such information as may be necessary to enable the person making the request under subsection (1) to inspect the document or a copy of it.

Refusal of request for advance information

57. If the prosecutor is of the opinion that the disclosure of any particular fact or matter in compliance with this section might lead to any person on whose evidence he proposes to rely in the proceedings being intimidated, to an attempt to intimidate him being made or otherwise to the course of justice being interfered with, he may withhold information in relation to the matter and must give notice in writing to the person who made the request that the information is being withheld under the authority of this section.

Adjournment pending furnishing of advance information

58. If the magistrate's court is satisfied that a request for advance information has been made and the prosecution has not furnished the information or a notice under section 57, then the magistrate's court shall adjourn the proceedings pending compliance with section 56 or 57, unless the magistrate's court is satisfied that the conduct of the case for the accused will not be substantially prejudiced by the non-compliance.

C. Determining Mode of Trial

Power of magistrate's court to choose mode of trial

59. If an accused is charged with an offence referred to in subsection 52(a) or 52(b) then, at the Initial Hearing, whether or not on application made by the prosecution or the accused person, if it appears to the magistrate that the case is one which ought to be tried by—

- (a) the High Court, the magistrate shall proceed with the Initial Hearing in accordance with section 66 and afterwards the case shall be continued as if the person had been charged with an indictable-only offence;
- (b) the magistrate's court, the magistrate shall stay all further proceedings in respect of the trial of the matter as an indictable offence, proceed with the Initial Hearing in accordance with Part 25 and afterwards the case shall be continued as if the person had been charged with an offence triable only summarily.

Accused's right to elect trial on indictment

60. (1) Subject to subsections (2) and (3), if an accused is charged with an offence referred to in subsection 52(c) then, at the Initial Hearing, he may elect, if he so desires, to be tried before the High Court, and the magistrate shall inform him of this right at the commencement of the Initial Hearing and before any issue in relation to trial is dealt with, explaining to him the difference in the procedure between summary trial and trial on indictment and the probable time at which he might be brought for trial before the High Court. If the accused then elects for trial before the High Court, the magistrate's court shall proceed with the Initial Hearing in accordance with section 66 and afterwards the case shall proceed as if the person had been charged with an indictable only offence.

(2) This section does not apply in a case where the accused person is, or appears to the magistrate to be, under the age of fourteen years, unless the parent or guardian of the accused is present, in which case the right of election shall be exercised by the parent or guardian.

(3) This section does not apply to curtail the summary jurisdiction of the magistrate's court in any case brought under any law which expressly provides that the offence charged shall be tried only summarily or which

expressly gives the magistrate's court a discretion as to whether to try the accused summarily or to commit him for trial on indictment.

PART 10

PROCEEDINGS AFTER PRELIMINARY PROCEEDINGS IN MAGISTRATE'S COURT

Judicial proceedings

61. (1) Criminal proceedings in respect of offences to be tried on indictment shall include—

- (a) an Initial Hearing before a magistrate;
- (b) a Sufficiency Hearing before a judge;
- (c) Indictment;
- (d) Arraignment; and
- (e) Trial.

(2) Criminal proceedings in respect of offences to be tried summarily shall include—

- (a) an Initial Hearing before a magistrate; and
- (b) Trial.

Case management hearings

62. Despite section 61, nothing shall prevent a judge or magistrate from conducting one or more case management hearings before completion of cases.

PART 11

DISCLOSURE

Pre-trial disclosure of evidence to be called

63. (1) The defence is entitled to know in advance of trial, whether summary or on indictment, the evidence the prosecution intends to call.

(2) The rules of court may stipulate the times and manner of disclosure by the prosecution for the purposes of subsection (1) and may provide for advance disclosure to provide information to assist the defence in determining the mode of trial.

Pre-trial disclosure of unused information

64. (1) To the extent necessary to ensure a fair trial, whether summary or on indictment, the prosecution shall disclose material which will not form part of its case.

(2) The prosecution discharges its obligation under subsection (1) if it complies with any rules of court respecting disclosure and the manner of recording information gathered that may be subject to disclosure.

Pre-trial disclosure of information by defence

65. The rules of court may require the defence to supply a written statement setting out the nature of the defence including any particular defences on which the defendant intends to rely, indicating the principal matters on which the defendant takes issue with the prosecution and any other matter necessary to achieve fair disclosure on the part of the defence.

PART 12

INDICTABLE OFFENCES: SENDING CASES FROM THE
MAGISTRATE'S COURT TO THE HIGH COURT**Initial Hearing of either way offences**

66. (1) The Initial Hearing shall commence on the return date of the summons or warrant or when the accused first appears before the magistrate after having been arrested without warrant and shall continue on the date to which the magistrate adjourns the Hearing from time to time.

(2) If the defendant has not been granted bail, the Initial Hearing shall take place within seventy two hours of arrest.

(3) At the Initial Hearing, the magistrate shall comply with section 67(3) except that before hearing any application made by the prosecution or the defence other than an application made under Part 9, the magistrate's court shall determine the mode of trial in accordance with Part 9 and verify compliance by the prosecutor with advance information requirements in accordance with Part 9.

(4) If the mode of trial is determined to be summary, the magistrate shall continue the Initial Hearing in accordance with Part 25 and thereafter deal with the case as if the defendant was charged with an offence triable only summarily.

(5) If the mode of trial is determined to be indictable, the magistrate shall continue the Initial Hearing in accordance with section 67 and thereafter deal with the case as though the defendant were charged with an indictable only offence.

Initial Hearing of indictable only offences

67. (1) The Initial Hearing shall commence on the return date of the summons or warrant or when the accused first appears before the magistrate after having been arrested without warrant and shall continue on the date to which the magistrate adjourns the Hearing from time to time.

(2) If the defendant has not been granted bail, the Initial Hearing shall take place within seventy two hours of arrest.

(3) At the Initial Hearing the magistrate shall—

- (a)* verify the defendant's identity and contact information;
- (b)* record the name and contact information for the defendant's counsel if the defendant is represented by counsel and record counsel's appearance;
- (c)* read the charges to the defendant or cause the charge to be read to the defendant in a language that he or she understands;
- (d)* explain to the defendant the rights set out in section 68;
- (e)* consider bail in accordance with Part 7;
- (f)* hear and review any applications made by the prosecution or the defendant;
- (g)* make a scheduling order filing dates—
 - (i)* for the Sufficiency Hearing in the High Court;
 - (ii)* by which the defendant must retain counsel or seek the appointment of counsel at the expense of the Crown;
 - (iii)* by which the defendant's application for appointment of counsel must be determined; and
 - (iv)* by which counsel, whether retained or appointed, must file notice of appearance with the magistrate's court, if a notice of appearance has not been filed.

(4) At the end of the Initial Hearing, the magistrate shall send the case to the High Court in the manner set out in the rules of court.

(5) Nothing in this paragraph shall be construed as preventing a defendant from retaining counsel at a subsequent stage of the proceedings.

(6) Scheduling orders made at the Initial Hearing are to be served on the prosecution, the defendant, counsel for the defendant, and the Director of Public Prosecutions. *(Amended by Act 9 of 2011)*

Defendant's rights

68. The defendant's rights referred to in section 67(3)(d) are—

- (a)* the right to bail, if any;

- (b) the right to retain counsel, including the right to request an adjournment to retain counsel;
- (c) the right to have counsel appointed at the expense of the Crown where the defendant has been charged with murder;
- (d) the right to disclosure by the prosecution before trial in accordance with Part 11;
- (e) the right to remain silent, except as to plea and the right to know that any statement made by him or her may be used against him or her;
- (f) the right to enter a plea to the charges;
- (g) the right to trial, if a not guilty plea is entered; and
- (h) the right, in the circumstances stated in clause 144(3), to an interpreter.

PART 13

INDICTABLE CASES: DETERMINING WHETHER INDICTMENT SHOULD BE PREFERRED

A. The Sufficiency Hearing

Judge to hold Sufficiency Hearing

69. (1) Within the prescribed time by rules of court after the Initial Hearing of an either way offence in which the mode of trial chosen is on indictment, or of an indictable only offence, a judge shall hold a Sufficiency Hearing to determine whether the evidence discloses a *prima facie* case that an indictable offence has been committed and that the defendant has committed it.

(2) The evidence discloses a *prima facie* case if the probative value is such that the High Court finds as a matter of law that the evidence, taken in the light most favourable to the prosecution, would support a verdict of guilty at trial.

Attendance of accused and witnesses

70. (1) Sections 142 to 144 respecting the attendance of the accused at trial apply with the necessary modifications to the Sufficiency Hearing.

(2) The attendance of a witness is not required unless the defence gives notice that it wishes to cross examine the witness in accordance with section 77.

Disclosure by prosecution

71. The prosecutor shall comply with rules of court requiring disclosure before the Sufficiency Hearing to be made in accordance with Part 11.

High Court to inquire into suspected incapacity of accused

72. (1) When in the course of a Sufficiency Hearing the High Court has reason to suspect that the accused person is of unsound mind so that he is incapable of making his defence, the High Court shall inquire into the fact of such unsoundness and for this purpose may receive evidence and may postpone the proceedings and remand the accused person for a medical report.

(2) The procedure set out in sections 154, 155 and 156 applies with the necessary modifications in respect of a Sufficiency Hearing.

Procedure when the defence is one of temporary insanity

73. When an accused person appears to be of sound mind at the time of a Sufficiency Hearing, although it is alleged that, at the time when the act was committed in respect of which the accused person is charged, he was insane within the meaning of the law relating to capacity to commit a criminal offence, the High Court shall proceed with the case and if the accused person ought, in the opinion of the High Court, to be committed for trial, the High Court shall so commit him.

Accused to be read charge and explained proceedings

74. The judge conducting the Sufficiency Hearing shall, at the commencement of the Hearing read over and explain to the accused person the charge in respect of which the Hearing is being held and shall explain to the accused person that he may, later in the proceedings, make a statement or submit witness statements (or both) and shall further explain to the accused person the purpose of the proceedings, namely to determine whether there is sufficient evidence to put him on his trial before the High Court.

Manner of adducing evidence

75. (1) A witness shall give his or her oral evidence in the form of a written statement.

(2) In addition to the requirements in any law respecting the admissibility of evidence, to be admissible the written statement must—

- (a) be signed by the person who made it;
- (b) contain 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 may be liable to perjury in respect of a false statement contained in it;
- (c) contain a certificate by the interpreter of a witness who does not understand the language in which the statement is made, that the statement was read over to the witness in a language that he or she understands and the witness declared that he or she understood it.

(3) Where a defendant is not represented by counsel the High Court shall cause the evidence submitted by the prosecutor to be tendered by being read out aloud, except where the High Court directs otherwise.

Obligation of prosecution to give notice and copy of statements

76. (1) The prosecution shall not tender evidence of any witness at the Sufficiency Hearing unless—

- (a) before the Hearing, the High Court and other parties to the proceedings were informed of the intention to seek to have the witness statements submitted in evidence at the trial and none of the other parties objected to the submission; and
- (b) before the statement is tendered in evidence a copy of the statement is given by or on behalf of the prosecutor, to each of the other parties to the proceedings.

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

(3) The parties to the proceedings shall have the right, in exceptional circumstances, to cross examine witnesses during the Sufficiency Hearing only where the judge determines that this would be essential in the interests of justice.

Cross examination

77. (1) A party shall not cross examine a witness except with leave of the High Court.

(2) A party who wishes to cross examine a witness shall send a notice to that effect to the Court and the parties, before the Hearing, within the time limited by the rules of court.

Variance between evidence and charge

78. No objection to a charge, summons or warrant for defect in substance or in form, or for variance between it and the evidence for the prosecution, shall be allowed at a Sufficiency Hearing; but if any variance appears to the High Court to be such that the accused person has been thereby deceived or misled, the High Court may, on the application of the accused person, adjourn the Hearing or may allow further evidence to be adduced by the defence that may have been omitted because of the defect or variance.

Direction to accused concerning accused's statement

79. After the review of the evidence submitted by the prosecution the Court shall—

- (a) satisfy itself that the accused understands the charge and shall ask the accused whether he wishes to make a statement in his defence or not and, if he wishes to make a statement, whether he wishes to make it on oath, or not; and
- (b) explain to the accused that he has nothing to hope from any promise of favour and nothing to fear from any threat that may have been held out to induce him to make any admission or confession of guilt, that he is not bound to make a statement, and that his statement, if he makes one, may be part of the evidence at his trial.

Statement of accused person

80. (1) Everything which the accused person says, either by way of statement or evidence, shall be recorded in full and shall be shown or read over to him, and he shall be at liberty to explain or add to anything contained in the record thereof.

(2) The Court shall certify that the statement or evidence as is taken in accordance with this section was taken in the accused's presence and hearing and contains accurately the whole statement made, or evidence given, as the case may be, by the accused person. The accused person shall sign, or attest by his mark, such record, and if he refuses, the Court shall add a note of his refusal, and the record may be used as if he had signed or attested it.

(3) Nothing in this section shall prevent the prosecution from giving in evidence any admission, confession or statement made at any other time by the accused person which by law would be admissible in evidence at his trial.

Committal for sentence if offence admitted by accused

81. If, in any statement made to the Court under section 80, the accused person admits that he is guilty of the offence charged, if such offence is not one of treason or murder, the Court shall commit the accused for sentence.

Address of defence and prosecution

82. (1) In a Sufficiency Hearing the accused person or his counsel (if any) shall be at liberty to address the Court—

- (a) if the accused does not make a statement, immediately after the examination of the witnesses called on behalf of the prosecution; or
- (b) if the accused makes a statement, immediately after the statement or evidence of the accused person;

(2) If the accused person or his counsel addresses the Court the prosecution shall have the right of reply.

Decision to discharge or indict

83. (1) If the Court finds that the prosecution has met its burden, it shall commit the defendant to stand trial, and if it finds that the prosecution has not met its burden, it shall discharge the defendant as to the particular charge which was the subject of the hearing, but such discharge shall not be a bar to any subsequent charge in respect of the same facts.

(2) However, the Court may, either immediately, or after an adjournment of the Sufficiency Hearing, proceed with a sufficiency investigation of any other charge—

- (a)* in respect of which the accused person was brought before the Court; or
- (b)* which it may appear from the evidence given in the course of the Sufficiency Hearing of the charge so dismissed that the accused person has committed.

Decision to return case to magistrate's court for trial

84. The High Court may, subject to the other provisions of this Code, send the case to the magistrate's court to hear and finally determine if at the close of or during the Sufficiency Hearing—

- (a)* it is not a case in which the accused has a right to elect to be tried on indictment and he has so elected; or
- (b)* it appears to the High Court that the offence is of such a nature that it may suitably be dealt with under the powers possessed by the magistrate's court.

Transmission of records to Registrar, Director of Public Prosecutions and accused

85. If the accused is committed for trial, the witness statements, the statement (if any) of the accused person, the recognizances of the complainant and the witnesses, the recognizances of bail (if any), and any documents or things which have been put in evidence shall be transmitted without delay by the committing judge to the Registrar, and an authenticated copy of these statements, recognizances and any documentary exhibits shall be supplied to the Director of Public Prosecutions and the accused at the same time by the committing judge. *(Amended by Act 9 of 2011)*

Power of Director of Public Prosecutions to reopen case

86. (1) After the receipt by the Director of Public Prosecutions of an authenticated copy of the record under section 85 forwarded to him in relation to a case committed for trial, the Director of Public Prosecutions may at any time refer back such documents to the judge who heard the committal with directions to re-open the inquiry for the purpose of taking evidence or further evidence on a certain point or points to be specified, and with such directions as the Director of Public Prosecutions may think proper.

(2) Subject to any express directions which may be given by the Director of Public Prosecutions, the effect of a reference back to the judge is that the Sufficiency Hearing shall be re-opened and dealt with in all respect as if the accused person had not been committed for trial.

(Amended by Act 9 of 2011)

Trial to be on indictment of Director of Public Prosecutions

87. If the High Court commits an accused for trial, and the Director of Public Prosecutions determines that it is in the interest of justice to try the accused, the Director of Public Prosecutions shall prefer an indictment against the person and the trial shall be conducted in accordance this Code relating to trial on indictment.

(Amended by Act 9 of 2011)

B. Securing attendance of witnesses for trial before close of Sufficiency Hearing

Remand of accused committed for trial

88. (1) If the High Court commits the accused for trial it shall, until the trial, either admit him to bail or remand him into custody. The warrant of the High Court is sufficient authority for the detention of the person therein named by the officer in charge of any prison.

(2) In the case of a corporation the High Court may, if it considers the evidence sufficient to put the accused corporation on trial, make an order authorising the Director of Public Prosecutions to file an indictment against such corporation, and for the purposes of this Code this order is deemed to be a committal for trial. *(Amended by Act 9 of 2011)*

(3) If the accused is a juvenile, section 14 of the Juveniles Act relating to committing to a place of safety applies.

Recording defence witnesses for trial

89. If the High Court commits the defendant to stand trial, the High Court shall ask him whether he intends to call witnesses at the trial, and, if so, whether he desires to give their names and addresses so that they may be summoned. The High Court shall thereon record the names and addresses of any witnesses whom the accused person may mention.

Complainant to enter recognizance

90. (1) When an accused person is committed for trial, the High Court committing him shall bind by recognizance, with or without sureties as the High Court may deem requisite, the complainant to appear at the trial to prosecute or to prosecute and give evidence, as the case may be, and also to the examination of any charge which may be held by direction given by the Director of Public Prosecutions under section 87.

(2) However, if the complainant is acting on behalf of the Crown, the Director of Public Prosecutions, the Commissioner of Police or any department of the Government or is a public officer acting in his official capacity, he shall not be required to be bound by any recognizance or to give any security.

(Amended by Act 9 of 2011)

Refusal to enter recognizance

91. If a person refuses to enter into a recognizance when lawfully required to do so, the High Court may commit him to prison or into the custody of any officer of the Court, there to remain until after the trial, unless in the meantime he enters into a recognizance. If afterwards, from want of sufficient evidence or other cause, the accused is discharged, the High Court shall order that the person imprisoned for so refusing be also discharged.

Binding over of witnesses conditionally

92. (1) Where any person is committed for trial, and it appears to the High Court after taking into account anything which may be said with reference thereto by the accused or the prosecutor, that the attendance at the trial of any witness who has submitted witness statements to the High Court is unnecessary by reason of anything contained in any statement by the accused person, or of the evidence of the witness being merely of a formal nature, the High Court shall, if the witness has not already been bound over, bind him over to attend the trial conditionally on notice given to him and not otherwise, or shall, if the witness has already been bound over, direct that he shall be treated as having been bound over to attend trial only conditionally, and shall record the names, addresses and occupations of the witnesses who are, or who are to be treated as having been bound over to attend the trial conditionally.

(2) Where a witness has been, or is to be treated as having been, bound over conditionally to attend the trial, the Director of Public Prosecutions or the person committed for trial may give notice, at any time before the opening of the sessions of the High Court, to the Registrar of the High Court, that he desires the witness to attend at the trial, and the Registrar shall forthwith notify the witness that he is required to attend in pursuance of his recognizance. *(Amended by Act 9 of 2011)*

The High Court shall, on committing the accused person for trial, inform him of his right to require the attendance at the trial of any such witness as aforesaid, and the steps which he must take for the purposes of enforcing such attendance.

(3) Any documents or articles produced in evidence during the Sufficiency Hearing by any witness whose attendance at the trial is stated to be unnecessary in accordance with this section and marked as exhibits shall, unless in any particular case the High Court otherwise orders, be forwarded with the depositions to the Registrar.

PART 14

INDICTABLE CASES: SECURING EVIDENCE
OF WITNESSES BEFORE TRIAL**Statement of witness who is ill or about to leave Montserrat**

93. If it is proved on oath before any magistrate or judge that a person is ill and unable to travel, or is about to leave Montserrat for a period extending beyond the time when the accused, if committed for trial, would be tried, and that such person is able and willing to give material information as to an offence which the magistrate's court is not empowered to try summarily, and with which a person has been charged (whether the Sufficiency Hearing has or has not been held or is in progress, but not after the accused has been discharged) the magistrate may take the statement of the person at the place where such person is lying sick or, if such person is about to leave Montserrat as aforesaid, in the magistrate's court, in the manner prescribed by this Code, and shall, after taking it, sign it, adding to it by way of heading a statement of the reason for taking it, and of the day on which and place at which it was taken, and of the names of the persons, if any, present at the taking thereof.

Notice to be given

94. Whenever it is intended to take any deposition under section 93, reasonable notice that it is intended so to be taken shall, if the accused is in prison be served on him in prison, or if he is on bail shall be either served on him or left with an adult inmate at his last or most usual place of abode. If the accused is in prison, the magistrate shall, by an order in writing, direct the gaoler having the custody of the accused to cause him to be conveyed to the place where the deposition is to be taken, for the purpose of being present when the same is taken, and to be conveyed back to prison when it has been taken, but no accused person shall be taken to any such place (other than the magistrate's court) for such a purpose without his consent.

