

Turks and Caicos Islands

Criminal Procedure Rules, 2021

Government Notice 751 of 2021

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Criminal Procedure Rules, 2021
Contents

| | |
|--|---|
| Part I – Preliminary | 1 |
| 1. Citation and commencement | 1 |
| 2. Interpretation | 1 |
| 3. Application of Rules | 3 |
| 4. Overriding objective (application) | 3 |
| Part II – Rules of general application | 4 |
| 5. Opening hours of the office of the court | 4 |
| 6. Court records to be in electronic form | 4 |
| 7. Verbatim records to be made | 4 |
| 8. Courtroom events to be recorded | 4 |
| 9. Copies of orders | 4 |
| 10. Electronic filing | 5 |
| 11. Application for adjournment | 5 |
| 12. Summary cases – time goals | 5 |
| 13. Persons remanded in custody – commencement date of trial | 5 |
| 14. Trial of persons charged with murder or a violent indictable sexual offence | 5 |
| 15. Power to extend time | 5 |
| 16. Expedited hearing when virtual complainant, defendant or witness about to leave the jurisdiction | 5 |
| 17. Applications (general) | 6 |
| Part III – Complaints, summons and arrest warrants | 6 |
| 18. Jurisdiction starts with service of summons or arrest | 6 |
| 19. Transmission of summons and arrest warrant to the police | 6 |
| 20. Transmission of summons and arrest warrant to the Director of Public Prosecutions | 6 |
| 21. Complaint | 6 |
| 22. Allegation of offence in complaint | 6 |
| 23. Summons or warrant | 7 |
| 24. Complaints made by police officer | 7 |
| 25. Complaint to relate to one offence only | 8 |
| 26. Service of summons | 8 |
| 27. Proof of service of summons | 8 |
| 28. Report on unexecuted arrest warrant | 9 |
| 29. Discharge of arrest warrant | 9 |
| Part IV – Bail | 9 |
| 30. Bail set when arrest warrant issued | 9 |

| | |
|---|----|
| 31. Application for bail | 9 |
| 32. Application for review of a decision of a Magistrate | 11 |
| 33. Hearing of application for review of a decision | 11 |
| 34. Review of bail conditions of persons remanded in custody | 11 |
| Part V – Proceedings in the criminal court | 12 |
| 35. Stages in proceedings | 12 |
| 36. Orientation session | 12 |
| 37. Providing initial details of the prosecution's case | 13 |
| 38. Content of initial details | 13 |
| 39. Case management: The duty of the court | 13 |
| 40. Case progression officers and their duties | 14 |
| 41. The court's case management powers | 14 |
| 42. Application to vary a direction | 15 |
| 43. Agreement to vary a time limit fixed by a direction | 15 |
| 44. Case preparation and progression | 15 |
| 45. Disclosure of material | 16 |
| 46. Notice of alibi | 16 |
| 47. Notice of acting | 16 |
| 48. Initial hearing in summary matters | 17 |
| 49. Initial hearing in indictable matters | 17 |
| 50. Explanation of rights | 18 |
| 51. Accepting a guilty plea (generally) | 18 |
| 52. Conduct of a trial (generally) | 19 |
| Part VI – Scheduling orders and omnibus conference | 19 |
| 53. Scheduling Order (general) | 19 |
| 54. Monitoring and follow-up of scheduling orders and other cases | 20 |
| 55. Omnibus conference | 20 |
| Part VII – Summary case management – Trial and sentence | 20 |
| 56. Trial and sentence in the Magistrate's Court | 20 |
| 57. Procedure on plea of not guilty | 21 |
| 58. Procedure on plea of guilty | 22 |
| 59. Application to withdraw a guilty plea (summary matters) | 22 |
| 60. Procedure if the court convicts | 22 |
| 61. Failure to prosecute in the Magistrate's Court | 23 |
| Part VIII – Hybrid cases procedure | 24 |