Magistrate to deal with deposition like any other deposition

95. If any deposition taken under section 93 relates to an offence, the Sufficiency Hearing into which has ended, the magistrate taking it shall send it to the Registrar to be placed with the other witness statements taken in the case, and if it relates to an offence with which some person has been charged, and as to which a Sufficiency Hearing is in progress, the magistrate shall deal with it like any other witness statement taken in the matter under Sufficiency Hearing; but such person as aforesaid so making a deposition shall not be called on to enter into a recognizance to give evidence at the trial of the accused.

Deposition to be admissible in evidence

96. (1) Every deposition taken under section 93 shall be a deposition taken in the case to which it relates, and shall be admissible in evidence of the same conditions as other depositions.

(2) A deposition shall be admissible against the accused although it may have been taken in his absence, and may not have been read over to the witness in his presence, and although neither he nor his counsel had any opportunity of cross-examining the witness, if it is proved that the accused having received such notice that the deposition was about to be taken, refused, or neglected to be present, or to cause his counsel to be present when it was taken.

(3) If it is proved that the person whose evidence has been taken as has so recovered from his sickness or returned to Montserrat as to be able to be present at the sessions at which the accused is tried, such deposition taken as aforesaid shall not be read.

Accused to have the same privileges as prosecutor under section 93

97. Any person charged with having committed an offence not punishable summarily may on notice to the complainant require that the evidence of any such person as in section 93 mentioned may be taken on behalf of the defence in like manner, and any deposition so taken shall be dealt with, and be admissible in evidence on the same conditions as other depositions and on conditions corresponding to those mentioned in section 96.

PART 15

INDICTABLE CASES: PREPARING AND PREFERRING INDICTMENT

A. Form and Content of Indictment

Form of indictment

98. (1) An indictment shall be drawn up in accordance with this Code and when signed by the Director of Public Prosecutions shall be filed in the office of the High Court together with such additional copies as are necessary for service on the accused persons.

(2) Where under any enactment any injured party or complainant is entitled to prosecute privately, the indictment shall be signed by that party or a legal practitioner acting on his or her behalf but not by the Director of Public Prosecutions.

(3) The Criminal Division Manager shall not receive an indictment from any private prosecutor unless—

- (a) the indictment has been endorsed by a certificate of the Director of Public Prosecutions to the effect that he or she has seen such indictment and declines to prosecute at the public instance the offence set out in the indictment; and
- (b) the private prosecutor has given the required security to prosecute the indictment to conclusion at the time at which the defendant shall be required to appear and has paid such costs

as may be ordered by the High Court in exceptional circumstances.

(4) For the purposes of this section, “**Criminal Division Manager**” means the person assigned by the Director of Public Prosecutor to carry out the duties of Criminal Division Manager.

(Amended by Act 9 of 2011)

Charge in indictment

99. In an indictment the Director of Public Prosecutions may charge the accused person with any offence which, in his opinion, is disclosed by the evidence from the Sufficiency Hearing either in addition to or in substitution for the offence on which the accused person has been committed for trial.

(Amended by Act 9 of 2011)

Offence to be specific in indictment

100. Every indictment shall contain, and, subject to this Code, shall be sufficient if it contains, a statement of the specific offence or offences with which the accused is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence alleged and the acts or omissions alleged to have given rise to the offence.

Joinder of counts in indictment

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

(2) Where more than one offence is alleged in an indictment, a description of each offence so charged shall be set out in a separate paragraph of the charge or indictment called a count.

Joinder of two or more accused in one indictment

102. The following persons may be joined in one indictment and may be tried together—

- (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 different offences all of which are founded on the same facts or form, or are part of, a series of offences of the same or similar character.

Rules for the framing of indictments

103. (1) Schedule 2 applies with respect to all indictments, and despite any rule of law or practice to the contrary, an indictment shall not be open to objection in respect of its form or contents if it is framed in accordance with those Rules.

(2) Without prejudice to subsection (1), no count is deemed objectionable or insufficient on any of the following grounds, namely that—

- (a) it contains only one name of the accused;
- (b) one name only or no name of the injured person is stated;
- (c) the name or identity of the owner of any property is not stated;
- (d) it charges an intent to defraud without naming or describing the person whom it was intended to defraud;
- (e) it does not set out any document which may be the subject of the charge;
- (f) it does not set out the words used where words used are the subject of the charge;
- (g) the means by which the offence was committed is not stated;
- (h) the district in which the offence was committed is not stated; or
- (i) any person or thing is not described with precision:

However, if it appears to the High Court that the interests of justice and the avoidance of prejudice to the accused person so require, the High Court shall order that the complainant or the prosecutor shall furnish particulars further describing or specifying any of the foregoing matters.

Summons for sentencing to accompany indictment

104. As soon as conveniently may be after the filing of an indictment against an accused person committed for sentence, the Registrar shall issue a summons to the accused person to appear, and if he is in custody, the Registrar shall issue an order to the gaoler to bring the prisoner before a judge of the High Court at a time to be fixed by the judge, and the Registrar shall notify the Director of Public Prosecutions accordingly.

(Amended by Act 9 of 2011)

Notice for trial to accompany indictment

105. The Registrar shall endorse or annex to an indictment filed, and to every copy thereof delivered to the officer of the High Court for service

thereof, a notice of trial, which notice shall specify the particular sessions of the High Court at which the accused person is to be tried on the said indictment and shall be in the following form, or as near thereto as may be—

“A. B.

Take notice that you will be tried on the indictment whereof this is a true copy at the sessions of the High Court to be held at commencing on the day of, 20.....”.

Service of copy of indictment and notice of trial

106. (1) The Registrar shall deliver to the officer of the High Court responsible for serving as many copies of the filed indictment with notice endorsed or annexed, as there are accused persons.

(2) As soon as possible, but at least three days before the date of the trial, the officer shall, by himself or his deputy or other officer, deliver to the accused person the indictment and notice, and explain to him the nature of the indictment and notice.

(3) When any accused person is admitted to bail and cannot readily be found, the officer shall leave a copy of the indictment and notice of trial with someone of his household for him at his dwelling house or with someone of his bail for him, and if no such can be found, shall affix the said copy and notice to the out or principal door of the dwelling house or houses of the accused person or of any of his bail.

(4) This section does not prevent any person committed for trial, and in custody at the opening of or during any sessions of the High Court, from being tried thereat, if he shall express his assent to be so tried and no special objection be made thereto on the part of the Crown.

(5) The officer serving the copy or copies of the indictment and notice or notices of trial shall as soon as possible make to the Registrar a return of the mode of service of the indictment in the manner prescribed by the rules of court.

Registrar to preserve indictments and evidence

107. The Registrar shall cause to be preserved all indictments and all evidence filed with or transmitted to him.

Dismissal for delay in preferring indictment

108. (1) If there is unreasonable delay in preferring an indictment, the judge may, only in absence of satisfactory explanation by the prosecution justifying the delay, order the dismissal of the indictable complaint on his or her own motion or that of the defendant, without prejudice to the right of the prosecution to file a fresh charge for the same offence.

(2) The Director of Public Prosecutions shall be given notice and an opportunity to be heard before an order dismissing an indictable complaint is made. (*Amended by Act 9 of 2011*)

B. Restrictions on offences with which accused may be charged

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

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

A person may be tried again for separate offence

110. A person acquitted or convicted of any offence may afterwards be tried for any other offence with which he might have been charged on the same facts and on which he could not have been convicted at the previous trial.

Consequences supervening or not known at time of former trial

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

Where original Court was not competent to try subsequent charge

112. Subject to any other law, a person acquitted or convicted of an offence constituted by an act may, despite the acquittal or conviction, be subsequently charged with and tried for any other offence constituted by the same act which he may have committed, if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

Proof of previous conviction

113. (1) In a proceeding under this Code in which it becomes necessary to prove the previous conviction of any accused person, a copy of the record of the conviction for the offence on summary trial, or a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction on trial on indictment; purporting to be signed by the officer having custody of the records of the Court where the offender was convicted shall, on proof of the identity of the person, be sufficient *prima facie* evidence of the said conviction without proof of the signature or official character of the person appearing to have signed such copy or certificate.

(2) Without prejudice to subsection (1), *prima facie* proof may be given of a previous conviction in any place within or without Montserrat by

the production of a certificate purporting to be issued under the hand of a police officer in the place where the conviction was had, containing a copy of the sentence or order and the fingerprints, or photographs of the fingerprints, of the person so convicted, together with evidence that the fingerprints of the person so convicted are those of the accused person.

C. Amending or quashing the Indictment

Objection to indictment on grounds of insufficiency of particulars

114. (1) A count in an indictment shall not be quashed on the ground only that it contains insufficient particulars, but in such a case if objection is taken to a count by the accused person, or if in default of such objection it appears to the High Court that the interest of justice so requires, the High Court may order that the prosecution furnish such particulars in support of the charge as it may consider necessary for a fair trial and a copy of any such particulars shall be given to the accused or his counsel without charge, and the trial shall proceed thereafter as if the indictment had been amended in conformity with the particulars.

(2) An objection to an indictment on a ground referred to in subsection (1) or for a formal defect on its face must be taken immediately after the indictment has been read over to the accused and not later.

Amendment of indictment, separate trial and postponement of trial

115. (1) Where, before a trial on indictment or at any stage of the trial, it appears to the High Court that the indictment is defective, the High Court shall make an order for the amendment of the indictment that the High Court considers necessary to meet the circumstances unless, having regard to the merits of the case, the required amendments cannot be made without injustice. The amendments shall be made on the terms that the High Court considers just.

(2) When an indictment is amended under this section, a note of the order for amendment shall be endorsed on the indictment and the indictment shall be treated for the purposes of all proceedings on it as having been filed in the amended form.

(3) Where before a trial on indictment or at any stage of the trial, the High Court is of the opinion that the accused may be prejudiced or embarrassed in his defence by reason of being charged with more than one offence in the same indictment, or that for any reason it is desirable to direct that where there are two or more accused persons they should be tried separately, the High Court may order the separate trial of any count or counts in such indictment or the separate trial of any accused persons charged in the same indictment.

(4) Where, before a trial on indictment or at any stage of such trial, the High Court is of the opinion that the postponement of the trial is expedient as a consequence of the exercise of any power of the High Court

under this section or any other provisions of this Code, the High Court shall make such order as to the postponement of the trial as appears necessary.

(5) Where an order of the High Court is made under this section for a separate trial or for postponement of a trial—

- (a) the procedure on the separate trial of a count shall be the same in all respects as if the count had been found in a separate indictment, and the procedure on the postponed trial shall be the same in all respects as if the trial had not commenced; and
- (b) the High Court may make such order as to admitting the accused to bail and as to the enlargement of recognizances and otherwise as the High Court may think fit.

(6) Any power conferred on the High Court under this section shall be in addition to and not in derogation of any other power of the High Court for the same or similar purposes.

Quashing of indictment

116. (1) No objection to an indictment shall be taken by way of demurrer, but if any indictment does not state in substance an indictable offence or states an offence not triable by the High Court, the accused may move the High Court to quash it or in arrest of judgment.

(2) If the motion is made before the accused pleads, the High Court shall either quash the indictment or amend it, if having regard to the interest of justice it considers that it is proper that it should be amended.

(3) If the defect in the indictment appears to the High Court during the trial and the High Court does not think fit to amend it, it may, in its discretion, quash the indictment or leave the objection to be taken in arrest of judgment.

(4) If the indictment is quashed, the High Court may direct the accused to plead to another indictment founded on the same facts when called on at the same session of the High Court.

Motion in arrest of judgment

117. (1) The accused person may at any time before sentence whether on his plea or otherwise move in arrest of judgment on the ground that the indictment does not, after any amendment which the High Court is willing and has power to make, state any offence which the High Court has power to try.

(2) The High Court may, in its discretion, either hear and determine the matter during the same sitting or adjourn the hearing to a future date to be fixed for that purpose.

(3) If the High Court decides in favour of the accused, he shall be discharged from that indictment.

PART 16

INDICTABLE CASES: ARRAIGNMENT AND PLEA

A. *Attendance of the accused***Attendance of the accused**

118. Sections 142 to 144 respecting the attendance of the accused at trial apply with the necessary modifications to the Sufficiency Hearing.

B. *Unfitness to plead and other reasons for failing to plead***Refusal to plead**

119. If an accused person on being arraigned on any indictment stands mute of malice or will not, or by reason of infirmity cannot, answer directly to the indictment, the High Court may, if it thinks fit, order the Registrar, or other proper officer of the High Court, to enter a plea of not guilty on behalf of such person and the plea so entered shall have the same force and effect as if such person had actually pleaded the same.

Incapacity to plead

120. (1) If it appears, before or on arraignment, that an accused person may be insane so that he is incapable of making his defence, the High Court shall inquire into the fact of such unsoundness and for this purpose may receive evidence and may postpone the proceedings and remand the accused person for a medical report.

(2) The procedure set out in sections 154, 155 and 156 applies.

C. *Autrefois Acquit, Autrefois Convict and Pardon***Pleas in bar**

121. (1) The following special pleas, and no other, may be pleaded, that is to say, a plea of *autrefois acquit*, a plea of *autrefois convict*, and a plea of pardon.

(2) All other grounds of defence may be relied on under the plea of not guilty.

(3) The pleas of *autrefois acquit*, *autrefois convict*, and pardon may be pleaded together, and shall, if pleaded, be disposed of before the accused is called on to plead further; and if every such plea is disposed of against the accused, he shall be allowed to plead not guilty.

(4) In any plea of *autrefois acquit*, or *autrefois convict*, it shall be sufficient for the accused to state that he has been lawfully acquitted or convicted, as the case may be, of the offence charged in the count to which the plea is pleaded.

(5) Every special plea shall be in writing or, if pleaded orally, should be reduced to writing, and shall be filed with the Registrar.

Plea in bar by a person committed for sentence

122. (1) A person who has been committed for sentence may plead *autrefois acquit*, *autrefois convict*, or pardon.

(2) The issue shall be tried by the judge.

Role of judge in disposing of plea

123. (1) On the trial of an issue on a plea of *autrefois acquit* or *autrefois convict*, the judge shall determine whether in law the accused was convicted or was liable to be convicted of the offence to which he stands charged or may be convicted and in respect of which he has pleaded *autrefois acquit* or *autrefois convict*.

(2) In addition, any issue of fact arising shall be determined by the judge.

General effect of pleas of *autrefois acquit* and *autrefois convict*

124. (1) On the trial of an issue on a plea of *autrefois acquit* or *autrefois convict*, if it appears that the matter on which the accused was tried on the former trial is the same in whole or in part as that on which it is proposed to try him, and that he might on the former trial have been convicted of any of the offences of which he may be convicted on the count to which the plea is pleaded, subject to subsection (2) the High Court shall give judgment that he is discharged from those counts which relate to such offences of which he might on the former trial have been convicted.

(2) If it appears that the accused might, on the former trial, have been convicted of any offence of which he may be convicted on the count to which the plea is pleaded, but that he may be convicted also on that count of some offence of which he could not have been convicted on the former trial, the High Court shall direct that he shall not be convicted on that count of any offence of which he might have been convicted on the former trial, but that he shall plead over as to the other offence charged.

Effects where previous offence charged was without aggravation

125. (1) Subject to section 111, where an indictment charges substantially the same offence as that charged in the indictment on which the accused was given in charge on a former trial, but adds a statement of intention or circumstances or aggravation tending, if proved, to increase the punishment, the previous acquittal or conviction shall be to the subsequent indictment.

(2) A previous acquittal or conviction on an indictment for murder shall be a bar to a second indictment for the same homicide charging it as manslaughter; and a previous acquittal or conviction on an indictment for

manslaughter shall be a bar to a second indictment for the same homicide charging it as murder.

Use of depositions, etc., on former trial, or trial of special plea

126. On the trial of an issue on a plea of *autrefois acquit* or *autrefois convict*, the witness statements or evidence transmitted to the Court on the former trial, together with the judge's notes, if available, and the witness statements transmitted to the Court on the subsequent charge or the copy of the record of the magistrate's court, as the case may be, shall be admissible in evidence to prove or disprove the identity of the charges.

D. Change of plea before arraignment

Notice by person committed for trial of intention to plead guilty

127. (1) A person committed for trial, whether he is in custody or not, may, if he wishes to plead guilty and be sentenced before the regular criminal sessions of the High Court, file with the Registrar a notice in writing to that effect, and the notice shall be filed on record in the Registrar's office.

(2) In such case the Registrar shall notify the judge and the Director of Public Prosecutions, or other prosecutor, of such notice and the subsequent proceedings shall be as in the case of a person committed for sentence. *(Amended by Act 9 of 2011)*

Withdrawal by accused of consent to his committal for sentence

128. (1) A person may at any time before he is brought up for sentence give notice in writing to the Registrar that he desires to withdraw his consent to be committed for sentence, and in such case the prisoner shall not be taken before the High Court for sentence but is deemed to have been committed for trial at the next sessions of the High Court.

(2) The notice referred to in subsection (1) shall be filed of record in the Registrar's office, and the Registrar shall notify the Director of Public Prosecutions of the withdrawal of the consent to committal for sentence; and such notice may be put in evidence at the trial or mention may be made at the trial of the fact that such notice was given.

(Amended by Act 9 of 2011)

E. Arraignment of accused committed for trial

Arraignment

129. (1) An accused person to be tried before the High Court on an indictment shall be placed at the bar unfettered, unless the High Court shall see cause otherwise to order and the indictment shall be read over to him by the Registrar or other officer of the High Court and explained or interpreted to him if need be, and the accused person shall be required to plead instantly to it, unless he objects that a copy of the indictment has not previously been served on him under Division A of Part 15, or has not had disclosure in

accordance with Part 11 or he raises an objection to the indictment under Division C of Part 15 or under this Part.

(2) In the case of a corporation, the corporation may, by its representative, enter a plea in writing, and if either the corporation does not appear by its representative or, though it does so appear, fails to enter a plea, the High Court shall cause a plea of not guilty to be entered.

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

Explanation of rights and plea process at arraignment

130. (1) At arraignment, the judge shall inform the defendant of—

- (a) the offence charged by reading or causing the indictment to be read;
- (b) the obligation to enter a plea to the charge;
- (c) if necessary, the right to bail;
- (d) the right to receive an indication of the applicable range of sentences or options for sentencing before entering a plea;
- (e) the right, if any, to trial by jury if a not guilty plea is entered; and
- (f) the right to know the maximum penalty and any mandatory minimum penalty provided by law for the offence charged.

(2) The judge shall explain the plea process to the defendant, including—

- (a) the pleas that are permitted by law;
- (b) that if the defendant pleads not guilty, the case will be scheduled for trial;
- (c) that sentence may be reduced if there is an early guilty plea; and
- (d) that sentence reduction will be less for a defendant who pleads guilty at a later stage.

Pleading to the Indictment

131. When the accused is called on to plead, he may plead either guilty or not guilty, or the pleas in bar as are provided in this Part.

Charge of previous conviction

132. Where an indictment contains a count charging the accused with having been previously convicted, he shall not, at the time of his arraignment, be required to plead to it unless he pleads guilty to the rest of the indictment, nor shall the count be mentioned to the jury when, in the case of a trial by jury, the accused is given in charge to them, or when they are sworn, nor shall he be tried on it if he is acquitted on the other counts; but, if he is convicted on any other part of the indictment he shall be asked whether he has been previously convicted as alleged or not, and, if he says that he has not or does not say that he has been so convicted, the judge, or in the case of a trial by jury, the jury, shall be charged to inquire into the matter as in other cases.

Proceedings when guilty plea made

133. (1) If on arraignment the accused pleads guilty, he may be convicted on the indictment.

(2) Before accepting a plea of guilty to an indictment, the judge must assure himself or herself, either by questioning the defendant either personally, or, at the judge's discretion, by calling on counsel to lead the questioning, that the defendant committed the offence, that the plea of guilty is voluntarily made, and that it is made with an understanding of the consequences of the plea.

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

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

Proceedings for other pleas

134. If on arraignment the accused pleads not guilty, or if a plea of not guilty is entered on his behalf in accordance with section 119, the High Court shall proceed to try the case.

Record

135. A plea, including a plea in bar, shall be recorded by the Registrar, or other proper officer of the High Court.

F. Arraignment of accused committed for sentence

Powers of High Court and judge respecting committals for sentence

136. A judge of the High Court when sitting to deal with persons committed for sentence shall possess all the powers, authorities and jurisdiction vested in the High Court with respect to the trial of criminal cases in the exercise of the ordinary criminal jurisdiction of the High Court.

Arraignment of accused committed for sentence

137. (1) The accused person or corporation shall be called on to plead to the indictment in the same manner as if he had been committed for trial, and he may plead, either that he is guilty of the offence charged in the indictment, or with the consent of the prosecutor, of any other offence of which he might be convicted on the indictment.

(2) The accused may also plead not guilty or a plea in bar.

Power of Court to enter not guilty plea

138. If the accused person pleads in the High Court that he is not guilty, or if, although he pleads that he is guilty it appears to the High Court on the examination of the evidence from the Sufficiency Hearing that he has not in fact committed the offence charged in the indictment, or any other offence, of which he might be convicted on the indictment, a plea of not guilty shall be entered and the trial is to proceed as in other cases when that plea is entered, and the judge shall postpone the case for trial at the regular criminal sessions of the High Court, and may remand the accused to prison or admit him to bail in the meantime.

*G. Scheduling Order***Scheduling Order for trial**

139. After arraignment, the judge shall make a Scheduling Order setting out the next steps in the process, including where applicable—

- (a)* the dates by which the prosecution and the defence must make the required disclosure, if such disclosure is not already made;
- (b)* the date by which pre-trial applications must be filed;
- (c)* the date of the first case management hearing; and
- (d)* the projected trial date.

PART 17

INDICTABLE CASES: JURIES

Procedure relating to jurors

140. All matters relating to the calling, challenging, empanelling or swearing of jurors, or otherwise in respect of any matter relating to juries for which no express provision is made in this Code, shall be conducted in accordance with the provisions in the Jury Act dealing with those matters.

Giving prisoner in charge of Court

141. At the commencement of the trial, after the jury, if any, is sworn, the Registrar shall call the prisoner to the bar and addressing the Court, shall

state the substance of the offences charged in the indictment and shall say “to this indictment he has pleaded not guilty and it is your charge to say, having heard the evidence, whether he be guilty or not guilty”.

PART 18

TRIAL ON INDICTMENT: GENERAL MATTERS

A. Attendance of accused

Bench warrant where accused does not appear

142. Where any person against whom an indictment is preferred, and who is at large, does not appear for trial, whether he is under recognizances or not, the High Court may issue a warrant for his arrest.

Bringing up prisoner for trial

143. (1) If a person against whom an indictment is preferred is at the date appointed for the trial confined in prison for some other cause, the judge, by order in writing, may direct the gaoler to bring up the accused as often as may be required for the purpose of the trial.

(2) The gaoler shall obey the order.

(3) The person shall for all purposes be deemed to be in lawful custody during the period when he is absent from prison in accordance with the order.

Evidence to be taken in accused’s presence

144. (1) Except as may be otherwise provided by any law, all evidence taken in a hearing or trial under this Code shall be taken in the presence of the accused, unless, with his consent, his absence has been dispensed with in accordance with this Code.

(2) All evidence shall be recorded in English and if any evidence is given in any other language it shall be interpreted; and in the case of any documents tendered in evidence which are written in a foreign language a translation shall be provided. Any interpretation or translation shall be made by a person appointed or approved for the purpose by the High Court.

(3) If the accused does not understand English any evidence given shall be interpreted to him in a language which he understands.

B. Attendance of witnesses

Summons for witness

145. (1) If it is made to appear on the statement of the complainant or the defendant or otherwise, that material evidence can be given by or is in the possession of any person, the High Court having cognizance of a criminal cause or matter may issue a summons to the person requiring his attendance

before the High Court or requiring him to bring and produce to the High Court for the purpose of evidence documents and writings in his possession or power which may be specified or otherwise sufficiently described in the summons.

(2) The Governor acting on the advice of Cabinet may make regulations prescribing scales of fees and expenses payable to witnesses summoned to give evidence in criminal cases.

Warrant for witness who disobeys summons

146. If without sufficient excuse, a witness does not appear in obedience to a summons, the High Court, on proof of the proper service of the summons within a reasonable time beforehand, may issue a warrant to bring him before the High Court at such time and place as shall be therein specified.

Warrant for witness in first instance

147. If the High Court is satisfied by evidence of an oath that a person summoned as a witness will not attend unless compelled to do so, such High Court may at once issue a warrant for the arrest and production of the witness before the High Court at a time and place to be therein specified.

Mode of dealing with witness arrested under warrant

148. When any witness is arrested under a warrant the High Court may on his furnishing security, by recognizance or deposit of cash to the satisfaction of the High Court, for his appearance at the hearing of the case, order him to be released from custody, or shall, on his failing to furnish such security, order him to be detained in custody for production at such hearing.

Power of High Court to order prisoner to be brought up for examination

149. In a case in which a High Court requires to examine as a witness in any proceedings before the High Court a person confined in a prison, the High Court may order the prisoner to be brought before it in accordance with section 29(2).

Penalty for non-attendance of witness

150. (1) A person summoned to attend as a witness who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the High Court, or fails to attend after adjournment of the High Court after being ordered to attend is liable by order of the High Court to a fine of \$5,000.

(2) The fine if not paid may be levied by attachment and sale of any movable property belonging to the witness within the limits of the jurisdiction of the High Court.

(3) In default of recovery of the unpaid fine by attachment and sale of goods, the witness may, by order of the High Court, be imprisoned as a civil prisoner for a term of fifteen days unless the fine is paid before the end of the said term.

(4) For good cause shown, the High Court may remit or reduce any fine imposed under this section by the magistrate's court.

Power to summon material witness or examine person present

151. (1) The High Court may, at any time, summon or call a person as a witness or recall and re-examine any person already examined, and the High Court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case.

(2) However, the prosecutor or the counsel for the prosecution and the defendant or his counsel have the right to cross-examine the person, and the High Court shall adjourn the case for the time (if any) that it thinks necessary to enable cross-examination to be adequately prepared, if in its opinion, either party may be prejudiced by the calling of the person as a witness.

Refractory witness

152. (1) If a person, appearing either in obedience to a summons or by virtue of a warrant, or being present in the High Court and being orally required by the High Court to give evidence—

- (a) refuses to be sworn;
- (b) having been sworn, refuses to answer any question put to him;
- (c) refuses or neglects to produce any document or thing which he is required to produce and which is in his possession or under his control; or
- (d) refuses to sign his deposition,

without in any such case offering any sufficient excuse for such refusal or neglect, the High Court may adjourn the case for any period exceeding ten days, and may in the meantime commit such person to prison, unless he sooner consents to do what is required of him.

(2) If the person, on being brought before the High Court at or before such adjourned hearing, again refuses to do what is required of him, the High Court may, if it sees fit, again adjourn the case and commit him for the like period, and so again from time to time until such person consents to do what is so required of him.

(3) Nothing in this section shall 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 prevent the High Court from disposing of the case in the meantime according to any other sufficient evidence taken before it.

*C. Incapacity of accused***High Court to inquire into suspected incapacity of accused**

153. When in the course of a trial the High Court has reason to suspect that the accused person is of unsound mind so that he is incapable of making his defence, the High Court shall inquire into the fact of such unsoundness and for this purpose may receive evidence and may postpone the proceedings and remand the accused person for a medical report.

Procedure when accused found insane during proceedings

154. (1) If the High Court finds that the accused person is of unsound mind and incapable of making his defence it shall postpone further proceedings in the case.

(2) If the case is one in which bail may be taken, the High Court may release the accused person on sufficient surety being given that he will be properly taken care of and prevented from doing injury to himself or to any other person, and for his appearance, if called on, before the High Court or any officer of the High Court appointed in that behalf.

(3) If the case is one in which bail may not be taken or if sufficient surety cannot be given or the High Court, for any sufficient reason, considers that bail ought not to be granted, the High Court shall report the matter to the Governor who may order the accused person to be detained in any hospital or other place appointed by any law for reception or custody of persons of unsound mind; and the Governor may from time to time make such further order in the case for the detention, treatment or otherwise of the accused as the circumstances may require. Pending the order of the Governor in any such case the High Court shall direct that the accused person be remanded in custody.

(4) The powers conferred on the Governor by this section shall be exercised by him in his discretion.

Resumption of proceedings if accused ceases to be incapable

155. Whenever a trial is postponed under section 72, 153 or 154 the High Court may at any time resume the Hearing or trial, unless the accused person is detained pursuant to an order by the Governor given under section 154(3), and require the accused to appear or be brought before the High Court, when if the High Court finds him capable of making his defence, the Hearing or trial shall proceed, but if the High Court considers the accused person still to be incapable of making his defence, it shall act as if the accused were brought before it for the first time.

***Prima facie* evidence of capacity of accused may be given by certificate**

156. If an accused person is confined in a hospital or other place appointed by law for the reception or custody of persons who are mentally ill, under any order made in exercise of any power conferred by this code, and the

medical practitioner in charge of such hospital or place certifies that the accused person is capable of making his defence, the Governor may order that such accused person shall be taken before the High Court having jurisdiction in the case to be dealt with according to law, and the certificate of such medical practitioner shall be receivable by the High Court as *prima facie* evidence of the capacity of the accused person.

D. Objections

Time for raising objections

157. (1) The proper time for making objections at a trial on the grounds of improper admission or rejection of evidence, or any irregularity or informality in the proceedings (other than defects in the indictment) shall be as follows—

- (a) if the objection is to admission or rejection of evidence, at the time of such admission or rejection;
- (b) if the irregularity or informality occurs before verdict, objection shall be made before verdict;
- (c) if the irregularity or informality occurs in the giving of the verdict or at any time before sentence is pronounced the objection shall be made before sentence is pronounced.

(2) The High Court shall so far as possible correct any irregularity or informality which occurs in the proceedings and may direct the trial to be recommenced, for this purpose, at any stage before the verdict is given.

(3) This section does not derogate from any powers conferred on the Court of Appeal to entertain any appeal in the exercise of its criminal jurisdiction.

PART 19

TRIAL ON INDICTMENT: THE PROSECUTION CASE

Case for the prosecution

158. After the accused has been given in charge of the Court under section 141, the counsel for the prosecution may open the case against the accused, and adduce evidence in support of the charge.

Additional evidence for the prosecution

159. (1) A witness who has not given evidence at the Sufficiency Hearing shall not be called by the prosecution at any trial unless the accused person has received notice in writing of the intention to call such witness.

(2) The notice must state the witness's name and give the substance of the evidence which he intends to give. It shall be for the High Court to determine in any particular case what notice is reasonable, regard being had

to the time when and the circumstances under which the prosecution became acquainted with the nature of the witness's evidence and decided to call him as a witness.

(3) Where the prosecution becomes aware that a witness who gave evidence at the Sufficiency Hearing proposes to give material evidence which he did not give at the Sufficiency, the prosecution shall, as soon as possible, give the accused person notice in writing of the substance of the new evidence, and such notice is deemed to form part of the witness statements of the Sufficiency Hearing.

Cross-examination of prosecution witnesses

160. Subject to Parts 33 and 34 of this Code and the Evidence Act, the witnesses called for the prosecution shall be subject to cross-examination by the accused person or his counsel, and to re-examination by the prosecution.

Witness statement may be read in certain cases

161. (1) If a person has been committed for trial for any offence and the conditions set out in subsections (2) and (3) are satisfied, the witness statement of a person filed in the High Court may be read as evidence on the trial of that person, without further proof, 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 that the statement must be—

- (a) of a witness whose attendance at the trial is stated to be unnecessary in accordance with section 92;
- (b) of a witness whose statement was taken in accordance with section 93 and who is proved at the trial, by the oath of a credible witness, to be dead, insane, absent from Montserrat or so ill as not to be able to travel;
- (c) of a witness whose statement was taken at the Sufficiency Hearing but who is proved at the trial, by the oath of a credible witness to be dead, insane, absent from Montserrat or so ill as not to be able to travel; or
- (d) of a witness who is proved to the satisfaction of the High Court, by evidence on oath, to be kept away by means of the procurement of the accused or on his behalf.

(3) A statement shall not be read into evidence if the statement is that of a witness whose attendance at the trial was stated to be unnecessary, and the witness has been duly notified subsequently that he is required to attend the trial.

High Court to record finding of not guilty

162. When the evidence of the witnesses for the prosecution has been concluded, and the statement or evidence (if any) of the accused person before the committing judge has been given in evidence, the High Court, if it considers that there is no evidence that the accused or any one of several accused committed the offence, shall, after hearing any arguments which the prosecution or the defence may desire to submit, record a finding of not guilty.

High Court to invite the defence to put its case

163. When the evidence of the witnesses for the prosecution has been concluded, and the statement or evidence (if any) of the accused person before the committing judge has been given in evidence, the High Court, if it considers that there is evidence that the accused person, or any one or more of several accused persons, committed the offence, shall inform each such accused person of his right to address the High Court, either personally or by his counsel (if any), to give evidence on his own behalf, and to call witnesses in his defence, and in all cases shall require him or his counsel to state whether it is intended to call any witnesses as to fact other than the accused person himself.

PART 20

TRIAL ON INDICTMENT: THE DEFENCE CASE

Procedure if person charged is the only witness called

164. (1) If the only witness of the facts of the case called by the defence is the person charged, he shall be called as a witness immediately after the close of the evidence for the prosecution.

(2) In cases where the right of reply depends on the question whether evidence has been called for the defence, the fact that the person charged has been called as a witness shall not of itself confer on the prosecution the right of reply.

Statement of witnesses for defence

165. Section 161 applies to defence witness statements other than the statement or evidence, if any, of the accused.

Case for the defence

166. (1) The accused person or his counsel may then open his case, stating the facts or law on which he intends to rely, and making the comments that he thinks necessary on the evidence for the prosecution.

(2) The accused person may then give evidence on his own behalf and he or his counsel may examine his witnesses (if any) and after their cross-

examination by the prosecution and re-examination (if any) may sum up his case.

(3) The accused person or his counsel shall not open the case for the defence by addressing the High Court if no witnesses as to the facts are to be called by the defence except the accused person.

Additional witness for the defence

167. (1) The accused person shall be allowed to examine a witness not previously bound over to give evidence at the trial if the witness is in attendance.

(2) If the accused person apprehends that the witness will not attend the trial voluntarily, he is entitled to apply for the issue of process to compel the witness's attendance.

(3) However, an accused person is not entitled to an adjournment to secure the attendance of a witness unless he shows that he could not by reasonable diligence have taken earlier steps to obtain the presence of the witness.

PART 21

TRIAL ON INDICTMENT: PROCEDURE BETWEEN CLOSE OF DEFENCE EVIDENCE AND RETIREMENT OF JURY

Evidence to rebut new and unforeseen matters

168. If the accused person adduces evidence in his defence introducing new matter which the prosecution could not have foreseen, the High Court may allow the prosecution to call evidence in reply to rebut such new matter.

Where accused adduces no evidence

169. If the accused person says that he does not desire to call evidence and the High Court considers that there is evidence on which he could be convicted of the offence, counsel on both sides or the accused person if he is unrepresented may address the High Court.

Right to reply

170. (1) On the trial of any person on indictment the prosecution is not entitled to the right to reply on the ground only that the Director of Public Prosecutions appears for the Crown at the trial. (*Amended by Act 9 of 2011*)

(2) The time at which the prosecution is entitled to exercise any right of reply shall, despite any other law or practice, be after the close of the evidence for the defence and before the closing speech (if any) by or on behalf of the accused.

High Court may require witness to be called

171. If the High Court is of the opinion that any witness who is not called for the prosecution ought to be so called, it may require the prosecution to call him and, if the witness is not in attendance, may make an order that his attendance be procured and adjourn the further hearing of the case until the witness attends, or may on the application of the accused discharge the jury and postpone the trial.

Recalling a witness

172. (1) The judge may call a witness at any stage of the trial before the conclusion of the summing up, whether or not the witness has been called before the High Court in the course of the trial or not, and to examine the witness.

(2) If a witness for the prosecution is recalled by the judge or by leave of the judge, the accused or his counsel shall be allowed to cross-examine him on the new evidence given.

(3) In any other case a witness called under this section may only be cross-examined by either party with the leave of the judge.

Summing up by the judge

173. When the case on both sides is closed the judge shall, as necessary, sum up the law and the evidence in the case.

PART 22

TRIAL ON INDICTMENT: PROCEDURE RELATING TO VERDICT

Consideration of verdict

174. After the summing up, the Court, or, in the case of a trial by jury, the jury, shall consider the verdict.

Verdict of not guilty

175. If the Court, or, in the case of a trial by jury, the jury, finds the accused not guilty, he shall be immediately discharged from custody on that indictment.

Alternative convictions

176. (1) On an indictment for murder a person found not guilty of murder may be found guilty of—

- (a) manslaughter, or of causing grievous bodily harm;
- (b) assisting an offender;

- (c) an attempt to commit murder, or of an attempt to commit any other offence of which he might be found guilty;
- (d) infanticide;
- (e) killing an unborn child; or
- (f) concealing the birth of a child (where the murder charged is that of a child),

but may not be found guilty of an offence not included above.

(2) Where, on a person's trial for any offence except treason or murder, the High Court finds him not guilty of the offence specifically charged but the allegations in the indictment amount to or include (expressly or by implication) an allegation of another offence falling within the jurisdiction of the High Court, the High Court may find him guilty of that other offence or of an offence of which he could be found guilty, on the facts found to be proved, on an indictment specifically preferring that other offence.

(3) For the purposes of subsection (2) any allegations of an offence shall be taken as including an allegation of attempting to commit that offence; and where a person is charged with attempting to commit an offence or with any assault or other act preliminary to an offence, but not with the complete offence, then (subject to the discretion of the High Court to discharge the jury, where there is one, with a view to the preferment of an indictment for the complete offence) he may be convicted of the offence charged although he is shown to be guilty of the completed offence.

(4) Where a person pleads not guilty of the offence charged but guilty of some other offence of which he might be found guilty on that charge, and is convicted on that plea of guilty without trial for the offence of which he pleaded not guilty, then (whether or not the two offences are separately charged in distinct counts) his conviction of the one offence shall be an acquittal of the other.

Special verdict where accused found guilty, but insane at date of offence charged

177. Where in any indictment any act or omission is charged against any person as an offence and it is given in evidence on his trial for that offence that he was insane so as not to be responsible, according to law, for his action at the time when the act was done or omission made, then, if it appears to the Court, in the case of a trial by jury, the jury, before whom he is tried that he did the act or made the omission charged but was insane at the time when he did or made it, it shall return a special verdict that the accused was guilty of the act or omission charged against him, but was insane at the time when he did the act or made the omission.

Recording of verdict

178. (1) The verdict shall be recorded by the Registrar, in accordance with Part 29, before the jury, if any, is discharged.

(2) The verdict of the jury, if there is one, shall not be recorded unless accepted by the Court.

Mode of delivering judgment

179. (1) Except in a case in which the personal attendance of the accused person has been dispensed with under this Code or any other law or by leave of the High Court, the judgment of the High Court in the exercise of its original jurisdiction in a criminal trial shall be pronounced, or the substance of such judgment explained in open court either immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties and their legal representatives, if any.

(2) However, the whole judgment shall be read out by the judge if requested so to do either by the prosecution or the defence.

(3) In any case in which judgment is required to be read, or the substance explained, in open court, the accused person is required to be present to hear the same.

Contents of judgment

180. (1) In the case of a conviction the judgment shall specify—

- (a)* the offence of which the accused person is convicted;
- (b)* the section of the law under which, the accused person is convicted; and
- (c)* the punishment to which the accused is sentenced or other lawful order of the High Court on such conviction.

(2) In the case of an acquittal the judgment shall—

- (a)* state the offence of which the accused person is acquitted;
- (b)* state the section of the law under which the charge was preferred; and
- (c)* direct that the accused be set at liberty in respect of that offence.

Accused person entitled to copy of judgment on application

181. On the application of the accused person a copy of the judgment in a criminal trial, and if practicable and he so desires a translation in his own language if that language is not English, shall be given to him without delay and free of any charge.

PART 23

TRIAL ON INDICTMENT: GENERAL SENTENCING PROCEDURE

Calling on the accused

182. If the accused person is convicted, or if the accused pleads guilty, the Registrar shall ask him if he has anything to say why sentence should not be passed on him according to law, but the omission to ask him shall have no effect on the validity of the proceedings.

Taking offences and evidence into consideration

183. (1) Before passing sentence, the High Court shall receive the evidence that it thinks fit in order to inform itself as to the sentence proper to be passed and shall hear counsel on any mitigating or other circumstances which may be relevant.

(2) The Court may also take one or more other offences committed by the offender into consideration, if—

- (a)* the offender has admitted one or more other charges and requested that they be taken into consideration;
- (b)* the offences to which the other charges relate are of a similar nature to the offence for which sentence is being imposed and are otherwise within the jurisdiction of the Court; and
- (c)* the prosecutor does not object to those offences being taken into consideration.