| | |
|--|----|
| 62. Court to begin by considering which mode of trial appears more suitable | 24 |
| 63. Procedure where summary trial appears more suitable | 24 |
| 64. Procedure where trial on indictment appears more suitable | 24 |
| 65. Procedure for matters remitted for hearing | 25 |
| Part IX – Indictable case progression – Initial hearing to trial | 25 |
| 66. Indictable case cause list | 25 |
| 67. Transmission of documents | 25 |
| 68. Sufficiency hearing | 25 |
| 69. Written statements at sufficiency hearing | 26 |
| 70. Director of Public Prosecutions may prefer or decline to prefer indictment | 26 |
| 71. Dismissal for delay | 27 |
| 72. Signing of indictments | 27 |
| 73. Filing of indictments | 27 |
| Part X – Plea and direction hearings | 27 |
| 74. Arraignment and Scheduling Order | 27 |
| 75. Plea of guilty | 28 |
| 76. Plea - sentence indication and reduction in sentence | 29 |
| 77. Plea of not guilty | 29 |
| 78. Case management conference | 29 |
| 79. Disclosure by prosecution | 29 |
| 80. Disclosure by defence | 30 |
| 81. Protective Order | 30 |
| 82. Trial management | 30 |
| 83. Election of trial by judge alone | 31 |
| Part XI – Trial and sentence in the Supreme Court | 31 |
| 84. When this Part applies | 31 |
| 85. General rule (trial and sentence in the Supreme Court) | 32 |
| 86. Requirement to comply with rule 74(7) | 32 |
| 87. Procedure on plea of not guilty | 32 |
| 88. Evidence of a witness in person | 33 |
| 89. Evidence of a witness in writing | 33 |
| 90. Application to withdraw a guilty plea before Supreme Court | 33 |
| 91. Procedure if the court convicts | 34 |
| 92. Application for excusal from jury service | 35 |
| Part XII – Service of documents | 36 |

| | |
|--|----|
| 93. Personal service | 36 |
| 94. Service on an entity or other legal person | 36 |
| 95. Service on a person in custody | 37 |
| 96. Address for serving documents not required to be served personally | 37 |
| 97. Service by electronic means | 37 |
| 98. Alternative methods of service | 37 |
| 99. Service by person in custody | 38 |
| 100. Proof of personal service | 38 |
| 101. Power of court to dispense with service | 38 |
| 102. Service of court process outside the jurisdiction | 38 |
| Part XIII – Miscellaneous | 39 |
| 103. Issuance of practice direction and procedure in the absence of a practice direction | 39 |
| 104. Pending matters | 39 |
| 105. Forms | 39 |
| Schedule | 39 |

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These Rules, the first this country has had since provision was made for them in 1969, will provide a necessary guidance, certainty, and quality, to criminal justice delivery in the Turks and Caicos Islands.

The Judiciary of the Turks and Caicos Islands therefore launches this historic document with deep pride, and even deeper appreciation to the Technical Team which was constituted by the Chief Justice on 4th November 2020, to provide Criminal Procedure Rules for the Turks and Caicos Islands.

The Team is headed by a Consultant and Team Leader: The Hon. Ms. Justice Georgis Taylor-Alexander of the Eastern Caribbean Supreme Court. The members of the team are: The Hon Mr. Justice Shiraz Aziz from the Turks and Caicos Island Judiciary; Ms. Angela Brooks - Deputy Director of Public Prosecutions, from the Office of the Director of Public Prosecutions; and Mr. Oliver Smith, Private Legal Practitioner, representative of the Private Bar.

These Criminal Procedure Rules have been produced through the diligent and thorough work of the Technical Team which, in addition to intensive research, consulted extensively with criminal justice stakeholders in the Turks and Caicos Islands. They deserve the gratitude and the commendation of the criminal justice system of the Turks & Caicos Islands.

I also thank all the stakeholders who made contributions to the work, including Ms. Gogontle Gatang of the Attorney General's Chambers.

Mabel M. Agyemang

Chief Justice

Made under section 16 of the Supreme Court Ordinance and section 74 of the Criminal Procedure Ordinance, in conjunction with the Chief Magistrate pursuant to section 150 of the Magistrate's Court Ordinance

Part I – Preliminary

1. Citation and commencement

- (1) These Rules may be cited as the Criminal Procedure Rules, 2021
- (2) These Rules shall come into force on the 1 August, 2021.

2. Interpretation

In these Rules—

"**accused**" means a person against whom a complaint is made, or an indictment is preferred, and includes a defendant;

"**Attorney**" means a person who has been admitted as an Attorney under the Legal Profession Ordinance and is entitled to practice law;

"case progression officer" means a person nominated under rule 40(2);

"complainant" includes any informant or prosecutor;

"court" except where specifically stated, means the Supreme Court of the Turks and Caicos Islands or a Magistrate's Court as the case may be, in the exercise of its criminal jurisdiction, and includes a judge or magistrate;

"court office" means the Office of the Supreme Court established under the Supreme Court Ordinance, or the Magistrate's Court Office as the case may be;