(3) The Court shall not take an offence into consideration if it considers that it would be in the public interest for the offence to be charged and tried separately.

(4) Where the Court takes one or more other offences into consideration, it may impose, in respect of the offence with which the defendant is charged, a sentence more severe than it would have imposed had it not taken any offence into consideration except that, if the maximum sentence for an offence is fixed by law, the court shall not exceed that maximum sentence.

(5) Where an offence is taken into consideration in accordance with this section, no further proceedings may be taken with respect to that offence unless the conviction for the offence with which the offender is charged is set aside or quashed on appeal.

Sentence

184. (1) If no motion in arrest of a judgment is made, or if the High Court decides against the accused person on such motion, the High Court may sentence the accused person at any time during the session of the High Court in which the trial took place or may, in its discretion discharge him on his own recognizances or on that of such sureties as the High Court may think

fit, or both, to appear and receive judgment at the same or some future sitting of the High Court or when called on.

(2) A sentence imposed under subsection (1) may be varied or rescinded by the judge at any time during the same session of the High Court during which it was imposed and in such event is deemed to have taken effect from the day on which the original sentence was imposed, unless the High Court otherwise directs.

(3) However, for the purposes of any provision relating to the time within which an appeal may be made, a sentence which has been varied is considered to have been imposed on the date on which it was varied.

Sentences which the High Court may impose

185. (1) The High Court may pass any sentence authorised by law to be inflicted in respect of the offence for which it is imposed.

(2) The High Court may pass any lawful sentence combining any of those sentences which it is authorised by law to pass.

(3) In determining the extent of the High Court's jurisdiction under this Code to pass a sentence of imprisonment, the High Court is deemed to have jurisdiction to pass the full sentence of imprisonment permitted under this section in addition to any term of imprisonment which may be awarded in default of payment of a fine, costs or compensation.

Reduction in sentence for guilty plea

186. Except in cases where a minimum sentence is mandated by law, a judge may give a defendant who pleads guilty at arraignment credit for an early plea of guilty, thereby reducing the sentence that would have been imposed had the defendant been convicted at trial.

Sentences in cases of conviction of several offences at one trial

187. (1) When a person is convicted at one trial of two or more distinct offences the High Court may sentence him to the several punishments prescribed for the offences which the High Court is competent to impose.

(2) The punishments, when consisting of imprisonment, are to commence one after the expiration of the other, unless the High Court directs that the sentences shall run concurrently.

Provision for custody of accused person found insane

188. (1) If any person is found to be insane before or on arraignment, or a special verdict is formed against him under section 177, the High Court shall order him to be conveyed to any hospital or other place for the time being appointed under any law to be a public asylum for persons of unsound mind or for the reception of criminal persons of unsound mind, there to be kept until discharged by order of the Governor.

(2) If a convict is sent to a hospital or other place under this section, the officers of the hospital or place may exercise the same powers and authorities for the restraint and punishment of the convict that the gaoler or other officer may exercise in respect of persons sentenced to imprisonment.

(3) The Governor may issue all necessary orders for the care, control and custody of a convicted person of unsound mind.

Recording of sentence

189. The sentence of the High Court shall be recorded by the Registrar in accordance with Part 29.

Objections cured by verdict

190. No judgment shall be stayed or reversed on the ground of any objection, which if stated after the indictment was read over to the accused person, or during the progress of the trial, might have been amended by the High Court nor for any informality in swearing the witnesses or any of them.

Property found on accused person

191. (1) Where, on the apprehension of a person charged with an offence, property is taken from him, the High Court before which he is charged may order—

- (a) that the property or any part thereof be restored to the person who appears to the High Court to be entitled thereto, and if he be the person charged, that it be restored either to him or to such other person as he may direct; or
- (b) that the property or a part thereof be applied to the payment of any fine or any costs or compensation directed to be paid by the person charged.

(2) Other provisions relating to property seized are set out in sections 5(4), (5) and (6).

Disposal of property after completion of trial

192. (1) A High Court before which a person has been tried for an offence involving theft, obtaining property by deception, handling stolen goods or other offence by which he is alleged to have wrongfully come into possession of any property, may direct the restitution of the property to its owner or his representative or, if the owner cannot be found, may give such directions, at the conclusion of the trial, for the disposal of the property as it thinks fit.

(2) Other provisions relating to property seized are set out in section 5(4), (5) and (6).

PART 24

SUMMARY CASES: COMPLAINT AND CHARGE

*A. Form and Content of Charge***Content of charge**

193. A charge shall contain, and, subject to this Code, shall be sufficient if it contains, a statement of the specific offence or offences with which the accused is charged, together with the particulars necessary for giving reasonable information as to the nature of the offence alleged and the acts or omissions alleged to have given rise to the offence.

Joinder of offences in the same charge

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

(2) Where more than one offence is alleged in a charge, a description of each offence so charged shall be set out in a separate paragraph of the charge and is called a count.

Joinder of two or more accused in one charge

195. The following persons may be joined in one charge and may be tried together—

- (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 different offences all of which are founded on the same facts or form, or are part of, a series of offences of the same or similar character.

Rules for the framing of charges

196. (1) Schedule 2 to this Code other than rules 1 and 2 apply with the necessary modification to charges.

(2) Despite any rule of law or practice to the contrary, a charge is not open to objection in respect of its form or contents if it is framed in accordance with those Rules.

(3) Without prejudice to subsections (1) and (2), a count shall not be considered objectionable or insufficient on any of the following grounds, namely that—

- (a) it contains only one name of the accused;
- (b) one name only or no name of the injured person is stated;
- (c) the name or identity of the owner of any property is not stated;
- (d) it charges an intent to defraud without naming or describing the person whom it was intended to defraud;
- (e) it does not set out any document which may be the subject of the charge;
- (f) it does not set out the words used where words used are the subject of the charge;
- (g) the means by which the offence was committed is not stated;
- (h) the district in which the offence was committed is not stated; or
- (i) any person or thing is not described with precision.

(4) However, if it appears to the magistrate's court that the interests of justice and the avoidance of prejudice to the accused person so require, the magistrate's court shall order that the complainant or the prosecutor furnish particulars further describing or specifying any of these matters.

B. Restrictions on offences with which accused may be charged

Provisions relating to indictments apply with necessary modifications

197. Sections 109 to 113 relating to restrictions on offences that may be charged in an indictment and proof of convictions apply with the necessary modifications to offences that may be included in a charge.

C. Amendment of Complaint or Charge

Amendment of charge

198. (1) If, at any stage of a trial before the close of the case for the prosecution, it appears to the magistrate's court that the charge is defective, either in substance or in form, the magistrate's court may make an order for the alteration, substitution or addition of a charge, as the magistrate's court thinks necessary to meet the circumstances of the case.

(2) However, if a charge is altered, added or substituted—

- (a) the magistrate's court shall call on the accused person to plead to the altered or new charge;
- (b) the accused person is entitled, if he so wishes, to have the witnesses (or any of them) recalled to give evidence afresh or to be further cross-examined by the defence; and
- (c) the prosecution may re-examine a witness on matters arising out of further cross-examination under paragraph (b).

No amendment for error in date of offence

199. Variance between a charge and the evidence adduced in support of it with respect to the day on which the alleged offence was committed is not ordinarily material and the charge need not be amended for such variance if it is proved that the proceedings were in fact instituted within the time (if any) limited by law for the institution thereof and the actual date is not material on any other ground.

Adjournment if accused misled

200. Where an alteration, addition or substitution of a charge is made under subsection (1) or there is a variance between the evidence and the charge as described in subsection (2), the magistrate's court shall, if it is of the opinion that the accused has been thereby misled or deceived, adjourn the trial for such period as may be reasonably necessary in the interest of justice.

D. Time within which trial should take place

Limitation of time for proceedings for summary offences

201. (1) Except where a longer time is specially allowed by law, a magistrate's court shall not try an accused for an offence triable only summarily unless the charge (in proceedings commenced by arrest and charge) or the complaint (in proceedings commenced by complaint) relating to it was laid within six months from the time when the matter of such complaint or charge arose or the date on which evidence sufficient to justify proceedings first came to the actual or constructive knowledge of a competent complainant.

(2) However, if the circumstances giving rise to the complaint or charge occurred on a vessel on the high seas, then the magistrate's court has jurisdiction if the complaint or charge was laid within six months after the arrival of the vessel at her port of discharge in Montserrat.

PART 25

SUMMARY CASES: INITIAL HEARING

Date to be held

202. (1) The Initial Hearing shall commence on the return date of the summons or warrant or when the accused first appears before the magistrate after having been arrested without warrant and shall continue on the date to which the magistrate adjourns the Hearing from time to time.

(2) If the accused has not been granted bail, the Initial Hearing shall take place within seventy two hours of arrest.

Matters to be dealt with

203. (1) At the Initial Hearing in summary matters the magistrate shall—

- (a) verify the defendant's identity and contact information, unless verified previously by a court officer;
 - (b) acknowledge counsel's appearance if the defendant is represented by counsel;
 - (c) read the charges to the defendant;
 - (d) explain to the defendant his rights;
 - (e) consider bail;
 - (f) hear and review of any applications made by the prosecution or the defendant;
 - (g) explain the plea process;
 - (h) notify the defendant of the next court date at which his or her appearance is required; and
 - (i) make a Scheduling Order fixing the dates for the milestones in the case as required by the rules of court.
- (2) At the Initial Hearing in summary matters, the magistrate may—
- (a) conduct a trial at once if the defendant requests an immediate trial and the prosecutor consents; or
 - (b) adjourn the trial and make any order for the efficient management of the case prescribed by the rules.
- (3) Nothing in this section shall be construed as preventing a defendant from retaining counsel at a subsequent stage of the proceedings.

Explanation of rights and other relevant information

- 204. (1)** At the Initial Hearing, the magistrate shall inform the defendant of—
- (a) the offence charged by reading or causing the charge to be read to the defendant in a language that he or she understands;
 - (b) the right to bail, if any;
 - (c) the right to retain counsel, including the right to request an adjournment to retain counsel;
 - (d) the right to remain silent, except as to plea and the right to know that any statement made may be used against him or her;
 - (e) the right to enter a plea to the charges;
 - (f) the right to trial, if a not guilty plea is entered; and
 - (g) the right, in the circumstances stated in clause 205(3), to an interpreter.
- (2) The magistrate shall explain the plea process to the defendant, including—

- (a) that the defendant has the option to plead either guilty or not guilty;
- (b) that if the defendant offers a plea of guilty to a summary offence, and the plea is accepted by the magistrate he or she will not receive a trial and will be sentenced by the magistrate;
- (c) that if the defendant pleads not guilty, the case will be set down for trial and an order setting a projected trial date will be entered.

PART 26

SUMMARY TRIAL: GENERAL MATTERS

A. Attendance of the accused

Evidence to be taken in accused's presence

205. (1) Except as may be otherwise provided by any law, all evidence taken in a hearing or trial under this Code shall be taken in the presence of the accused, unless, with his consent, his absence has been dispensed with in accordance with this Code.

(2) All evidence shall be recorded in English and if any evidence is given in any other language it shall be interpreted; and in the case of any documents tendered in evidence which are written in a foreign language a translation shall be provided. Any interpretation or translation shall be made by a person appointed or approved for the purpose by the magistrate's court.

(3) If the accused does not understand English any evidence given shall be interpreted to him in a language which he understands.

B. Failure of parties to appear

When neither party appears

206. If at the time and place appointed for a trial under this Part neither party appears, the magistrate's court may dismiss or adjourn the case as it considers fit.

Non-appearance of complainant at trial

207. If the accused person appears at the time and place appointed in the summons for the hearing of the case, or is brought before the magistrate's court under arrest, then, if the complainant, having had notice of the time and place appointed for the hearing of the charge, does not appear, either in person or by a legal practitioner or other person authorised to represent him, the magistrate's court shall dismiss the charge, unless for some reason the magistrate's court thinks proper to adjourn the hearing of the case to some other date, on such terms as it shall think fit, in which event it may, pending such adjourned hearing, either admit the accused to bail or remand him in

custody, or take such security for his appearance as the magistrate's court shall think fit.

Non-appearance of defendant at the trial

208. If at the time and place of hearing appointed in a summons the defendant does not appear, and it be proved that the summons was duly served a reasonable time before the time appointed for his appearance, and if the magistrate's court is satisfied on any sufficient evidence that the accused has wilfully refused to attend or otherwise may be deemed to have consented to the trial taking place in his absence, the magistrate's court may either proceed to adjudicate on the case as if the defendant had appeared or, if the magistrate's court is not satisfied that the defendant has so consented or considers that it is inexpedient for any other reason that the trial should proceed in the absence of the accused, the magistrate's court may issue a warrant for the arrest of the defendant in accordance with section 28 and may adjourn the trial to some other date.

C. Attendance of witnesses

Provisions in respect of witnesses in trial on indictment apply

209. Sections 145 to 152 in respect of attendance of witnesses for trial on indictment apply with the necessary modifications to summary trial.

D. Incapacity in the context of summary trial

Magistrate's court to inquire into suspected incapacity of accused

210. When in the course of preliminary proceedings or trial in the magistrate's court the magistrate's court has reason to suspect that the accused person is of unsound mind so that he is incapable of making his defence, the magistrate's court shall inquire into the fact of such unsoundness and for this purpose may receive evidence and may postpone the proceedings and remand the accused person for a medical report.

Provisions in respect of incapacity in trial on indictment apply

211. Sections 153 to 156 in respect of incapacity of the accused in trial on indictment apply with the necessary modifications to summary trial.

E. Objections

Provisions in respect of objections in trial on indictment apply

212. Section 157 in respect of the raising of objections in trial on indictment applies with the necessary modifications to summary trial.

PART 27

SUMMARY TRIAL: THE COURSE OF TRIAL

*A. Taking of Pleas***Appearance of both parties**

213. (1) If both parties appear, the magistrate's court shall proceed to hear the case and the substance of the charge or complaint shall be read to the accused person by the magistrate's court and he shall be asked whether he admits or denies it.

(2) In a case in which the defendant is a corporation, it shall be sufficient if the corporation appears by a representative appointed in writing purporting to be signed by a person (by whatever name called) having, or being one of the persons having the management of the affairs of the corporation.

(3) At the time and place appointed under this section or section 207 or 208 for any adjourned hearing, the magistrate's court shall have the same powers to proceed with, dismiss or adjourn the case as if the complaint was before the magistrate's court for the first time.

If accused pleads guilty

214. (1) If the accused person admits the truth of the charge, his admission shall be recorded as nearly as possible in the words used by him, and the magistrate's court shall convict him and pass sentence on or make an order against him.

(2) Before accepting a plea of guilty, the magistrate must assure himself or herself, by questioning the defendant either personally or, at the magistrate's discretion, by calling on counsel for the defendant to lead the questioning, that the defendant committed the offence, that the plea of guilty is voluntarily made, (and not as a result of any threats or inducements not disclosed on the record), and that it is made with an understanding of the consequences of the plea.

(3) A magistrate may refuse to accept a plea of guilty if he or she believes it is in the interests of justice to do so.

(4) If a plea of guilty is rejected, no admission made by the defendant at that stage of the proceedings shall be admissible in evidence against the defendant at trial.

Pleas in other cases

215. (1) If the accused person pleads not guilty, the magistrate's court shall proceed to try the case as hereinafter provided.

(2) If the accused person refuses to plead, the magistrate's court shall direct that a plea of not guilty be entered for him, or in an appropriate case may act in accordance with section 210.

B. The Prosecution Case

Procedure after plea of not guilty

216. If the accused person does not admit the truth of the charge, the magistrate's court shall proceed to hear the witnesses for the prosecution. The accused person or his counsel may cross-examine each witness called by the prosecution and if the accused person is not represented by counsel the magistrate's court shall, at the close of the examination of each witness for the prosecution, ask the accused person whether he wishes to put any question to that witness and shall record his answer. If the accused desires to question a witness, the magistrate's court shall record the questions put by the accused and the answers given by the witness.

Opening and closing of cases for prosecution

217. (1) Subject to subsection (2), the prosecutor shall be entitled to address the magistrate's court at the commencement of his case.

(2) If the accused person, or any one of several accused persons, adduces any evidence, the prosecutor shall be entitled to address the magistrate's court again.

Acquittal of accused person if no case to answer

218. At the close of the evidence in support of the charge, the magistrate's court shall consider whether or not a sufficient case is made out against the accused person to require him to make a defence, and if the magistrate's court considers that such a case is not made out the charge shall be dismissed and the accused acquitted and discharged.

C. The Defence Case

The defence

219. (1) At the close of the evidence in support of the charge, if it appears to the magistrate's court that a case is made out against the accused person sufficiently to require him to make a defence, the magistrate's court shall—

- (a)* again explain the substance of the charge to the accused;
- (b)* inform him that he need not say anything, but that he has a right to give evidence on oath from the witness box and that, if he does so he will be liable to cross-examination; and
- (c)* ask him whether he has any witnesses to examine or other evidence to adduce in his defence.

(2) The magistrate's court shall then hear the accused and his witnesses (if any) and shall permit the accused to question any witnesses whom he calls.

Procedure if person charged is the only witness called

220. (1) If the only witness of the facts of the case called by the defence is the person charged, he shall be called as a witness immediately after the close of the evidence for the prosecution.

(2) In cases where the right of reply depends on the question whether evidence has been called for the defence, the fact that the person charged has been called as a witness shall not of itself confer on the prosecution the right of reply.

Magistrate's court may compel attendance of defence witness

221. If the accused person states that he has witnesses to call but that they are not present in magistrate's court, and the magistrate's court is satisfied that the absence of such witnesses is not due to any fault or neglect of the accused person and that there is a likelihood that they could, if present, give material evidence on behalf of the accused person, the magistrate's court may adjourn the trial and issue process or take other steps, as necessary to compel the attendance of such witnesses.

Opening and closing of case for defence

222. (1) Subject to subsection (2), the accused person or his counsel shall be entitled to address the magistrate's court at the commencement and in conclusion of his case.

(2) The accused person or his counsel shall not open the case for the defence by addressing the magistrate's court if no witnesses as to the facts are to be called by the defence except the accused person.

D. The Reply

Evidence in reply

223. If the accused person adduces evidence in his defence introducing a new matter which the prosecutor could not reasonably have foreseen, the magistrate's court may allow the prosecutor to adduce evidence in reply to rebut the said new matter.

E. Judgement

Decision of the magistrate's court

224. (1) The magistrate's court having heard both the prosecutor and the accused person and their witnesses shall either convict the accused and pass sentence on or make an order against him according to law or shall acquit him or may without proceeding to conviction deal with the accused person under the Probation of Offenders Act.

(2) The decision of the magistrate's court may include an order for the payment of the costs (or any part thereof) of the prosecutor by the accused,

in the case of a conviction, or of the accused by the prosecutor in the case of an acquittal.

Mode of delivering judgment

225. (1) Except in a case in which the personal attendance of the accused person has been dispensed with under this Code or any other law or by leave of the magistrate's court, the judgment of the magistrate's court in the exercise of its original jurisdiction in a criminal trial shall be pronounced, or the substance of such judgment explained in open court either immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties and their legal representatives, if any.

(2) However, the whole judgment shall be read out by the magistrate if requested so to do either by the prosecution or the defence.

(3) In any case in which judgment is required by subsection (1) to be read, or the substance thereof explained, in open court the accused person shall be required to be present to hear the same.

Contents of judgment

226. (1) In the case of a conviction the judgment shall specify the offence of which, and the section of the law under which, the accused person is convicted and the punishment to which he is sentenced or other lawful order of the magistrate's court on such conviction.

(2) In the case of an acquittal the judgment shall state the offence of which the accused person is acquitted, and the section of the law under which the charge was preferred and shall direct that he be set at liberty in respect of that offence.

(3) Every judgment in a summary trial, except as otherwise expressly provided by this Code or any other law, shall be written by the presiding magistrate and shall contain the point or points for determination, the decision thereon and the reason for the decision, and shall be dated and signed by such magistrate in open court at the time of pronouncing it.

(4) However, in a case in which the accused person has admitted the truth of the charge and has been convicted, it shall be sufficient compliance with this subsection if the judgment contains only the finding and sentence or other final order and is signed and dated by the presiding magistrate at the time of pronouncing it.

Drawing up conviction

227. If the magistrate's court convicts the accused person, a minute or memorandum thereof shall then be made and the conviction shall afterwards be drawn up by the magistrate in proper form under his hand and seal, and a copy thereof transmitted by him to the Registrar before the date on which an appeal against the conviction will be heard.

Certificate of acquittal

228. If the magistrate's court acquits the accused person the magistrate shall, when requested to do so, make an order for the dismissal of the charge and give the accused person a certificate of acquittal which shall constitute proof of the acquittal.

Accused person entitled to copy of judgment on application

229. On the application of the accused person a copy of the judgment in any criminal trial, and if practicable and he so desires a translation in his own language if that language is not English, shall be given to him without delay and free of any charge.

PART 28

SUMMARY TRIAL: SENTENCING

Punishments which the magistrate's court may impose

230. (1) Whenever under provisions of any law the Court, on the summary conviction of any person for an offence, has power to pass a sentence of imprisonment or to impose a fine, unless in the context a contrary intention appears, such provisions shall be construed as fixing the maximum penalty and shall confer a power to pass any sentence not exceeding the term of imprisonment or the amount of the fine prescribed for that offence.

(2) Where it is provided by any law that an offence shall be punishable on summary conviction by a term of imprisonment and the Court is not given the option of imposing a fine, the Court may, nevertheless, impose a fine of \$1,000, instead of a term of imprisonment, in a case in which the offender has not previously been convicted of the same offence:

Provided that the amount of the fine so imposed does not subject the offender, in default of payment, to any longer term of imprisonment than that to which he would otherwise have been liable for the offence of which he has been convicted.

(3) Where it is provided by any law that an offender shall be required to enter into recognizances or to find sureties for keeping the peace or for observing any condition or to do any act, the magistrate, in his discretion, may dispense with any such requirement or any part thereof.

(4) Subsections (1) to (3) do not apply to any proceedings taken under any enactment relating to Her Majesty's regular or auxiliary forces, and shall not be construed to permit the reduction of the amount of any fine where the enactment prescribing such amount carries into effect any treaty, convention or other international agreement where such treaty, convention or other international agreement stipulates for a fine of a minimum amount.

(5) The magistrate's court may pass sentences as follows—

- (a) in the case where the law creating the offence stipulates a sentence, the sentence permitted to be imposed by the law for the offence;
 - (b) in any case not falling within the terms of paragraph (a), imprisonment for a term of six months or a fine of \$5,000.
- (6) The magistrate's court may pass any lawful sentence combining any of those sentences which it is authorised by law to pass.

(7) In determining the extent of a magistrate's court's jurisdiction under this Code to pass a sentence of imprisonment, the magistrate's court is deemed to have jurisdiction to pass the full sentence of imprisonment permitted under this section in addition to any term of imprisonment which may be awarded in default of payment of a fine, costs or compensation.

Sentences in cases of conviction of several offences at one trial

231. (1) When a person is convicted at one trial of two or more distinct offences the magistrate's court may sentence him to the several punishments prescribed for the offences which the magistrate's court is competent to impose.

(2) The punishments, when consisting of imprisonment, are to commence one after the expiration of the other, unless the magistrate's court directs that the sentences shall run concurrently.

(3) In the case of consecutive sentences it is not necessary for the magistrate's court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is permitted to impose on conviction of a single offence, to send the offender for trial before the High Court.

(4) However, the aggregate punishment shall not exceed twice the amount of punishment which the magistrate's court is competent to impose in the exercise of its ordinary jurisdiction.

Where magistrate's court awards imprisonment without option of fine, prisoner shall be committed to prison

232. Where the magistrate's court convicts a person and orders him to be imprisoned without the option of a fine, the magistrate's court shall, by warrant, commit him to prison, there to be imprisoned for the period mentioned in the warrant.

Powers of magistrate when imposing a fine or other monetary penalty

233. (1) Subject to this section, the magistrate's court, on recording a conviction by which any sum (including any costs) is adjudged to be paid, may do all or any of the following things—

- (a) order imprisonment in the first instance unless such sum be paid forthwith;

- (b) allow time for the payment of the said sum;
- (c) direct payment to be made of the said sum by instalments;
- (d) issue a warrant of distress for the levying of the said sum;
- (e) order imprisonment in default or sufficient distress or of the payment of any instalment.

(2) The magistrate's court shall not exercise its powers under paragraph (a) unless it is satisfied that the convicted person has the means to pay forthwith and refuses so to do, or does not desire time to pay or that there are special reasons, to be recorded in the warrant of commitment, why the magistrate's court should not allow time for payment.

(3) Subject to the express provisions of any other law, a sentence of imprisonment imposed by the magistrate's court for non-payment of a sum to which this section refers shall not exceed six months.

Property found on accused person

234. (1) Where, on the apprehension of a person charged with an offence, any property is taken from him, the magistrate's court before which he is charged may order—

- (a) that the property or any part thereof be restored to the person who appears to the magistrate's court to be entitled thereto, and if he be the person charged, that it be restored either to him or to such other person as he may direct; or
- (b) that the property or a part thereof be applied to the payment of any fine or any costs or compensation directed to be paid by the person charged.

(2) Other provisions relating to property seized are set out in section 5(4), (5) and (6).

Disposal of property after completion of trial

235. (1) A magistrate's court before which any person has been tried for an offence involving theft, obtaining property by deception, handling stolen goods or other offence by which he is alleged to have wrongfully come into possession of any property, may direct the restitution of such property to the owner thereof or his representative or, if the owner cannot be found, may give such directions, at the conclusion of the trial, for the disposal of the property as it thinks fit.

(2) Other provisions relating to property seized are set out in section 5(4), (5) and (6).

Alternative convictions

236. (1) Where, on a person's trial for any offence the magistrate's court finds him not guilty of the offence specifically charged but the allegations in the charge amount to or include (expressly or by implication) an allegation

of another offence falling within the jurisdiction of the magistrate's court, the magistrate's court may find him guilty of that other offence or of an offence of which he could be found guilty, on the facts found to be proved, on a charge specifically preferring that other offence.

(2) For the purposes of subsection (1) an allegation of an offence shall be taken as including an allegation of attempting to commit that offence; and where a person is charged with attempting to commit an offence or with any assault or other act preliminary to an offence, but not with the complete offence, then he may be convicted of the offence charged although he is shown to be guilty of the completed offence.

(3) If a person pleads not guilty of the offence charged but guilty of some other offence of which he might be found guilty on that charge, and is convicted on that plea of guilty without trial for the offence of which he pleaded not guilty, then (whether or not the two offences are separately charged in distinct counts) his conviction of the one offence shall be an acquittal of the other.

PART 29

RECORD OF PROCEEDINGS

A. General

Practice Directions by Chief Justice

237. The Chief Justice may issue Practice Directions as to the manner in which evidence or the substance of it is to be taken down in proceedings before a criminal Court.

B. Magistrate's Court

Manner of recording evidence

238. (1) This section is subject to section 239 and to any Practice Directions.

(2) In proceedings in the magistrate's court, the evidence of a witness, or as much of it as the presiding magistrate considers material, shall be recorded by the magistrate's court, and shall be signed by the presiding magistrate and shall form part of the record.

(3) The evidence shall not ordinarily be recorded in the form of question and answer but in the form of narrative, however, the magistrate may in his discretion, cause to be recorded any particular question and answer or the evidence or any part thereof in any particular case in the form of question and answer.

(4) At the request of a witness his evidence shall be read over to him.

(5) Any erroneous or defective entry in the record may at any time be amended by the magistrate in accordance with the facts. Any such amendment shall be signed and dated by the magistrate.

Special procedure in cases where the charge is admitted

239. (1) Despite section 238, but subject to any Practice Directions, a magistrate may in any case in which the accused person admits the offence, record the proceedings in accordance with this section.

(2) Subject to subsection (3), in a case to which this section applies it is sufficient compliance with the requirements of this Code relating to the manner of recording of evidence if the magistrate, when the accused makes a statement admitting the truth of the charge, instead of recording the accused person's statement in full, enters in the record a plea of guilty, and it shall be sufficient compliance with section 226, relating to the contents of the judgment, if the judgment of the magistrate's court consists only of the finding, the specific offence to which it relates and the sentence or other order.

(3) A magistrate may be required by the Court of Appeal to state in writing the reasons for his decision in any particular case.

C. High Court

Minute of proceedings in trial before High Court

240. (1) This section is subject to any Practice Directions.

(2) The Registrar shall keep and preserve in the office of the High Court the following which shall constitute the record of the proceedings—

- (a) the indictment;
- (b) the plea to it;
- (c) the verdict; and
- (d) the judgement and sentence of the High Court.

(3) In proceedings in the High Court, the evidence of a witness, or as much of it as the presiding judge considers material, shall be recorded by the High Court, and once signed by the presiding judge, they constitute the judge's notes and shall be kept and preserved by the Registrar.

(4) Any erroneous or defective entry in the judge's notes may at any time be amended by the judge in accordance with the facts. Any such amendment shall be signed and dated by the judge.

Recording proceedings of persons committed for sentence

241. The Registrar or other proper officer shall attend before a judge in any proceedings respecting persons committed for sentence and keep a record of them in the same way as in other proceedings in the High Court.

PART 30

MAGISTERIAL APPEALS

Appeals from decisions of magistrate's court

242. (1) Save as hereafter in this Code provided, a person who is dissatisfied with a judgment, sentence or order of the magistrate's court in a criminal cause or matter to which he is a party may appeal to the Court of Appeal against the judgment, sentence or order either by motion on matters of law or fact (or both), or by way of case stated on a point of law only, as hereafter provided, and the Court of Appeal shall have jurisdiction to hear and determine any appeal in accordance with this Part.

(2) However, the complainant shall not appeal from a decision dismissing a complaint except by way of a case stated on a point of law.

(3) For the purposes of an appeal the Director of Public Prosecutions is considered to be a party to any criminal cause or matter other than those in which the proceedings were instituted and carried on as a private prosecution and in which the conduct of the proceedings has not been taken over by the Director of Public Prosecutions under section 15(5). (*Amended by Act 9 of 2011*)

Magistrate to inform accused person of right to appeal

243. (1) When a person is convicted by the magistrate's court, the magistrate shall inform him, at the time when the sentence is passed, of his right of appeal and the steps which must be taken by a party wishing to appeal and a note shall be made at the time by the magistrate that this information has been given by him to the person and the note shall be conclusive as to this section having been complied with.

(2) On being so informed, the convicted person may then and there give oral notice of his intention to appeal, and the notice shall be recorded by the magistrate and by the prosecutor.

(3) An appellant who has not given notice of appeal under subsection (2), or who has given notice under that subsection but has not at the same time stated the general grounds of his appeal, within fourteen days after the day on which the decision was given from which the appeal is made, shall serve notice in writing, signed by the appellant or his counsel, on the other party and on the magistrate's court, stating his intention to appeal and of the general grounds of his appeal.

(4) However, a person aggrieved by the decision of the magistrate's court may, on notice to the other party, apply to the Court of Appeal for leave to extend the time prescribed within which the notice of appeal referred to in this section may be served, and the Court of Appeal on hearing the application may extend such time as it considers fit, and may do so either before or after the expiration of the time so prescribed.

Limitations on right of appeal

244. An appeal shall not be allowed in a case in which the accused person has pleaded guilty, and has been convicted by the magistrate's court of the plea, except as to the extent or legality of the sentence, unless the plea is alleged to have been equivocal or not voluntary.

Manner of instituting appeal

245. An appeal shall be on motion or by special case stated.

Appeal to operate as a stay

246. (1) Subject to subsections (2) and (3), an appeal has the effect of suspending the execution of the decision appealed against until the appeal is determined.

(2) If the decision involves a sentence of imprisonment the filing of an appeal does not require that the convicted person be released from custody except in accordance with section 249.

(3) If the decision involves the cancellation or suspension of a licence to drive a motor vehicle the licence is considered suspended until the determination of the appeal unless any Court otherwise directs on application made by the appellant.

Recognizance for security to be taken

247. (1) Within three days after he serves notice of his intention to appeal, the appellant shall—

- (a)* enter into a recognizance before a magistrate, with or without sureties as the magistrate may direct, conditioned to prosecute the appeal to judgment, and to pay any costs awarded; or
- (b)* give another security by deposit of money with the magistrate's court or otherwise as the magistrate considers sufficient, if the magistrate thinks it expedient.

(2) However, if the complainant acts on behalf of the Crown, the Director of Public Prosecutions, the Commissioner of Police or a department of the Government or is a public officer acting in his official capacity he shall not be required to be bound by any recognizance or to give any security.
(Amended by Act 9 of 2011)

Transmission of appeal papers

248. (1) As soon as the appellant has filed the notice of appeal and has complied with any requirements of section 247, the magistrate's court shall transmit to the Court of Appeal as soon as possible a copy of the conviction, order or judgment and all papers relating to the appeal.

(2) If the appellant is represented by counsel, the counsel shall lodge with the Registrar and serve on the respondent, within the time limited by the

rules of court, a notice containing particulars of matters of law or fact in regard to which the magistrate's court is alleged to have erred.

Admission of appellant to bail

249. (1) If the appellant is in custody, a judge or the magistrate's court may, if in the circumstances of the case he or it thinks fit, order that he be released on bail with or without sureties, pending the determination of the appeal.

(2) If the appeal is abandoned or withdrawn, or is dismissed, the order for bail is automatically cancelled.

Time spent awaiting appeal may be computed as part of sentence

250. (1) If an appellant is released on bail or the sentence is suspended pending an appeal, time during which he is at large after being so released or during which the sentence has been suspended is to be excluded in computing the term of any sentence to which he is subject.

(2) If an appellant whose sentence is suspended is not released from custody, the Court hearing the appeal, in its discretion, may order that the time so spent in custody, or any part of it, awaiting the hearing of the appeal, may be included in computing the terms of the sentence.

(3) An appellant whose sentence is suspended but who is not admitted to bail shall during the period in custody during such suspension be treated in the same manner as a prisoner awaiting trial.

Case stated

251. In all cases of appeal by way of case stated the appellant shall, within the times and in the manner and form required by this Code, serve a notice of appeal and enter into recognizances, and shall within fourteen days after the day on which the magistrate's court gave the decision from which the appeal is made apply to it to state a special case for the purpose of the appeal, setting out the facts of the case and the grounds on which the proceeding is questioned and the grounds of the Court's decision.

Remedy if case stated refused

252. (1) A magistrate may refuse to state a case if he considers the matter is frivolous, and shall on request, deliver to the appellant a certificate of refusal, whereupon the appellant may apply to the Court of Appeal for an order requiring the case to be stated.

(2) A magistrate shall not refuse to state a case where the application for that purpose is made to him by or under the direction of the Director of Public Prosecutions. (*Amended by Act 9 of 2011*)

Duty of magistrate's court as to case stated

253. (1) The magistrate, on receiving the application of the appellant, or an order of the Court of Appeal on the appellant's behalf, shall, subject to

section 251, draw up the special case, concisely setting out the facts and documents (if any) that may be necessary to enable the Court of Appeal to decide the questions raised in the case, and shall as soon as possible transmit the same together with a copy of the conviction, order or judgment appealed from and all documents alluded to in the special case to the Registrar who, on application of either party shall supply the applicant with a copy of the case stated on payment for the same of any prescribed charge.

(2) A case stated under this section shall, in addition to any other matter which appears to the magistrate to be relevant, set out—

- (a) the charge, summons, information or complaint in respect of which the proceedings arose;
- (b) the facts found by the magistrate's court to be admitted or proved;
- (c) any submission of law made by or on behalf of the complainant during the hearing or trial;
- (d) any submission of law made by or on behalf of the accused person during the hearing or trial;
- (e) the finding and, in the case of conviction, the sentence of the magistrate's court;
- (f) any question of law which the magistrate or any of the parties desires to be submitted for the opinion of the Court of Appeal; and
- (g) any question of law which the Director of Public Prosecutions may require to be submitted for the opinion of the Court of Appeal. (*Amended by Act 9 of 2011*)

Appellant entitled to copies of evidence

254. On an appeal by motion the appellant on serving notice on the magistrate's court of his intention to appeal and on entering into recognizances, is entitled to receive with all convenient speed a copy of the evidence taken by the Court in the case, and also a copy of the conviction, order or judgment made or given.

Court of Appeal to set appeal down for argument

255. (1) Subject to subsection (2), the Court of Appeal shall set the appeal, whether on motion or by case stated, down for argument on a day that it directs, and shall cause notice of the date to be published in the manner that it considers appropriate.

(2) Except when otherwise agreed by the parties, notice is to be given by the Court of Appeal of the date appointed for the hearing of an appeal within the time limited by the rules.

Appeal not a re-hearing unless the Court of Appeal so directs

256. (1) Subject to subsection (2), on an appeal by motion, unless the Court of Appeal considers the justice of the case requires a re-hearing, the appellant shall begin, and unless he satisfies the Court of Appeal that it is necessary to call on the respondent, the conviction, order or judgment shall be confirmed.

(2) If the Court of Appeal directs a re-hearing, the respondent, if the issue is with him, shall begin and prove his case, and the Court of Appeal may, if the justice of the case requires it, adjourn the hearing to a convenient day.

Procedure on hearing of appeal on motion

257. At the hearing of an appeal on motion, the appellant shall, before going into the case, state all the grounds of appeal on which he intends to rely, and shall not, unless by leave of the Court of Appeal, go into any matters not raised by the statement, nor shall he be entitled to examine a witnesses not examined at the hearing of the case before the magistrate's court unless he has given to the respondent notice within the time limited by the rules of court in writing of the names and addresses of the witnesses and of the substance of the evidence they will give and unless he has subsequently obtained the leave of the Court of Appeal for the examination.

Court of Appeal on hearing appeal on motion to decide facts and law

258. On an appeal by motion the Court of Appeal may draw inferences of fact from the evidence given before the magistrate's court, and, subject to the due notice having been given, may hear any further evidence tendered by the appellant, and may take and admit, if it thinks fit, any further evidence tendered in reply and also such other evidence as it may require, and it may decide the appeal with reference both to matters of fact and to matters of law.

On appeal by special case Court of Appeal confined to facts and evidence stated

259. On appeal by special case the Court of Appeal shall entertain such appeal on the ground only that the decision of the magistrate's court was erroneous in point of law, or in excess of jurisdiction, and only on the facts stated and the evidence mentioned in the special case. The Court of Appeal may remit the case to the magistrate's court for amendment or restatement if necessary, or for re-hearing and determination in accordance with the directions that may be considered necessary.

Powers of Court of Appeal on hearing appeals

260. The Court of Appeal may adjourn the hearing of the appeal, and may confirm, reverse, vary or modify the decision of the magistrate's court or remit the matter with the opinion of the Court of Appeal to the magistrate's court, or may make any other order in the matter that it thinks just, and may by the order exercise any power which the magistrate's court might have

exercised, and the order shall have the same effect and may be enforced in the same manner as if it had been made by the magistrate's court.

Costs

261. (1) The Court of Appeal hearing any appeal may make such order as to the costs to be paid by either party as it may think just.

(2) A magistrate is not liable to any costs in respect of any appeal against his decision.

Where appeal is abandoned Court of Appeal may give respondent his costs

262. If an appeal is abandoned or withdrawn, the Court of Appeal, on proof of notice of appeal having been given to the respondent, may make an order that the respondent shall receive the costs that the Court of Appeal may allow.

No appeal on point of form or matter of variance

263. Judgment shall not be given in favour of the appellant if the appeal is based on an objection to a charge, complaint, summons or warrant for an alleged defect in matter of substance or for any variance between the charge, complaint, summons or warrant and the evidence adduced in support, unless it be proved that the objection was raised before the magistrate's court.

Court of Appeal may decide on merits despite defect in form

264. The Court of Appeal may hear and determine an appeal on the merits, despite a defect in form or otherwise in the conviction, order or judgment, and if the appellant is found guilty, the conviction, order or judgment shall be confirmed and, if necessary, amended.

Defect in order or warrant of commitment not to render void

265. (1) A conviction or order shall not be quashed or removed by *certiorari* into the High Court or the Court of Appeal for want of form.

(2) A warrant or commitment shall not be held void by reason of a defect, if it is alleged that the party has been convicted or ordered to do or abstain from doing any act or thing required to be done or left undone, and there is a good and valid conviction or order to sustain the same.

Where conviction confirmed, warrant may issue as though no appeal had been made

266. (1) If the decision of the magistrate's court is confirmed on appeal, the Registrar shall inform the magistrate's court, and the magistrate's court may issue a warrant of distress, or commitment, or writ of execution, as the case may be, for enforcing the decision in the same manner as though no appeal had been brought.

(2) If the decision is not confirmed, the Registrar shall send to the magistrate's court, for entry in the registry of that court and shall also endorse on the conviction, order or judgment appealed against, a memorandum of the decision of the Court of Appeal, and if a copy or certificate of the conviction, judgment or order is made, a copy of the memorandum is to be added to it, and shall be sufficient evidence of the decision on appeal in every case where such copy or certificate would be sufficient evidence of such conviction, order or judgment.