"court officer" means an officer of the Supreme Court or Magistrate's Court;

"defendant" means the person against whom a complaint is made;

"document" includes any document in writing whether of a formal or informal character, any disc, tape, soundtrack or other device on or in which information is recorded or stored mechanically or by electronic means or other means;

"electronic means" includes any form of electronic communication of the contents of a document, such as, email, online shared drives, CD ROMs, memory sticks or fax;

"entity" means a company, corporation, partnership or association, whether corporate or unincorporated;

"guardian" in relation to a juvenile or vulnerable person, includes the person who for the time being has charge of, or has control over, such juvenile or vulnerable person;

"juvenile" means a person who is under the age of sixteen years;

"Legal Aid Panel" means the panel constituted by the Legal Aid Rules made by the Chief Justice under section 16 of the Supreme Court Ordinance;

"officer" in relation to an entity includes any officer, chairman, director, trustee, manager, secretary, treasurer, clerk, auditor, accountant or any other person performing any function in respect of the entity;

"party" includes both parties to the proceedings and any Attorney on record for that party unless any rule specifies, or it is clear from the context that it relates to the defendant or to the Attorney only;

"participant" means any person who takes part in or has any role or function in the proceedings of the court and includes—

- (a) a party to the proceedings;
- (b) a witness;
- (c) a Judge or Magistrate;
- (d) a police officer;
- (e) a Registrar presiding over the proceedings
- (f) an interpreter or other person assisting in the proceedings;
- (g) a representative of the press;
- (h) court staff;
- (i) any other person directly involved in the proceedings, whom the court considers appropriate;

"special defence" includes the defences of alibi, unfitness to plead, automatism, insanity *autrefois acquit* or *autrefois convict*;

"writing" includes typing, printing, lithography, photography or other mode of representing or reproducing words or symbols in a visible form.

3. Application of Rules

These Rules, unless the context otherwise requires, shall apply to the management of all criminal cases in the Supreme Court and the Magistrate's Court.

4. Overriding objective (application)

- (1) The overriding objective of these Rules is to ensure that criminal cases are dealt with justly.
- (2) It is the duty of the court and all parties and participants, at every stage of the proceedings to advance the overriding objective.
- (3) Dealing with a criminal case justly includes—
 - (a) dealing with a case efficiently and expeditiously;
 - (b) dealing with the prosecution and the defence fairly;
 - (c) considering the interests of the parties, witnesses, victims and jurors and keeping them informed of the progress of the case as necessary;
 - (d) ensuring the protection of the rights of a defendant;
 - (e) ensuring that appropriate information is available to the court particularly when bail and sentence are under consideration; and
 - (f) dealing with a case in a way that takes into account—
 - (i) the gravity of the offence;
 - (ii) the complexity of the issues;
 - (iii) the consequences for the defendant and others affected;
 - (iv) the needs of other cases; and
 - (iv) allotting a case an appropriate share of the court's resources, while taking into account the need of resources to other cases.
- (4) The court must seek to give effect to the overriding objective when the court—
 - (a) exercises any discretion given to it by these Rules; or
 - (b) interprets the meaning of any Ordinance, rule or practice direction.
- (5) Each party shall actively assist the court in fulfilling its duty under subrule (4) whether or not the court has given a direction; and may apply for a direction if needed.
- (6) It is the duty of the parties and participants in a criminal case to—
 - (a) prepare and conduct the case in accordance with the overriding objective;
 - (b) comply with the rules, any practice directions, orders and directions made or given by the court;
 - (c) immediately inform the court and all parties of—
 - (i) any significant failure (whether or not that party or participant is responsible for the failure) to take any procedural step required by these Rules, a practice direction or any order or direction made by the court;
 - (ii) anything that may affect the date or duration of the trial;
 - (iii) anything that may significantly affect the progress of the case in any other way.

- (7) Under these Rules, unless the context makes it clear that something different is meant, anything that a party may or shall do, may be done—
- (a) by an Attorney on the party's behalf;
 - (b) by an individual with the written authority of an entity or other legal person, where that party is an entity or other legal person; and
 - (c) with the help of a parent, guardian or other adult as the court may determine, where that party is an accused—
 - (i) who is a juvenile;
 - (ii) whose understanding of what the case involves is or may be limited; or
 - (iii) who is on record as being assisted by a McKenzie Friend.