PART 31

JUVENILES

Court in which proceedings involving juveniles to be held

267. (1) When a juvenile is charged with a summary offence, or an offence triable either way in which the mode of trial is determined under Division C of Part 9 to be summary trial, then, unless the juvenile is charged jointly with a person who is not a juvenile, the charge shall not be heard before the magistrate's court but shall be heard before a court established under the Juveniles Act, and the procedure at the hearing shall be in accordance with that Act.

(2) Where a juvenile is charged, with a summary offence or an offence triable either way in which the mode of trial is determined under Division C of Part 9 to be summary trial, jointly with a person who has attained the age of sixteen years or that person is charged at the same time with aiding, abetting, causing, procuring, allowing or permitting that offence, the charge shall be heard by the magistrate's court, in accordance with this Code.

(3) When a juvenile is charged with an indictable-only offence or an offence triable either way in which the mode of trial is determined under Division C of Part 9 to be on indictment, the procedure shall be in accordance with this Code.

Powers of Court and procedure in respect of juveniles

268. When a juvenile is brought before a Court charged with any offence in a case which is not required to be heard before a Juvenile Court, the Court shall have in relation to that juvenile all the powers of a Juvenile Court established under the Juveniles Act.

PART 32

VULNERABLE AND INTIMIDATED WITNESSES:
SPECIAL MEASURES DIRECTIONS*A. Preliminary***Interpretation of Part 32**

269.(1) In this Part—

“**eligible witness**” means a witness eligible for assistance by virtue of section 270 or 271;

“**live link**” means a live television link or other arrangement whereby a witness, while absent from the courtroom or other place where the proceedings are being held, is able to see and hear a person there and to be seen and heard by the persons specified in section 277(2)(a) to (c);

“**quality**”, in relation to the evidence of a witness, shall be construed in accordance with section 270(5);

“**special measures direction**” means a direction under section 273.

(2) In this Part references to the special measures available in relation to a witness shall be construed in accordance with section 272.

(3) In this Part references to a person being able to see or hear, or be seen or heard by, another person are to be read as not applying to the extent that either of them is unable to see or hear by reason of any impairment of eyesight or hearing.

(4) In the case of any proceedings in which there is more than one accused—

(a) any reference to the accused in sections 277 to 282 may be taken by a Court, in connection with the giving of a special measures direction, as a reference to all or any of the accused, as the Court may determine; and

(b) any such direction may be given on the basis of any such determination.

Witnesses eligible for assistance on grounds of age or incapacity

270.(1) For the purposes of this Part, a witness in criminal proceedings (other than the accused) is eligible for assistance by virtue of this section—

(a) if under the age of seventeen at the time of the hearing; or

(b) if the Court considers that the quality of evidence given by the witness is likely to be diminished by reason of any circumstances falling within subsection (2).

(2) The circumstances falling within this subsection are—

- (a) that the witness—
 - (i) is of unsound mind within the meaning of the Mental Treatment Act; or
 - (ii) otherwise has a significant impairment of intelligence and social functioning;
 - (b) that the witness has a physical disability or is suffering from a physical disorder.
- (3) In subsection (1)(a) “**the time of the hearing**”, in relation to a witness, means the time when it falls to the Court to make a determination for the purposes of section 272(2) in relation to the witness.
- (4) In determining whether a witness falls within subsection (1)(b) the Court must consider any views expressed by the witness.
- (5) In this Part references to the quality of a witness’s evidence are to its quality in terms of completeness, coherence and accuracy, and for this purpose “**coherence**” refers to a witness’s ability in giving evidence to give answers which address the questions put to the witness and can be understood both individually and collectively.

Witnesses eligible for assistance on grounds of fear or distress about testifying

271.(1) For the purposes of this Part a witness in criminal proceedings (other than the accused) is eligible for assistance by virtue of this subsection if the Court is satisfied that the quality of evidence given by the witness is likely to be diminished by reason of fear or distress on the part of the witness in connection with testifying in the proceedings.

- (2) In determining whether a witness falls within subsection (1) the Court must take into account, in particular—
- (a) the nature and alleged circumstances of the offence to which the proceedings relate;
 - (b) the age of the witness;
 - (c) such of the following matters as appear to the Court to be relevant, namely—
 - (i) the social and cultural background and ethnic origins of the witness;
 - (ii) the domestic and employment circumstances of the witness; and
 - (iii) any religious beliefs or political opinions of the witness;
 - (d) any behaviour towards the witness on the part of—
 - (i) the accused;
 - (ii) members of the family or associates of the accused; or

(iii) any other person who is likely to be an accused or a witness in the proceedings.

(3) In determining that question the Court must in addition consider any views expressed by the witness.

(4) Where the complainant in respect of a sexual offence is a witness in proceedings relating to that offence (or to that offence and any other offences), the witness is eligible for assistance in relation to those proceedings by virtue of this subsection unless the witness has informed the Court of the witness's wish not to be so eligible by virtue of this subsection.

Special measures direction available to eligible witnesses

272.(1) For the purposes of this Part—

- (a) the provision which may be made by a special measures direction by virtue of each of sections 277 to 284 is a special measure available in relation to a witness eligible for assistance by virtue of section 270; and
- (b) the provision which may be made by such a direction by virtue of each of sections 277 to 282 is a special measure available in relation to a witness eligible for assistance by virtue of section 271,

but this subsection has effect subject to subsection (2).

(2) Where (apart from this subsection) a special measure would, in accordance with subsection (1)(a) or (b), be available in relation to a witness in any proceedings, it shall not be taken by a Court to be available in relation to the witness unless—

- (a) the Court has been notified by the Director of Public Prosecutions that relevant arrangements may be made available in the area in which it appears to the Court that the proceedings will take place; and
- (b) the notice has not been withdrawn.

(Amended by Act 9 of 2011)

(3) In subsection (2) “**relevant arrangements**” means arrangements for implementing the measure in question which cover the witness and the proceedings in question.

(4) The withdrawal of a notice under that subsection relating to a special measure shall not affect the availability of that measure in relation to a witness if a special measures direction providing for that measure to apply to the witness's evidence has been made by the court before the notice is withdrawn.

(5) The Director of Public Prosecutions may by order make such amendments of this Part as he considers appropriate for altering the special measures which, in accordance with subsection (1)(a) or (b), are available in

relation to a witness eligible for assistance by virtue of section 270 or (as the case may be) section 271, whether—

- (a) by modifying the provisions relating to any measure for the time being available in relation to such a witness;
 - (b) by the addition—
 - (i) (with or without modifications) of any measure which is available in relation to a witness eligible for assistance by virtue of the other of those sections; or
 - (ii) of any new measure; or
 - (c) by the removal of any measure.
- (Amended by Act 9 of 2011)*

B. Special Measures Directions

Special measures direction relating to eligible witness

273.(1) This section applies where in any criminal proceedings—

- (a) a party to the proceedings makes an application for the Court to give a direction under this section in relation to a witness in the proceedings other than the accused; or
- (b) the Court of its own motion raises the issue whether such a direction should be given.

(2) Where the Court determines that the witness is eligible for assistance by virtue of section 270 or 271, the Court must then—

- (a) determine whether any of the special measures available in relation to the witness (or any combination of them) would, in its opinion, be likely to improve the quality of evidence given by the witness; and
- (b) if so—
 - (i) determine which of those measures (or combination of them) would, in its opinion, be likely to maximise so far as practicable the quality of such evidence; and
 - (ii) give a direction under this section providing for the measure or measures so determined to apply to evidence given by the witness.

(3) In determining for the purposes of this Part whether any special measure or measures would or would not be likely to improve, or to maximise so far as practicable, the quality of evidence given by the witness, the Court must consider all the circumstances of the case, including in particular—

- (a) any views expressed by the witness; and

(b) whether the measure or measures might tend to inhibit such evidence being effectively tested by a party to the proceedings.

(4) A special measures direction must specify particulars of the provision made by the direction in respect of each special measure which is to apply to the witness's evidence.

(5) Nothing in this Part is to be regarded as affecting any power of a Court to make an order or give leave of any description (in the exercise of its inherent jurisdiction or otherwise)—

(a) in relation to a witness who is not an eligible witness; or

(b) in relation to an eligible witness where (as, for example, in a case where a foreign language interpreter is to be provided) the order is made or the leave is given except by reason of the fact that the witness is an eligible witness.

Further provisions about directions

274.(1) Subject to subsection 275(8), a special measures direction has binding effect from the time it is made until the proceedings for the purposes of which it is made are either—

(a) determined (by acquittal, conviction or otherwise); or

(b) abandoned,

in relation to the accused or (if there is more than one) in relation to each of the accused.

(2) The Court may discharge or vary (or further vary) a special measures direction if it appears to the Court to be in the interests of justice to do so, and may do so either—

(a) on an application made by a party to the proceedings, if there has been a material change of circumstances since the relevant time; or

(b) of its own motion.

(3) In subsection (2) “**the relevant time**” means—

(a) the time when the direction was given; or

(b) if a previous application has been made under that subsection, the time when the application (or last application) was made.

(4) Nothing in section 278(2) and (3), 281(4) to (7) or 282(4) to (6) is to be regarded as affecting the power of the Court to vary or discharge a special measures direction under subsection (2).

(5) The Court must state in open court its reasons for—

(a) giving or varying;

(b) refusing an application for, or for the variation or discharge of;
or

(c) discharging,

a special measures direction and, if it is a magistrate's court, must cause them to be entered in the register of its proceedings.

(6) Rules of Court may make provision—

- (a) for uncontested applications to be determined by the Court without a hearing;
- (b) for preventing the renewal of an unsuccessful application for a special measures direction except where there has been a material change of circumstances;
- (c) for expert evidence to be given in connection with an application for, or for varying or discharging, such a direction; and
- (d) for the manner in which confidential or sensitive information is to be treated in connection with such an application and in particular as to its being disclosed to, or withheld from, a party to the proceedings.

Special provisions relating to child witnesses

275.(1) For the purposes of this section—

- (a) a witness in criminal proceedings is a “**child witness**” if he is an eligible witness by reason of section 270(1)(a) (whether or not he is an eligible witness by reason of any other provision of section 270 or 271);
- (b) a child witness is “**in need of special protection**” if the offence (or any of the offences) to which the proceedings relate is—
 - (i) a sexual offence; or
 - (ii) an offence under Part 14, 15 or 16 of the Penal Code; and
- (c) a “**relevant recording**”, in relation to a child witness, is a video recording of an interview of the witness made with a view to its admission as evidence in chief of the witness.

(2) Where the Court, in making a determination for the purposes of section 273(2), determines that a witness in criminal proceedings is a child witness, the Court must—

- (a) first have regard to subsections (3) to (7) below; and
- (b) then have regard to section 273(2),

and for the purposes of section 273(2), as it then applies to the witness, any special measures required to be applied in relation to him by virtue of this section shall be treated as if they were measures determined by the Court, under section 273(2)(a) and (b)(i), to be ones that (whether on their own or

with any other special measures) would be likely to maximise, so far as practicable, the quality of his evidence.

(3) The primary rule in the case of a child witness is that the Court must give a special measures direction in relation to the witness which complies with the following requirements—

- (a) it must provide for any relevant recording to be admitted under section 281 (video recorded evidence in chief); and
- (b) it must provide for any evidence given by the witness in the proceedings which is not given by means of a video recording (whether in chief or otherwise) to be given by means of a live link in accordance with section 278.

(4) The primary rule is subject to the following limitations—

- (a) the requirement contained in subsection (3)(a) or (b) has effect subject to the availability (within the meaning of section 272(2)) of the special measure in question in relation to the witness;
- (b) the requirement contained in subsection (3)(a) also has effect subject to section 281(2); and
- (c) the rule does not apply to the extent that the Court is satisfied that compliance with it would not be likely to maximise the quality of the witness's evidence so far as practicable (whether because the application to that evidence of one or more other special measures available in relation to the witness would have that result or for any other reason).

(5) However, subsection (4)(c) does not apply in relation to a child witness in need of special protection.

(6) Where a child witness is in need of special protection by virtue of subsection (1)(b)(i), any special measures direction given by the Court which complies with the requirement contained in subsection (3)(a) must in addition provide for the special measure available under section 282 (video recorded cross-examination or re-examination) to apply in relation to—

- (a) any cross-examination of the witness except by the accused in person; and
- (b) any subsequent re-examination.

(7) The requirement contained in subsection (6) has effect subject to the following limitations—

- (a) it has effect subject to the availability (within the meaning of section 272(2)) of that special measure in relation to the witness; and
- (b) it does not apply if the witness has informed the Court that he does not want that special measure to apply in relation to him.

(8) Where a special measures direction is given in relation to a child witness who is an eligible witness by reason only of section 270(1)(a), then—

- (a) subject to subsection (9) below; and
- (b) except where the witness has already begun to give evidence in the proceedings,

the direction shall cease to have effect at the time when the witness attains the age of seventeen.

(9) Where a special measures direction is given in relation to a child witness who is an eligible witness by reason only of section 270(1)(a) and—

- (a) the direction provides—
 - (i) for any relevant recording to be admitted under section 281 as evidence in chief of the witness; or
 - (ii) for the special measure available under section 282 to apply in relation to the witness, and
- (b) if it provides for that special measure to so apply, the witness is still under the age of seventeen when the video recording is made for the purposes of section 282,

then, so far as it provides as mentioned in paragraph (a)(i) or (ii) above, the direction shall continue to have effect in accordance with section 274(1) even though the witness subsequently attains that age.

Extension of provisions of section 275 to certain witnesses over seventeen

276.(1) For the purposes of this section—

- (a) a witness in criminal proceedings (other than the accused) is a “**qualifying witness**” if he—
 - (i) is not an eligible witness at the time of the hearing (as defined by section 270(3)); but
 - (ii) was under the age of seventeen when a relevant recording was made;
- (b) a qualifying witness is “**in need of special protection**” if the offence (or any of the offences) to which the proceedings relate is—
 - (i) a sexual offence; or
 - (ii) an offence under Part 14, 15 or 16 of the Penal Code; and
- (c) a “**relevant recording**”, in relation to a witness, is a video recording of an interview of the witness made with a view to its admission as evidence in chief of the witness.

(2) Subsections 275(2) to (7) apply as follows in relation to a qualifying witness—

- (a) subsections (2) to (4), so far as relating to the giving of a direction complying with the requirement contained in subsection (3)(a), shall apply to a qualifying witness in respect of the relevant recording as they apply to a child witness (within the meaning of that section);
- (b) subsection (5), so far as relating to the giving of such a direction, shall apply to a qualifying witness in need of special protection as it applies to a child witness in need of special protection (within the meaning of that section); and
- (c) subsections (6) and (7) shall apply to a qualifying witness in need of special protection by virtue of subsection (1)(b)(i) above as they apply to such a child witness as is mentioned in subsection (6).

C. Special measures

Screening witness from accused

277.(1) A special measures direction may provide for the witness, while giving testimony or being sworn in Court, to be prevented by means of a screen or other arrangement from seeing the accused.

(2) But the screen or other arrangement must not prevent the witness from being able to see, and to be seen by—

- (a) the judge or justices (or both) and the jury (if there is one);
- (b) legal representatives acting in the proceedings; and
- (c) any interpreter or other person appointed (pursuant to the direction or otherwise) to assist the witness.

(3) Where two or more legal representatives are acting for a party to the proceedings, subsection (2)(b) is to be regarded as satisfied in relation to those representatives if the witness is able at all material times to see and be seen by at least one of them.

Evidence by live link

278.(1) A special measures direction may provide for the witness to give evidence by means of a live link.

(2) Where a direction provides for the witness to give evidence by means of a live link, the witness may not give evidence in any other way without the permission of the Court.

(3) The Court may give permission for the purposes of subsection (2) if it appears to the Court to be in the interests of justice to do so, and may do so either—

- (a) on an application by a party to the proceedings, if there has been a material change of circumstances since the relevant time; or
 - (b) of its own motion.
- (4) In subsection (3) “**the relevant time**” means—
- (a) the time when the direction was given; or
 - (b) if a previous application has been made under that subsection, the time when the application (or last application) was made.
- (5) Where in proceedings before a magistrate’s court—
- (a) evidence is to be given by means of a live link in accordance with a special measures direction; but
 - (b) suitable facilities for receiving such evidence are not available at the court-house in which that court can (apart from this subsection) lawfully sit,

the court may sit for the purposes of the whole or any part of those proceedings at a place where such facilities are available and which has been appointed for the purposes of this subsection by the justices acting for the petty sessions area for which the court acts.

(6) A place appointed under subsection (5) may be outside the petty sessions area for which it is appointed; but (if so) it is to be regarded as being in that area for the purpose of the jurisdiction of the justices acting for that area.

Evidence given in private

279.(1) A special measures direction may provide for the exclusion from the Court, during the giving of the witness’s evidence, of persons of any description specified in the direction.

- (2) The persons who may be so excluded do not include—
- (a) the accused;
 - (b) legal representatives acting in the proceedings; or
 - (c) any interpreter or other person appointed (pursuant to the direction or otherwise) to assist the witness.

(3) A special measures direction providing for representatives of news gathering or reporting organisations to be so excluded shall be expressed not to apply to one named person who—

- (a) is a representative of such an organisation; and
- (b) has been nominated for the purpose by one or more such organisations,

unless it appears to the Court that no such nomination has been made.

(4) A special measures direction may only provide for the exclusion of persons under this section where—

- (a) the proceedings relate to a sexual offence; or
- (b) it appears to the Court that there are reasonable grounds for believing that any person other than the accused has sought, or will seek, to intimidate the witness in connection with testifying in the proceedings.

(5) Any proceedings from which persons are excluded under this section (whether or not those persons include representatives of news gathering or reporting organisations) shall nevertheless be taken to be held in public for the purposes of any privilege or exemption from liability available in respect of fair, accurate and contemporaneous reports of legal proceedings held in public.

Removal of gowns

280. A special measures direction may provide for the wearing of gowns to be dispensed with during the giving of the witness's evidence.

Video recorded evidence in chief

281.(1) A special measures direction may provide for a video recording of an interview of the witness to be admitted as evidence in chief of the witness.

(2) A special measures direction may, however, not provide for a video recording, or a part of such a recording, to be admitted under this section if the Court is of the opinion, having regard to all the circumstances of the case, that in the interests of justice the recording, or that part of it, should not be so admitted.

(3) In considering for the purposes of subsection (2) whether any part of a recording should not be admitted under this section, the Court must consider whether any prejudice to the accused which might result from that part being so admitted is outweighed by the desirability of showing the whole, or substantially the whole, of the recorded interview.

(4) Where a special measures direction provides for a recording to be admitted under this section, the Court may nevertheless subsequently direct that it is not to be so admitted if—

- (a) it appears to the Court that—
 - (i) the witness will not be available for cross-examination (whether conducted in the ordinary way or in accordance with any such direction); and
 - (ii) the parties to the proceedings have not agreed that there is no need for the witness to be so available; or
- (b) any rules of Court requiring disclosure of the circumstances in which the recording was made have not been complied with to the satisfaction of the Court.

- (5) Where a recording is admitted under this section—
- (a) the witness must be called by the party tendering it in evidence, unless—
 - (i) a special measures direction provides for the witness's evidence on cross-examination to be given except by testimony in Court; or
 - (ii) the parties to the proceedings have agreed as mentioned in subsection (4)(a)(ii); and
 - (b) the witness may not give evidence in chief except by means of the recording—
 - (i) as to any matter which, in the opinion of the Court, has been dealt with adequately in the witness's recorded testimony; or
 - (ii) without the permission of the Court, as to any other matter which, in the opinion of the Court, is dealt with in that testimony.
- (6) Where in accordance with subsection (2) a special measures direction provides for part only of a recording to be admitted under this section, references in subsections (4) and (5) to the recording or to the witness's recorded testimony are references to the part of the recording or testimony which is to be so admitted.
- (7) The Court may give permission for the purposes of subsection (5)(b)(ii) if it appears to the Court to be in the interests of justice to do so, and may do so either—
- (a) on an application by a party to the proceedings, if there has been a material change of circumstances since the relevant time; or
 - (b) of its own motion.
- (8) In subsection (7) “**the relevant time**” means—
- (a) the time when the direction was given; or
 - (b) if a previous application has been made under that subsection, the time when the application (or last application) was made.
- (9) The Court may, in giving permission for the purposes of subsection (5)(b)(ii), direct that the evidence in question is to be given by the witness by means of a live link; and, if the Court so directs, section 282(5) to (7) shall apply in relation to that evidence as they apply in relation to evidence which is to be given in accordance with a special measures direction.
- (10) A judge holding a Sufficiency Hearing may consider any video recording in relation to which it is proposed to apply for a special measures

direction providing for it to be admitted at the trial in accordance with this section.

(11) Nothing in this section affects the admissibility of any video recording which would be admissible apart from this section.