Part II – Rules of general application

5. Opening hours of the office of the court

- (1) The court office shall be open to the public for the filing of documents between the hours of 8:30 a.m. and 4:00 p.m. every Monday to Friday, except on public holidays.
- (2) Notwithstanding subrule (1), a document that is filed electronically or otherwise with the court office—
- (a) before the regular business hours on any given day shall be deemed to have been filed at 8:30am of that day.
 - (b) Any document that is filed after 4:00 pm of any given day shall be deemed to have been filed at 8:30 am the next day.
 - (c) Any document that is filed on a weekend shall be deemed to have been filed at 8:30 am on the next business day when the office is open to the public for business; or
 - (d) on the weekend or public holiday, shall be dated and deemed filed on the next working day.

6. Court records to be in electronic form

Court records shall be created, entered and maintained electronically to the extent possible.

7. Verbatim records to be made

Official verbatim records of all criminal proceedings shall be made on audio recording equipment unless the Judge or Magistrate presiding in any criminal proceedings directs that the recording of any proceedings or any part of proceedings should be made by stenographic reporting or other method approved by the Chief Justice.

8. Courtroom events to be recorded

Courtroom events shall be recorded electronically.

9. Copies of orders

Upon payment of a prescribed fee, if applicable, the parties in any criminal proceedings shall be provided with copies of any order issued by the court in its proceedings.

10. Electronic filing

Upon the introduction of electronic filing mechanism, a police officer or other person duly authorised may use the electronic filing program in use at the court to electronically submit and file, in the format required by the filing program, complaints and any other documents that are required or that may be filed with the court.

11. Application for adjournment

- (1) Except in exceptional circumstances, a notice of application for adjournment shall be made in writing, giving reasons for the application, not less than four working days prior to the date of the hearing or trial, through the court office where the adjournment is requested.
- (2) An application for adjournment shall be granted only if good cause is shown.
- (3) Unless the court orders otherwise, a defendant and any witness who is bound over to appear must appear in court on the date set for the hearing of an application for adjournment.

12. Summary cases – time goals

The Chief Justice shall establish time goals for the disposition of summary cases, in consultation with the Judges, Magistrates, Attorneys and others.

13. Persons remanded in custody – commencement date of trial

- (1) The trial of a person remanded in custody shall commence—
 - (a) where the offence is being tried summarily, within six months of the charge; or
 - (b) where the offence is indictable, within nine months after arraignment.
- (2) Notwithstanding subrule (1), a trial may commence at a later date if where—
 - (a) a bail review is carried out prior to the expiry of the six months for the summary matter, or nine months after arraignment; and
 - (b) the prosecution satisfies the court that the Custody Order should be continued, and that the postponement of the trial is justified.
- (3) A person remanded in custody in default of bail shall receive priority for trial or other hearings.

14. Trial of persons charged with murder or a violent indictable sexual offence

The trial of a person charged with murder or a violent indictable sexual offence shall be given priority for trial.

15. Power to extend time

In the absence of expressed provision to the contrary in these Rules, or any other enactment, the court may, where it is considered in the interest of justice to do so, extend the time for doing any act under these Rules.

16. Expedited hearing when virtual complainant, defendant or witness about to leave the jurisdiction

- (1) The Director of Public Prosecutions or a defendant may apply for an expedited hearing in cases where—
 - (a) there is a virtual complainant,

- (b) a defendant or a witness who is not ordinarily resident in the Turks and Caicos Islands; or
- (b) a resident is about to leave the jurisdiction without expectation of return.
- (2) An expedited hearing shall not be granted if the expedited hearing would prejudice the person charged or would not be in the interest of justice.

17. Applications (general)

In the absence of expressed provisions to the contrary in these Rules or any other enactment, the general rule is that an application under these Rules to the Supreme Court must be in writing and should be filed and served four working days before the hearing at which the application is heard.

Part III – Complaints, summons and arrest warrants

18. Jurisdiction starts with service of summons or arrest

The court has immediate jurisdiction over a person accused of committing an offence when—

- (a) a summons is served on that person; or
- (b) the person is arrested, with or without an arrest warrant.

19. Transmission of summons and arrest warrant to the police

- (1) The court shall transmit a summons or arrest warrant to the police by hard copy or by electronic means.
- (2) A printed copy of a summons or arrest warrant transmitted by electronic means in accordance with subrule (1) is a valid copy.

20. Transmission of summons and arrest warrant to the Director of Public Prosecutions

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

21. Complaint

A complainant who wants the court to issue a summons must—

- (a) file, lay or prefer a complaint in writing in the court office; or
- (b) unless any other written law otherwise provides, present a complaint orally to the court, with a written record of the allegation that it contains.

22. Allegation of offence in complaint

- (1) An allegation of an offence in a complaint or charge must contain—
 - (a) a statement of the offence that—
 - (i) describes the offence in ordinary language; and
 - (ii) identifies any written law that creates it; and
 - (b) such particulars of the conduct constituting the commission of the offence to make clear what the complainant alleges against the accused.

- (2) More than one incident of the commission of the offence may be included in the allegation, if those incidents, taken together, amount to a course of conduct having regard to the time, place or purpose of commission.

23. Summons or warrant

- (1) The court may issue or withdraw a summons—
 - (a) without giving the parties an opportunity to make representations; or
 - (b) at a hearing in public or private, or without a hearing.
- (2) The court may issue or withdraw a warrant—
 - (a) without giving the parties an opportunity to make representations; or
 - (b) at a hearing in public or private, or without a hearing.
- (3) Where appropriate, the court may inform such parties and participants that it has done so, as the court may deem necessary.
- (4) A summons or warrant may be issued in respect of more than one offence.
- (5) A summons must—
 - (a) contain notice of when and where the accused is required to attend the court;
 - (b) specify each offence in respect of which it is issued; and
 - (c) identify—
 - (i) the court that issued it, unless it is otherwise recorded by the court officer; and
 - (ii) the court office for the court that issued it.
- (6) A summons may be contained in the same document as a complaint or must be accompanied by the complaint.
- (7) Unless it would be inconsistent with other legislation, a replacement summons may be issued without a fresh complaint where the one replaced was served by leaving or posting it where personal service is required but is shown not to have been received by the addressee.
- (8) A summons issued to an accused who is a juvenile must require the accused's parent or guardian to attend court with the accused, or a separate summons may be issued for that purpose.
- (9) A summons may be issued to secure the attendance of the complainant, notwithstanding that the court has received either a reasonable excuse for non-attendance of the complainant or other sufficient reason and has adjourned the hearing.
- (10) In this rule where a signature is required, an electronic signature incorporated in the summons shall satisfy this requirement.

24. Complaints made by police officer

- (1) The general rule is that a complaint by a police officer shall be in writing and shall be signed by the officer making the complaint.
- (2) A police officer may file a complaint on oath or affirmation and shall sign a certificate certifying that the statements in the complaint are true to the best of his knowledge and belief and that the officer is aware that wilfully making a false statement in a complaint makes the officer liable to punishment.
- (3) A certificate in lieu of oath made in accordance with this rule is deemed to be equivalent to an oath.

- (4) A police officer may file a complaint or a complaint on oath or affirmation by transmitting the document electronically to the court office and the officer's typewritten name on the electronic document shall be deemed to be the officer's handwritten signature if accompanied by an authorised password issued by the court office.

25. Complaint to relate to one offence only

A complaint shall be for one offence only, but a complainant may lay more than one complaint against the same person.

26. Service of summons

- (1) A summons shall be served within 30 days after the date of the filing of complaint.
- (2) The court office shall arrange service of the summons.
- (3) A summons shall be served by a bailiff, process server or police officer upon the person to whom it is directed, by either delivering it to him personally or by leaving it for him at his last or most usual place of abode where it is not convenient or possible to deliver it to him personally.
- (4) A defendant in respect of whom a summons has been issued is deemed to be lawfully served if the summons—
 - (a) in the case of the defendant being a master or seaman or person employed in any ship or vessel, is left within the hands of a person employed on board the ship or vessel; or
 - (b) in the case of the defendant being an entity, is left at its ordinary place of business, with a partner, director, secretary, manager, or other official thereof, or if the entity is served in the same manner as if the proceedings were in the civil court.
- (5) A body of trustees may be summoned by serving a summons on any one of them resident in the Islands or on their known legal representative.

27. Proof of service of summons

- (1) Service of a summons may be proved by a certificate of service on oath, endorsed on a copy of the summons and signed by the person who served the summons.
- (2) A certificate of service shall state—
 - (a) the date and time of service;
 - (b) the precise place or address at which the summons was served;
 - (c) the precise manner by which the person on whom the summons was served, was identified; and
 - (d) the precise manner in which the summons was served.
- (3) A person who serves a summons shall file a certificate of service with the court no later than three working days after the service of a summons.
- (4) Failure to execute or file a certificate of service does not affect the validity of the service.
- (5) The court may, at any time, allow an amended certificate of service to be filed unless injustice would result.
- (6) The court may also receive proof of service by affidavit made before a Justice of the Peace or Commissioner of Oaths.
- (7) A person who serves a summons may file a certificate of service or an affidavit of service electronically.