Video recorded cross-examination or re-examination

282.(1) Where a special measures direction provides for a video recording to be admitted under section 281 as evidence in chief of the witness, the direction may also provide—

- (a) for any cross-examination of the witness, and any re-examination, to be recorded by means of a video recording; and
- (b) for such a recording to be admitted, so far as it relates to any such cross-examination or re-examination, as evidence of the witness under cross-examination or on re-examination, as the case may be.

(2) Such a recording must be made in the presence of such persons as rules of court or the direction may provide and in the absence of the accused, but in circumstances in which—

- (a) the judge or magistrate and legal representatives acting in the proceedings are able to see and hear the examination of the witness and to communicate with the persons in whose presence the recording is being made; and
- (b) the accused is able to see and hear any such examination and to communicate with any legal representative acting for him.

(3) Where two or more legal representatives are acting for a party to the proceedings, subsection (2)(a) and (b) are to be regarded as satisfied in relation to those representatives if at all material times they are satisfied in relation to at least one of them.

(4) Where a special measures direction provides for a recording to be admitted under this section, the court may nevertheless subsequently direct that it is not to be so admitted if any requirement of subsection (2) or rules of Court or the direction has not been complied with to the satisfaction of the Court.

(5) Where pursuant to subsection (1) a recording has been made of any examination of the witness, the witness may not be subsequently cross-examined or re-examined in respect of any evidence given by the witness in the proceedings (whether in any recording admissible under section 281 or this section or except in such a recording) unless the Court gives a further special measures direction making such provision as is mentioned in subsection (1)(a) and (b) in relation to any subsequent cross-examination, and re-examination, of the witness.

(6) The Court may only give such a further direction if it appears to the Court—

- (a) that the proposed cross-examination is sought by a party to the proceedings as a result of that party having become aware, since the time when the original recording was made pursuant to subsection (1), of a matter which that party could not with reasonable diligence have ascertained by then; or
- (b) that for any other reason it is in the interests of justice to give the further direction.

(7) Nothing in this section shall be read as applying in relation to any cross-examination of the witness by the accused in person (in a case where the accused is to be able to conduct any such cross-examination).

Examination of witness through intermediary

283.(1) A special measures direction may provide for any examination of the witness (however and wherever conducted) to be conducted through an interpreter or other person approved by the Court for the purposes of this section (“**an intermediary**”).

(2) The function of an intermediary is to communicate—

- (a) to the witness, questions put to the witness; and
- (b) to any person asking such questions, the answers given by the witness in reply to them,

and to explain such questions or answers so far as necessary to enable them to be understood by the witness or person in question.

(3) Any examination of the witness pursuant to subsection (1) must take place in the presence of such persons as rules of court or the direction may provide, but in circumstances in which—

- (a) the judge or magistrate and legal representatives acting in the proceedings are able to see and hear the examination of the witness and to communicate with the intermediary; and
- (b) (except in the case of a video recorded examination) the jury (if there is one) are able to see and hear the examination of the witness.

(4) Where two or more legal representatives are acting for a party to the proceedings, subsection (3)(a) is to be regarded as satisfied in relation to those representatives if at all material times it is satisfied in relation to at least one of them.

(5) A person may not act as an intermediary in a particular case except after making a declaration, in such form as may be prescribed by rules of court, that he will faithfully perform his function as intermediary.

(6) Subsection (1) does not apply to an interview of the witness which is recorded by means of a video recording with a view to its admission as

evidence in chief of the witness; but a special measures direction may provide for such a recording to be admitted under section 281 if the interview was conducted through an intermediary and—

- (a) that person complied with subsection (5) before the interview began; and
- (b) the court's approval for the purposes of this section is given before the direction is given.

(7) A person acting as an intermediary is liable for perjury in the same way as a person lawfully sworn as an interpreter in a judicial proceeding; and for this purpose, where a person acts as an intermediary in any proceeding which is not a judicial proceeding for the purposes of that section, that proceeding shall be taken to be part of the judicial proceeding in which the witness's evidence is given.

Aids to communication

284. A special measures direction may provide for the witness, while giving evidence (whether by testimony in Court or otherwise), to be provided with such device as the Court considers appropriate with a view to enabling questions or answers to be communicated to or by the witness despite any disability or disorder or other impairment which the witness has or suffers from.

D. Supplementary

Status of evidence given under Part 32

285.(1) Subsections (2) to (4) apply to a statement made by a witness in criminal proceedings which, in accordance with a special measures direction, is not made by the witness in direct oral testimony in court but forms part of the witness's evidence in those proceedings.

(2) The statement shall be treated as if made by the witness in direct oral testimony in court, and accordingly—

- (a) it is admissible evidence of any fact of which such testimony from the witness would be admissible;
- (b) it is not capable of corroborating any other evidence given by the witness.

(3) Subsection (2) applies to a statement admitted under section 281 or 282 which is not made by the witness on oath even though it would have been required to be made on oath if made by the witness in direct oral testimony in court.

(4) In estimating the weight (if any) to be attached to the statement, the Court must have regard to all the circumstances from which an inference can reasonably be drawn (as to the accuracy of the statement or otherwise).

(5) Nothing in this Part (apart from subsection (3)) affects the operation of any rule of law relating to evidence in criminal proceedings.

(6) Where any statement made by a person on oath in any proceeding which is not a judicial proceeding for the purposes perjury under the Penal Code is received in evidence pursuant to a special measures direction, that proceeding shall be taken for the purposes of that section to be part of the judicial proceeding in which the statement is so received in evidence.

(7) Where in any proceeding which is not a judicial proceeding for the purposes of the Penal Code—

- (a) a person wilfully makes a false statement except on oath which is subsequently received in evidence pursuant to a special measures direction; and
- (b) the statement is made in such circumstances that had it been given on oath in any such judicial proceeding that person would have been guilty of perjury,

that person commits an offence and is liable to any punishment which might be imposed on conviction of an offence of giving false unsworn evidence in criminal proceedings under the Evidence Act.

(8) In this section “**statement**” includes any representation of fact, whether made in words or otherwise.

Warning to jury

286. Where on a trial on indictment evidence has been given in accordance with a special measures direction, the judge must give the jury such warning (if any) as the judge considers necessary to ensure that the fact that the direction was given in relation to the witness does not prejudice the accused.

PART 33

VULNERABLE AND INTIMIDATED WITNESSES: PROTECTION FROM CROSS-EXAMINATION BY ACCUSED IN PERSON

A. General prohibitions

Complainants in proceedings for sexual offences

287. No person charged with a sexual offence may in any criminal proceedings cross-examine in person a witness who is the complainant, either—

- (a) in connection with that offence; or
- (b) in connection with any other offence (of whatever nature) with which that person is charged in the proceedings.

Child complainants and other child witnesses

288.(1) No person charged with an offence to which this section applies may in any criminal proceedings cross-examine in person a protected witness, either—

- (a) in connection with that offence; or
- (b) in connection with any other offence (of whatever nature) with which that person is charged in the proceedings.

(2) For the purposes of subsection (1) a “**protected witness**” is a witness who—

- (a) either is the complainant or is alleged to have been a witness to the commission of the offence to which this section applies; and
- (b) either is a child or falls to be cross-examined after giving evidence in chief (whether wholly or in part)—
 - (i) by means of a video recording made (for the purposes of section 281) at a time when the witness was a child; or
 - (ii) in any other way at any such time.

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

- (a) a sexual offence;
- (b) an offence under Part 14, 15 or 16 of the Penal Code.

(4) In this section “**child**” means—

- (a) where the offence falls within subsection (3)(a), a person under the age of seventeen; or
- (b) where the offence falls within subsection (3)(b), a person under the age of fourteen.

(5) For the purposes of this section “**witness**” includes a witness who is charged with an offence in the proceedings.

B. Prohibition imposed by court

Direction prohibiting accused from cross-examining particular witness

289.(1) This section applies where, in a case where neither section 287 nor section 288 operates to prevent an accused in any criminal proceedings from cross-examining a witness in person—

- (a) the prosecutor makes an application for the Court to give a direction under this section in relation to the witness; or
- (b) the Court of its own motion raises the issue whether such a direction should be given.

(2) If it appears to the Court—

- (a) that the quality of evidence given by the witness on cross-examination—
 - (i) is likely to be diminished if the cross-examination (or further cross-examination) is conducted by the accused in person; and
 - (ii) would be likely to be improved if a direction were given under this section; and
- (b) that it would not be contrary to the interests of justice to give such a direction,

the Court may give a direction prohibiting the accused from cross-examining (or further cross-examining) the witness in person.

(3) In determining whether subsection (2)(a) applies in the case of a witness the Court must have regard, in particular, to—

- (a) any views expressed by the witness as to whether or not the witness is content to be cross-examined by the accused in person;
 - (b) the nature of the questions likely to be asked, having regard to the issues in the proceedings and the defence case advanced so far (if any);
 - (c) any behaviour on the part of the accused at any stage of the proceedings, both generally and in relation to the witness;
 - (d) any relationship (of whatever nature) between the witness and the accused;
 - (e) whether any person (other than the accused) is or has at any time been charged in the proceedings with an offence referred to in section 288(3), and (if so) whether section 287 or 288 operates or would have operated to prevent that person from cross-examining the witness in person;
 - (f) any direction under section 273 which the Court has given, or proposes to give, in relation to the witness.
- (4) For the purposes of this section—
- (a) “**witness**”, in relation to an accused, does not include any other person who is charged with an offence in the proceedings; and
 - (b) any reference to the quality of a witness’s evidence shall be construed in accordance with section 270(5).

Further provisions about directions under section 289

290.(1) Subject to subsection (2), a direction under section 289 has binding effect from the time it is made until the witness to whom it applies is discharged.

(2) The Court may discharge a direction if it appears to the Court to be in the interests of justice to do so, and may do so either—

- (a) on an application made by a party to the proceedings, if there has been a material change of circumstances since the relevant time; or
- (b) of its own motion.

(3) In subsection (2) “**the relevant time**” means—

- (a) the time when the direction was given; or
- (b) if a previous application has been made under that subsection, the time when the application (or last application) was made.

(4) The Court must state in open Court its reasons for—

- (a) giving; or
- (b) refusing an application for, or for the discharge of; or
- (c) discharging,

a direction and, if it is a magistrate’s court, must cause them to be entered in the register of its proceedings.

(5) Rules of Court may make provision—

- (a) for uncontested applications to be determined by the Court without a hearing;
- (b) for preventing the renewal of an unsuccessful application for a direction except where there has been a material change of circumstances;
- (c) for expert evidence to be given in connection with an application for, or for discharging, a direction;
- (d) for the manner in which confidential or sensitive information is to be treated in connection with such an application and in particular as to its being disclosed to, or withheld from, a party to the proceedings.

C. Cross-examination on behalf of accused

Defence representation for purposes of cross-examination

291.(1) This section applies where an accused is prevented from cross-examining a witness in person by virtue of section 287, 288 or 289.

(2) Where it appears to the Court that this section applies, it must—

- (a) invite the accused to arrange for a legal representative to act for him for the purpose of cross-examining the witness; and
- (b) require the accused to notify the Court, by the end of such period as it may specify, whether a legal representative is to act for him for that purpose.

- (3) If by the end of the period mentioned in subsection (2)(b) either—
- (a) the accused has notified the Court that no legal representative is to act for him for the purpose of cross-examining the witness; or
 - (b) no notification has been received by the Court and it appears to the Court that no legal representative is to so act,

the Court must consider whether it is necessary in the interests of justice for the witness to be cross-examined by a legal representative appointed to represent the interests of the accused.

(4) If the Court decides that it is necessary in the interests of justice for the witness to be so cross-examined, the Court must appoint a qualified legal representative (chosen by the court) to cross-examine the witness in the interests of the accused.

(5) A person so appointed shall not be responsible to the accused.

(6) Rules of court may make provision—

- (a) as to the time when, and the manner in which, subsection (2) is to be complied with;
- (b) in connection with the appointment of a legal representative under subsection (4), and in particular for securing that a person so appointed is provided with evidence or other material relating to the proceedings.

(7) Rules of court made under subsection (6)(b) may make provision for the application, with such modifications as are specified in the rules, of any of the rules relating to disclosure.

(8) For the purposes of this section—

- (a) any reference to cross-examination includes (in a case where a direction is given under section 289 after the accused has begun cross-examining the witness) a reference to further cross-examination; and
- (b) **“qualified legal representative”** means a legal representative who has a right of audience in relation to the proceedings before the Court.

Warning to jury

292.(1) Where on a trial on indictment an accused is prevented from cross-examining a witness in person by virtue of section 287, 288 or 289, the judge must give the jury such warning (if any) as the judge considers necessary to ensure that the accused is not prejudiced—

- (a) by any inferences that might be drawn from the fact that the accused has been prevented from cross-examining the witness in person; or

- (b) where the witness has been cross-examined by a legal representative appointed under section 291(4), by the fact that the cross-examination was carried out by such a legal representative and not by a person acting as the accused's own legal representative.

(2) Subsection 291(8)(a) applies for the purposes of this section as it applies for the purposes of section 291.

PART 34

VULNERABLE AND INTIMIDATED WITNESSES: PROTECTION IN PROCEEDINGS FOR SEXUAL OFFENCES

Restriction on evidence or questions about complainant's sexual history

293.(1) If at a trial a person is charged with a sexual offence, then, except with the leave of the Court—

- (a) no evidence may be adduced; and
(b) no question may be asked in cross-examination,

by or on behalf of any accused at the trial, about any sexual behaviour of the complainant.

(2) The Court may give leave in relation to any evidence or question only on an application made by or on behalf of an accused, and shall not give such leave unless it is satisfied—

- (a) that subsection (3) or (5) applies; and
(b) that a refusal of leave might have the result of rendering unsafe a conclusion of the jury or (as the case may be) the Court on any relevant issue in the case.

(3) This subsection applies if the evidence or question relates to a relevant issue in the case and either—

- (a) that issue —
(i) is not an issue of consent; or
(ii) is an issue of consent and the sexual behaviour of the complainant to which the evidence or question relates is alleged to have taken place at or about the same time as the event which is the subject matter of the charge against the accused; or
(b) it is an issue of consent and the sexual behaviour of the complainant to which the evidence or question relates is alleged to have been, in any respect, so similar—

- (i) to any sexual behaviour of the complainant which (according to evidence adduced or to be adduced by or on behalf of the accused) took place as part of the event which is the subject matter of the charge against the accused; or
- (ii) to any other sexual behaviour of the complainant which (according to such evidence) took place at or about the same time as that event,

that the similarity cannot reasonably be explained as a coincidence.

(4) For the purposes of subsection (3) no evidence or question shall be regarded as relating to a relevant issue in the case if it appears to the Court to be reasonable to assume that the purpose (or main purpose) for which it would be adduced or asked is to establish or elicit material for impugning the credibility of the complainant as a witness.

(5) This subsection applies if the evidence or question—

- (a) relates to any evidence adduced by the prosecution about any sexual behaviour of the complainant; and
- (b) in the opinion of the Court, would go no further than is necessary to enable the evidence adduced by the prosecution to be rebutted or explained by or on behalf of the accused.

(6) For the purposes of subsections (3) and (5) the evidence or question must relate to a specific instance (or specific instances) of alleged sexual behaviour on the part of the complainant (and accordingly nothing in those subsections is capable of applying in relation to the evidence or question to the extent that it does not so relate).

(7) Where this section applies in relation to a trial by virtue of the fact that one or more of a number of persons charged in the proceedings is or are charged with a sexual offence—

- (a) it shall cease to apply in relation to the trial if the prosecutor decides not to proceed with the case against that person or those persons in respect of that charge; but
- (b) it shall not cease to do so in the event of that person or those persons pleading guilty to, or being convicted of, that charge.

(8) Nothing in this section authorises any evidence to be adduced or any question to be asked which cannot be adduced or asked apart from this section.

Interpretation and application of section 293

294.(1) In section 293—

- (a) “**relevant issue in the case**” means any issue falling to be proved by the prosecution or defence in the trial of the accused;

- (b) “**issue of consent**” means any issue whether the complainant in fact consented to the conduct constituting the offence with which the accused is charged (and accordingly does not include any issue as to the belief of the accused that the complainant so consented);
- (c) “**sexual behaviour**” means any sexual behaviour or other sexual experience, whether or not involving any accused or other person, but excluding (except in section 293(3)(c)(i) and (5)(a)) anything alleged to have taken place as part of the event which is the subject matter of the charge against the accused; and
- (d) subject to any order made under subsection (2), “**sexual offence**” shall be construed in accordance with section 2.

(2) The Director of Public Prosecutions may by order make such provision as he considers appropriate for adding or removing, for the purposes of section 293, any offence to or from the offences which are sexual offences for the purposes of this Act by virtue of section 2. (*Amended by Act 9 of 2011*)

(3) Section 293 applies in relation to the following proceedings as it applies to a trial, namely—

- (a) a Sufficiency Hearing;
- (b) the hearing of an application to dismiss the charge by the accused;
- (c) any hearing held, between conviction and sentencing, for the purpose of determining matters relevant to the court’s decision as to how the accused is to be dealt with; and
- (d) the hearing of an appeal,

and references (in section 293 and in this section) to a person charged with an offence accordingly include a person convicted of an offence.

Procedure on applications under section 293

295.(1) An application for leave shall be heard in private and in the absence of the complainant.

(2) Where such an application has been determined, the court must state in open Court (but in the absence of the jury, if there is one)—

- (a) its reasons for giving, or refusing, leave; and
- (b) if it gives leave, the extent to which evidence may be adduced or questions asked pursuant to the leave,

and, if it is a magistrate’s court, must cause those matters to be entered in the register of its proceedings.

(3) Rules of court may make provision—

- (a) requiring applications for leave to specify, in relation to each item of evidence or question to which they relate, particulars of the grounds on which it is asserted that leave should be given by virtue of section 293(3) or (5);
- (b) enabling the Court to request a party to the proceedings to provide the Court with information which it considers would assist it in determining an application for leave;
- (c) for the manner in which confidential or sensitive information is to be treated in connection with such an application, and in particular as to its being disclosed to, or withheld from, parties to the proceedings.

PART 35

VULNERABLE AND INTIMIDATED WITNESSES: REPORTING RESTRICTIONS

A. Reports relating to persons under eighteen

Restrictions on reporting alleged offences involving persons under eighteen

296.(1) This section applies where a criminal investigation by the police has begun in respect of an alleged offence against the law of Montserrat.

(2) No matter relating to any person involved in the offence shall while he is under the age of eighteen be included in any publication if it is likely to lead members of the public to identify him as a person involved in the offence.

(3) The restrictions imposed by subsection (2) cease to apply once there are proceedings in a Court in respect of the offence.

(4) For the purposes of subsection (2) any reference to a person involved in the offence is to—

- (a) a person by whom the offence is alleged to have been committed; or
 - (b) if this paragraph applies to the publication in question by virtue of subsection (5)—
 - (i) a person against or in respect of whom the offence is alleged to have been committed; or
 - (ii) a person who is alleged to have been a witness to the commission of the offence.
- (5)** Subsection (4)(b) applies to a publication if—
- (a) where it is a relevant programme, it is transmitted; or
 - (b) in the case of any other publication, it is published,

on or after such date as may be specified in an order made by the Director of Public Prosecutions.

(Amended by Act 9 of 2011)

(6) The matters relating to a person in relation to which the restrictions imposed by subsection (2) apply (if their inclusion in any publication is likely to have the result mentioned in that subsection) include in particular—

- (a) his name;
- (b) his address;
- (c) the identity of any school or other educational establishment attended by him;
- (d) the identity of any place of work; and
- (e) any still or moving picture of him.

(7) A Court may by order dispense, to any extent specified in the order, with the restrictions imposed by subsection (2) in relation to a person if it is satisfied that it is necessary in the interests of justice to do so.

(8) However, when deciding whether to make such an order dispensing (to any extent) with the restrictions imposed by subsection (2) in relation to a person, the Court shall have regard to the welfare of that person.

(9) In the case of a decision of a magistrate's court to make or refuse to make an order under subsection (7), the following persons, namely—

- (a) a person who was a party to the proceedings on the application for the order; and
- (b) with the leave of the High Court, any other person,

may, in accordance with rules of court, appeal to the High Court against that decision or appear or be represented at the hearing of such an appeal.

(10) On such an appeal the High Court—

- (a) may make such order as is necessary to give effect to its determination of the appeal; and
- (b) may also make such incidental or consequential orders as appear to it to be just.

Power to restrict reporting of criminal proceedings involving persons under 18

297.(1) This section applies in relation to criminal proceedings in any Court.

(2) The Court may direct that no matter relating to any person concerned in the proceedings shall while he is under the age of eighteen be included in any publication if it is likely to lead members of the public to identify him as a person concerned in the proceedings.

(3) The Court or an appellate court may by direction (“**an excepting direction**”) dispense, to any extent specified in the excepting direction, with the restrictions imposed by a direction under subsection (2) if it is satisfied that it is necessary in the interests of justice to do so.