- (8) A person who serves a summons and files a certificate of service or an affidavit of service electronically, may use an electronic signature, accompanied by an authorised password registered with and approved by the court, in lieu of a handwritten signature on the certificate or affidavit.
- (9) A person who serves a summons shall, where—
 - (a) the person served fails to appear and there is doubt as to service; or
 - (b) on filing a certificate or affidavit of service the service is contested, attend court at a time and place specified by the court, in order, if necessary, to prove the service in the manner specified in these Rules.
- (10) The Magistrate before whom the accused ought to appear may, in his discretion, receive proof of service by an endorsement on the summons with the date of service and the signature of the police officer, and may not require the appearance of the person who served the summons.

28. Report on unexecuted arrest warrant

- (1) The court office shall prepare detailed quarterly reports on the status of all arrest warrants, including bench warrants that were issued during that period.
- (2) Where there are arrest warrants that are unexecuted for more than 30 days, a Magistrate or the Presiding Judge may enquire of the Commissioner of Police as to the status of the unexecuted warrants.

29. Discharge of arrest warrant

The court may discharge an unexecuted arrest warrant for good cause shown.

Part IV – Bail

30. Bail set when arrest warrant issued

- (1) At the time of issuing an arrest warrant, the Judge or Magistrate shall set terms and conditions of bail, unless bail is denied pending the initial hearing.
- (2) The terms and conditions referred to in subrule (1) 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) Subrule (1) shall not apply to offences where the defendant is alleged to have committed murder, treason, misprision of treason or treason-felony.
- (4) For the purpose of considering bail, the Magistrate may in the exercise of the power to remand the accused into custody, grant a single adjournment for a period not exceeding two days.

31. Application for bail

- (1) An application for bail to the Supreme Court must be made in Form 1 set out in the Schedule.
- (2) The application for bail must—
 - (a) specify—
 - (i) each offence charged; and
 - (ii) if applicable, each relevant previous bail decision and the reasons given for each;
 - (b) explain—
 - (i) as appropriate, the reasons that the court should not withhold bail; and

- (ii) what further information or legal argument, if any, that has become available since the most recent previous bail decision was made;
 - (c) propose the terms of any suggested condition of bail; and
 - (d) if the applicant wants an earlier hearing than subrule (8) requires, make such a request, and explain the reasons for that request.
- (3) An indigent or unrepresented person may use Form 2 as set out in the Schedule.
- (4) An opposition to bail or an application to withdraw, impose or vary a condition of bail shall be made in Form 3 as set out in the Schedule and shall—
- (a) state the reasons that the court should refuse, withdraw, impose or vary a condition of bail;
 - (b) in the case of an application to withdraw, impose or vary a condition of bail, state what material information has become available since the most recent previous bail decision was made; and
 - (c) in the case of an application to impose or vary a condition of bail, state the conditions proposed and the purpose each would serve.
- (5) If the prosecution applies to withdraw bail or opposes bail or variation of bail under subrule (4) its office must—
- (a) in the case of an opposition to bail or variation of bail, notify the office of the Supreme Court within 24 hours of service on its office of the application for bail or variation of bail; and
 - (b) within 24 hours file and serve on the defendant notice of the reasons for opposition; or
 - (c) in the case of an application to withdraw bail, serve on the defendant, notice that the court has power to withdraw bail and, if the defendant is absent when the court makes its decision, order the defendant's arrest.
- (6) A defendant who makes an application for bail must—
- (a) if he is in custody and is not represented by an Attorney, lodge the application with the Superintendent of Prisons; or
 - (b) if he is in custody and is represented by an Attorney, file the application at the office of the Supreme Court.
- (7) The Superintendent of Prisons or other person referred to in subrule (6)(a) who receives a copy of the application from a defendant must as soon as practicable file the application at the Supreme Court office.
- (8) The Supreme Court Office must—
- (a) if the application is made by the defendant, immediately send a copy of the application to the Director of Public Prosecutions;
 - (b) fix a date, time and place for the court to hear the application as soon as practicable and in any event—
 - (i) if it is an application to grant or withdraw bail, no later than seven working days after it was served;
 - (ii) if it is an application to impose or vary a condition, no later than seven working days after it was served;
 - (c) give notice of the date, time and place to—
 - (i) the applicant;
 - (ii) the Director of Public Prosecutions; and

- (iii) if the applicant is in custody, the Superintendent of Prisons.
- (9) The court may—
 - (a) vary or waive a time limit under this rule; or
 - (b) allow an application to be in a different form to the form set out in the Rules, or to be made orally.

32. Application for review of a decision of a Magistrate

- (1) An application to review a decision of a Magistrate must be in Form 1 set out in the Schedule.
- (2) If the applicant is in custody and is not represented by an Attorney, the application must be lodged with the Superintendent of Prisons.
- (3) The Superintendent of Prisons must as soon as practicable, and in any event no later than five working days after the date of the decision appealed against, file the application at the office of the Supreme Court.
- (4) If the applicant is—
 - (a) not in custody; or
 - (b) represented by an Attorney.

the applicant must file the application at the court office no later than five working days after the date of the decision appealed against.
- (5) The Supreme Court must as soon as practicable—
 - (a) send a copy of the application to the Director of Public Prosecutions;
 - (b) fix a date, time and place to hear the application; and
 - (c) give notice of the date, time and place to—
 - (i) the applicant;
 - (ii) the Director of Public Prosecutions; and
 - (iii) if the applicant is in custody, the Superintendent of Prisons.

33. Hearing of application for review of a decision

- (1) A review of a decision under this part shall be made by way of a rehearing.
- (2) The court may confirm, modify or reverse the decision of the Magistrate.
- (3) The court office must serve a copy of any order on the—
 - (a) Chief Magistrate;
 - (b) Superintendent of Prisons;
 - (c) Magistrate or clerk of the court of the Magistrate who made the decision under review; and
 - (d) defendant or his Attorney.

34. Review of bail conditions of persons remanded in custody

- (1) The court office shall prepare by the fifteenth day of every month a list of all persons—
 - (a) who are remanded in custody; and
 - (b) who have been granted bail but are unable to satisfy the conditions of bail.

- (2) The list in subrule (1) shall contain for each person listed, the date of remand, bail conditions, and a summary of bail applications made.
- (3) The Chief Justice shall cause the list referred to in subrule (1) to be reviewed by a Judge who may, with or without application being made by or on behalf of the defendant, vary the conditions of bail, but no such variation shall impose more onerous condition.

Part V – Proceedings in the criminal court

35. Stages in proceedings

- (1) The major stages in the proceedings of summary cases are—
 - (a) orientation session;
 - (b) initial hearing;
 - (c) pre-trial case management;
 - (d) omnibus conference; and
 - (e) trial.
- (2) The major stages in the proceedings of indictable cases are—
 - (a) orientation session;
 - (b) initial hearing;
 - (c) sufficiency hearing;
 - (d) indictment;
 - (e) the plea and directions hearing which comprises—
 - (i) arraignment;
 - (ii) case management conference; and
 - (iii) omnibus conference; and
 - (f) trial.

36. Orientation session

- (1) An orientation session for a defendant shall be held prior to the initial hearing and shall be conducted by a member of the court.
- (2) The orientation session serves the following purposes—
 - (a) to take attendance;
 - (b) to note adjournment requests;
 - (c) to prepare a bench warrant list for the Magistrate's review in the event of non-appearance of a summoned defendant;
 - (d) to verify the accuracy of information concerning a defendant's address and contact information;
 - (e) to cross-check a defendant's name against the court's warrant and criminal history file;
 - (f) to acquaint a defendant with court procedures.

- (3) An orientation session for a virtual complainant and witness, conducted separately, shall be held prior to the start of a trial to acquaint the virtual complainant and witness with court procedures and practices and to ensure the comfort of the virtual complainant and witness.

37. Providing initial details of the prosecution's case

- (1) A complainant must serve initial details of the prosecution's case on the court office—
 - (a) as soon as practicable; and
 - (b) in any event, no later than the commencement of the initial hearing at the Magistrate's Court.
- (2) Whether or not the accused person requests those details, the complainant must serve them on the accused or his Attorney—
 - (a) as soon as practicable; and
 - (b) in any event, no later than the commencement of the first hearing at the Magistrate's Court.

38. Content of initial details

- (1) Initial details of the prosecution case must include—
 - (a) a summary of the evidence on which that case will be based;
 - (b) any document or extract setting out facts or other matters on which that case will be based;
 - (c) any combination of such a summary, statement, document, extract or criminal record, if any;
 - (d) video footage or CCTV footage where available;
 - (e) records of statements or interviews under caution.
- (2) A failure to comply with the requirements of this rule may lead to comments being made by the court, or an appropriate sanction being imposed.