(4) The Court or an appellate court may also by direction (“**an excepting direction**”) dispense, to any extent specified in the excepting direction, with the restrictions imposed by a direction under subsection (2) if it is satisfied—

- (a) that their effect is to impose a substantial and unreasonable restriction on the reporting of the proceedings; and
- (b) that it is in the public interest to remove or relax that restriction,

but no excepting direction shall be given under this subsection by reason only of the fact that the proceedings have been determined in any way or have been abandoned.

(5) When deciding whether to make—

- (a) a direction under subsection (2) in relation to a person; or
- (b) an excepting direction under subsection (3) or (4) by virtue of which the restrictions imposed by a direction under subsection (2) would be dispensed with (to any extent) in relation to a person,

the Court or (as the case may be) the appellate court shall have regard to the welfare of that person.

(6) For the purposes of subsection (3) any reference to a person concerned in the proceedings is to a person—

- (a) against or in respect of whom the proceedings are taken; or
- (b) who is a witness in the proceedings.

(7) The matters relating to a person in relation to which the restrictions imposed by a direction under subsection (2) apply (if their inclusion in any publication is likely to have the result mentioned in that subsection) include in particular—

- (a) his name;
- (b) his address;
- (c) the identity of any school or other educational establishment attended by him;
- (d) the identity of any place of work; and
- (e) any still or moving picture of him.

(8) A direction under subsection (2) may be revoked by the Court or an appellate Court.

(9) An excepting direction—

- (a) may be given at the time the direction under subsection (2) is given or subsequently; and
- (b) may be varied or revoked by the Court or an appellate Court.

B. Reports relating to adult witnesses

Power to restrict reports about certain adult witnesses in criminal proceedings

298.(1) This section applies where in any criminal proceedings in any Court a party to the proceedings applies for the Court to give a reporting direction in relation to a witness in the proceedings (other than the accused) who has attained the age of eighteen.

(2) If the Court determines—

- (a) that the witness is eligible for protection; and
- (b) that giving a reporting direction in relation to the witness is likely to improve—
 - (i) the quality of evidence given by the witness; or
 - (ii) the level of co-operation given by the witness to any party to the proceedings in connection with that party's preparation of its case,

the Court may give a reporting direction in relation to the witness.

(3) For the purposes of this section a witness is eligible for protection if the Court is satisfied—

- (a) that the quality of evidence given by the witness; or
- (b) the level of co-operation given by the witness to any party to the proceedings in connection with that party's preparation of its case,

is likely to be diminished by reason of fear or distress on the part of the witness in connection with being identified by members of the public as a witness in the proceedings.

(4) In determining whether a witness is eligible for protection the Court must take into account, in particular—

- (a) the nature and alleged circumstances of the offence to which the proceedings relate;
- (b) the age of the witness;
- (c) such of the following matters as appear to the Court to be relevant, namely—
 - (i) the social and cultural background and ethnic origins of the witness;

- (ii) the domestic and employment circumstances of the witness; and
 - (iii) any religious beliefs or political opinions of the witness;
 - (d) any behaviour towards the witness on the part of—
 - (i) the accused;
 - (ii) members of the family or associates of the accused; or
 - (iii) any other person who is likely to be an accused or a witness in the proceedings.
- (5) In determining that question the Court must in addition consider any views expressed by the witness.
- (6) For the purposes of this section a reporting direction in relation to a witness is a direction that no matter relating to the witness shall during the witness's lifetime be included in any publication if it is likely to lead members of the public to identify him as being a witness in the proceedings.
- (7) The matters relating to a witness in relation to which the restrictions imposed by a reporting direction apply (if their inclusion in any publication is likely to have the result mentioned in subsection (6)) include in particular—
- (a) the witness's name;
 - (b) the witness's address;
 - (c) the identity of any educational establishment attended by the witness;
 - (d) the identity of any place of work; and
 - (e) any still or moving picture of the witness.
- (8) In determining whether to give a reporting direction the Court shall consider—
- (a) whether it would be in the interests of justice to do so; and
 - (b) the public interest in avoiding the imposition of a substantial and unreasonable restriction on the reporting of the proceedings.
- (9) The Court or an appellate court may by direction (“an excepting direction”) dispense, to any extent specified in the excepting direction, with the restrictions imposed by a reporting direction if—
- (a) it is satisfied that it is necessary in the interests of justice to do so; or it is satisfied—
 - (i) that the effect of those restrictions is to impose a substantial and unreasonable restriction on the reporting of the proceedings; and

- (ii) that it is in the public interest to remove or relax that restriction,

but no excepting direction shall be given under paragraph (b) by reason only of the fact that the proceedings have been determined in any way or have been abandoned.

(10) A reporting direction may be revoked by the Court or an appellate Court.

(11) An excepting direction—

- (a) may be given at the time the reporting direction is given or subsequently; and
- (b) may be varied or revoked by the Court or an appellate Court.

(12) In this section—

- (a) “**appellate court**”, in relation to any proceedings in a court, means a court dealing with an appeal (including an appeal by way of case stated) arising out of the proceedings or with any further appeal;
- (b) references to the quality of a witness’s evidence are to its quality in terms of completeness, coherence and accuracy (and for this purpose “**coherence**” refers to a witness’s ability in giving evidence to give answers which address the questions put to the witness and can be understood both individually and collectively);
- (c) references to the preparation of the case of a party to any proceedings include, where the party is the prosecution, the carrying out of investigations into any offence at any time charged in the proceedings; and
- (d) “**reporting direction**” has the meaning given by subsection (6).

C. Reports relating to directions under Parts 32 or 33

Restrictions on reporting directions under Parts 32 or 33

299.(1) Except as provided by this section, no publication shall include a report of a matter falling within subsection (2).

(2) The matters falling within this subsection are—

- (a) a direction under section 273 or 289 or an order discharging, or (in the case of a direction under section 273) varying, such a direction;
- (b) proceedings—
 - (i) on an application for such a direction or order; or

(ii) where the Court acts of its own motion to determine whether to give or make any such direction or order.

(3) The Court dealing with a matter falling within subsection (2) may order that subsection (1) is not to apply, or is not to apply to a specified extent, to a report of that matter.

(4) Where—

(a) there is only one accused in the relevant proceedings; and

(b) he objects to the making of an order under subsection (3),

the Court shall make the order if (and only if) satisfied after hearing the representations of the accused that it is in the interests of justice to do so; and if the order is made it shall not apply to the extent that a report deals with any such objections or representations.

(5) Where—

(a) there are two or more accused in the relevant proceedings; and

(b) one or more of them object to the making of an order under subsection (3),

the Court shall make the order if (and only if) satisfied after hearing the representations of each of the accused that it is in the interests of justice to do so; and if the order is made it shall not apply to the extent that a report deals with any such objections or representations.

(6) Subsection (1) does not apply to the inclusion in a publication of a report of matters after the relevant proceedings are either—

(a) determined (by acquittal, conviction or otherwise); or

(b) abandoned,

in relation to the accused or (if there is more than one) in relation to each of the accused.

(7) In this section “**the relevant proceedings**” means the proceedings to which any such direction mentioned in subsection (2) relates or would relate.

(8) Nothing in this section affects any prohibition or restriction by virtue of any other enactment on the inclusion of matter in a publication.

D. Offences

Offences under Part 35

300.(1) This section applies if a publication—

(a) includes any matter in contravention of section 296(2) or of a direction under section 297(3) or 298(2); or

(b) includes a report in contravention of section 299.

(2) Where the publication is a newspaper or periodical, the proprietor, the editor and the publisher of the newspaper or periodical commits an offence.

(3) Where the publication is a relevant programme—

(a) a body corporate engaged in providing the programme service in which the programme is included; and

(b) a person having functions in relation to the programme corresponding to those of an editor of a newspaper,

commit an offence.

(4) In the case of any other publication, a person publishing it commits an offence.

(5) A person who commits an offence under this section is liable on summary conviction to a fine of \$1,000.

(6) Proceedings for an offence under this section in respect of a publication falling within subsection (1)(b) shall not be instituted except by or with the consent of the Director of Public Prosecutions.

(Amended by Act 9 of 2011)

Defences

301.(1) Where a person is charged with an offence under section 300 it shall be a defence to prove that at the time of the alleged offence he was not aware, and neither suspected nor had reason to suspect, that the publication included the matter or report in question.

(2) Where—

(a) a person is charged with an offence under section 300; and

(b) the offence relates to the inclusion of any matter in a publication in contravention of section 296(2),

it shall be a defence to prove that at the time of the alleged offence he was not aware, and neither suspected nor had reason to suspect, that the criminal investigation in question had begun.

(3) Where—

(a) paragraphs (2)(a) and (2)(b) apply; and

(b) the contravention of section 296(2) does not relate to either—

(i) the person by whom the offence mentioned in that provision is alleged to have been committed; or

(ii) a person who is alleged to be a witness to the commission of the offence,

it shall be a defence to show to the satisfaction of the Court that the inclusion in the publication of the matter in question was in the public interest on the ground that, to the extent that they operated to prevent that matter from being

so included, the effect of the restrictions imposed by section 296(2) was to impose a substantial and unreasonable restriction on the reporting of matters connected with that offence.

(4) Subsection (5) applies where—

- (a) subsection (2) (a) and (b) apply; and
- (b) the contravention of section 296(2) relates to a person (“**the protected person**”) who is neither—
 - (i) the person mentioned in subsection (3)(b)(i); nor
 - (ii) a person within subsection (3)(b)(ii) who is under the age of sixteen.

(5) In such a case it shall be a defence, subject to subsection (6), to prove that written consent to the inclusion of the matter in question in the publication had been given—

- (a) by an appropriate person, if at the time when the consent was given the protected person was under the age of sixteen; or
- (b) by the protected person, if that person was aged sixteen or seventeen at that time,

and (where the consent was given by an appropriate person) that written notice had been previously given to that person drawing to his attention the need to consider the welfare of the protected person when deciding whether to give consent.

(6) The defence provided by subsection (5) is not available if—

- (a) (where the consent was given by an appropriate person) it is proved that written or other notice withdrawing the consent—
 - (i) was given to the appropriate recipient by any other appropriate person or by the protected person; and
 - (ii) was so given in sufficient time to enable the inclusion in the publication of the matter in question to be prevented;
or
- (b) subsection (8) applies.

(7) Where—

- (a) a person is charged with an offence under section 300; and
- (b) the offence relates to the inclusion of any matter in a publication in contravention of a direction under section 298(2),

it shall be a defence, unless subsection (8) applies, to prove that the person in relation to whom the direction was given had given written consent to the inclusion of that matter in the publication.

(8) Written consent is not a defence if it is proved that any person interfered—

- (a) with the peace or comfort of the person giving the consent; or
- (b) (where the consent was given by an appropriate person) with the peace or comfort of either that person or the protected person,

with intent to obtain the consent.

(9) In this section—

“**appropriate person**” means a person who is a parent or guardian of the protected person;

“**guardian**”, in relation to the protected person, means any person who is not a parent of the protected person but who has parental responsibility for the protected person within the meaning of the Guardianship of Infants Act or by order of a Juvenile Court or a Court exercising powers of a Juvenile Court; and

“**appropriate recipient**”, in relation to a notice under subsection (6)(a), means—

- (a) the person to whom the notice giving consent was given;
- (b) (if different) the person by whom the matter in question was published; or
- (c) any other person exercising, on behalf of the person mentioned in paragraph (b), any responsibility in relation to the publication of that matter,

and for this purpose “**person**” includes a body of persons and a partnership.

(10) Notwithstanding the definition of “appropriate person” in subsection (9), no person by whom the offence mentioned in section 296(2) is alleged to have been committed is, by virtue of subsection (9), an appropriate person for the purposes of this section.

Offences committed by bodies corporate

302.(1) If an offence under section 300 committed by a body corporate is proved—

- (a) to have been committed with the consent or connivance of; or
- (b) to be attributable to any neglect on the part of,

an officer, the officer as well as the body corporate commits the offence and is liable to be proceeded against and punished accordingly.

(2) In subsection (1) “**officer**” means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

(3) If the affairs of a body corporate are managed by its members, “**director**” in subsection (2) means a member of that body.

E. Supplementary

Decisions as to public interest for purposes of Part 35

303.(1) Where for the purposes of any provision of this Part it falls to a Court to determine whether anything is (or, as the case may be, was) in the public interest, the Court must have regard, in particular, to the matters referred to in subsection (2)(so far as relevant).

(2) Those matters are—

(a) the interest in each of the following—

(i) the open reporting of crime;

(ii) the open reporting of matters relating to human health or safety; and

(iii) the prevention and exposure of miscarriages of justice;

(b) the welfare of any person in relation to whom the relevant restrictions imposed by or under this Part apply or would apply (or, as the case may be, applied); and

(c) any views expressed—

(i) by an appropriate person on behalf of a person within paragraph (b) who is under the age of sixteen (“**the protected person**”); or

(ii) by a person within that paragraph who has attained that age.

(3) In subsection (2) “**an appropriate person**”, in relation to the protected person, has the same meaning as it has for the purposes of section 301.

PART 36

MISCELLANEOUS

Powers of High Court in respect of *habeas corpus*, etc.

304. Subject to section 265, this Code shall not be construed to affect or limit the powers of the High Court to issue orders of *certiorari*, *habeas corpus*, *mandamus*, and prohibition.

Code not to affect certain powers

305. This Code shall not be construed to affect or limit the powers conferred on a Court in respect of young persons or juveniles under the

Juveniles Act or under the Magistrate's Court Act, or in respect of any person under the Probation of Offenders Act.

General power to require recognizance to keep the peace

306. A person may by complaint made to the magistrate's court call on another to show cause why the other should not be bound over in recognizances—

(a) to keep the peace; or

(b) to be of good behaviour toward any particular person,

and the magistrate's court may make an order adjudging the person complained against to enter into recognizances and find sureties in that behalf, and the complainant and defendant and witnesses may be called and examined and cross-examined, and the parties and witnesses in such case shall be subject to all the provisions of this Code relating to trial before the magistrate's court.

Copies of proceedings

307. Subject to section 229, if any person affected by any order made or judgment passed in any proceedings under this Code desires to have a copy of such order or judgment, or of any statement or other part of the record in any the proceedings, he shall, on application for a copy, be furnished with it, provided he pays for it according to the scale that may be prescribed unless in any particular case the Court directs that it be furnished free of cost.

Criminal informations abolished

308. The abolition by the Criminal Procedure Code, Act (No. 21 of 1982), of criminal information for bringing proceedings for an offence in the High Court does not affect the power under common law to proffer a Bill of Indictment.

Rules

309. The power conferred on the Chief Justice and any two judges of the Supreme Court to make Rules of Court, under section 84 of the Supreme Court Act, is deemed to extend to permit the making of rules prescribing anything required to be prescribed under this Code, other than section 36, and generally for carrying into effect this Code.

SCHEDULE 1

(Section 6(1))

FORM OF SEARCH WARRANT

To:.....

WHEREAS I am*/the Court is* satisfied by information on oath that there is reasonable suspicion of the commission of the offence of and it has been made to appear to me*/this Court* that there are articles essential to the inquiry into the said offence in or on the premises of situated at

NOW, THEREFORE, this warrant is to authorise and require you to enter on and search the said premises and, if any such articles are discovered, to take possession of such articles[†] and to produce them forthwith before a Court, returning this warrant to the Court with an endorsement certifying the manner of execution thereof.

Given under my hand (and the seal of the Court)* this day of 20..... .

magistrate* justice of the peace*

* *Delete as necessary*

† *Particulars of the actual articles to be seized should be inserted if possible.*

SCHEDULE 2*(Section 103)***RULES FOR FRAMING INDICTMENTS****Material, etc. for indictment**

1. (1) An indictment may be on parchment or durable paper, and may be either written or printed, or partly written and partly printed.

(2) Each sheet on which an indictment is set out shall be not more than seventeen and not less than thirteen inches in length, and not more than fourteen and not less than eight inches in width, and if more than one sheet is required the sheets shall be fastened together in book form.

(3) A proper margin not less than two inches in width shall be kept on the left hand side of the sheet.

(4) Figures and abbreviations may be used in an indictment for expressing anything which is commonly expressed thereby.

(5) There shall be endorsed on the indictment the name of every witness intended to be examined by the prosecution.

(6) An indictment shall not be open to objection by reason only of any failure to comply with this rule.

Commencement of indictment

2. The commencement of an indictment shall be in the following form—

“MONTSERAT
IN THE HIGH COURT OF JUSTICE
(Criminal)

Case No. of 20.....

THE QUEEN

V.

A.B.

Indictment by the Director of Public Prosecutions of Montserrat

A.B. is charged with the following offence—”.

Mode in which offences are to be charged

3. (1) A description of the offence charged in an indictment, or where more than one offence is charged, of each offence so charged, shall be set out in a separate paragraph called a count.

(2) A count shall commence with a statement of the offence charged, called a statement of offence.

(3) The statement of an offence shall describe the offence shortly in ordinary language, avoiding as far as possible the use of technical terms, and without necessarily

stating all the elements of the offence, and if the offence charged is one created by any enactment, shall contain a reference to the section of the enactment creating the offence.

(4) After the statement of the offence, particulars of such offence shall be set out in ordinary language, which the use of technical terms shall not be necessary:

Provided that where any rule of law or any enactment limits the particulars of an offence which are required to be given in an indictment, nothing in this rule shall require any more particulars to be given than those so required.

(5) Where a charge or indictment contains more than one count, the counts shall be numbered consecutively.

Provisions as to statutory offences

4. (1) Where an enactment constituting an offence states the offence to be the doing or the omission to do any one of any different acts in the alternative, or the doing or the omission to do any act in any one of any different capacities, or with any one of any 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.

(2) It shall not be necessary, in any count charging a statutory offence, to negative any exception or exemption from or qualification to the operation of the enactment creating the offence.

Description of property

5. (1) The description of property in a count shall be in ordinary language and such as to indicate with reasonable clearness the property referred to, and if the property is so described it shall not be necessary (except when required for the purpose of describing an offence depending on any special ownership of property or special value of property) to name the person to whom the property belongs or the value of the property.

(2) Where property is vested in more than one person, and the owners of the property are referred to in an indictment, it shall be sufficient to describe the property as owned by one of those persons by name with others, and if the persons owning the property are a body of persons with a collective name, such as “**Inhabitants**”, “**Trustees**”, “**Commissioners**”, or “**Club**” or other such name, it shall be sufficient to use the collective name without naming any individual.

Description of persons

6. The description or designation in an indictment of the accused person, or of any other person to whom reference is made therein, shall be such as is reasonably sufficient to identify him, without necessarily stating his correct name, or his 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 shall be given as is reasonably practicable in the circumstances, or such person may be described as “**a person unknown**”.

Description of document

7. Where it is necessary to refer to any document or instrument, it shall be sufficient to describe it by any name or designation by which it is usually known, or by the purport thereof without setting out any copy thereof.

Description of engraving

8. In a count in respect of an offence for engraving, or making the whole or any part of any instrument, matter or thing whatsoever, or for using or having the unlawful possession of any plate or other material on which the whole or any part of any instrument, matter or thing whatsoever, shall have been engraved or made, or for having the unlawful possession of any paper on which the whole or any part of any instrument, matter or thing whatsoever, shall have been made or printed, it shall be sufficient to describe such instrument, matter or thing by any name or designation by which the same may be usually known, without setting out any copy or facsimile of the whole or any part of such instrument, matter or thing.

Description of money

9. In a count in which it shall be necessary to make any averment as to any money or any currency note, it shall be sufficient to describe such money or currency note simply as money, without specifying any particular coin or bank note; and such allegation so far as regards the description of the property shall be sustained by proof of any amount of coin, or of any bank note, although the particular species of coin of which such amount was composed or the particular nature of the bank note shall not be proved; and in cases of obtaining money or pecuniary advantage by deception, by proof that the offender obtained any piece of coin, or any bank note, or any portion of the value thereof although such piece of coin or bank note may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same, or to any other person and such part shall have been returned accordingly.

General rule as to description

10. Subject to any other provisions of these rules, it shall be 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 clearness the place, time, thing, matter, act or omission referred to.

Statement of intent

11. It shall not be necessary in stating any intent to defraud, deceive or injure to state an intent to defraud, deceive or injure any particular person where the statute creating the offence does not make any intent to defraud, deceive or injure a particular person an essential ingredient of the offence.

Charge of previous convictions, etc.

12. Any charge of a previous conviction of an offence shall be charged at the end of the indictment by means of statement that the person accused has been previously convicted of that offence at a certain time and place without stating the particulars of the offence:

Provided that in reading such indictment to the jury (if there is one) regard shall be had to section 132.

(Amended by Act 9 of 2011)