39. Case management: The duty of the court

- (1) These provisions apply to both the Supreme Court and Magistrate's Court in criminal proceedings.
- (2) The court shall advance the overriding objective by actively managing the case.
- (3) Active case management includes—
 - (a) early identification of the real issues, which includes—
 - (i) the identification of all possible legal issues;
 - (ii) identification of the nature of the defence; and
 - (iii) enquiring whether the defence has taken written instructions;
 - (b) early identification of the needs of witnesses or accused, including special measures for testimony including interpretation and translation services;
 - (c) achieving certainty as to what shall be done, by whom, and when, in particular, by the early setting of a timetable for the progress of the case;
 - (d) monitoring the progress of the case and compliance with directions;
 - (e) ensuring that evidence, whether disputed or not, is presented in the shortest and clearest way;

- (f) discouraging delay, dealing with as many aspects of the case as possible on the same occasion, and avoiding unnecessary hearings;
 - (g) encouraging the participants to co-operate in the progression of the case;
 - (h) making use of technology;
 - (i) in the case of a juvenile appearing before the court, ensuring that juvenile has legal representation as soon as possible; and
 - (j) any other matter the court deems necessary.
- (4) The court shall actively manage the case by giving any direction appropriate to the needs of that case as early as possible.

40. Case progression officers and their duties

- (1) At the commencement of proceedings in the Magistrate's Court and in the Supreme Court each party must, unless the court otherwise directs#
- (a) specify a person responsible for progressing that case; and
 - (b) inform other parties and the court who that person is and how to contact that person.
- (2) In fulfilling its duty under subrule (1), the court must, where appropriate#
- (a) nominate a court officer responsible for progressing the case; and
 - (b) ensure the parties know who that person is and how to contact him.
- (3) A case progression officer must—
- (a) monitor compliance with directions;
 - (b) ensure that the court is kept informed of events that may affect the progress of that case;
 - (c) ensure that he can be contacted promptly about the case during ordinary business hours;
 - (d) act promptly and reasonably in response to communication about the case; and
 - (e) if he will be unavailable, appoint a substitute to fulfil his duties and inform the other case progression officers.
- (4) Upon a final trial timetable and arrangements being set by the court, the case progression officer shall prepare and issue the final trial timetable and arrangements using Form 4 set out in the Schedule, which shall be served on the parties, no later than seven) days before the commencement of the trial.

41. The court's case management powers

- (1) In fulfilling its duty under rule 39(3) the court may give any direction and take any step to actively manage a case.
- (2) In particular, the court may—
- (a) give a direction on its own initiative or on application by a party;
 - (b) ask or allow a party to propose a direction;
 - (c) 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;
 - (d) fix, postpone, bring forward, extend, cancel or adjourn a hearing;

- (e) give directions without a hearing;
 - (f) where rule 42 and 43 apply, shorten or extend (even after it has expired) a time limit fixed by a direction;
 - (g) require issues in the case to be#
 - (i) identified in writing; or
 - (ii) determined separately, and decide in what order they will be determined;
 - (h) require parties to file in court written submissions, including a no case submission by the defence and reply by the prosecution and serve such submissions and reply on a date or within a period directed by the court; or
 - (i) specify the consequences of failing to comply with a direction.
- (3) Any power to give a direction under this Part includes a power to vary or revoke that direction.
- (4) If a party fails to comply with a rule or a direction, the court may—
- (a) fix, postpone, bring forward, extend, cancel or adjourn a hearing; or
 - (b) impose such other sanction as may be appropriate.

42. Application to vary a direction

- (1) A party may apply to vary a direction if—
- (a) the court gave it without a hearing;
 - (b) the court gave it at a hearing in his absence; or
 - (c) circumstances have changed.
- (2) A party who applies to vary a direction must#
- (a) apply as soon as practicable after he becomes aware of the grounds for doing so; and
 - (b) give as much notice to the other parties as the nature and urgency of his application permits.

43. Agreement to vary a time limit fixed by a direction

- (1) The parties may agree to vary a time limit fixed by a direction, but only if the variation will not#
- (i) affect the date of any hearing that has been fixed; or
 - (ii) significantly affect the progress of the case in any other way; and
 - (iii) the court has not prohibited variation by agreement; and
 - (iv) the court's case progression officer is promptly informed.
- (2) The case progression officer must refer the agreement to the court if he doubts the condition in subrule (1) is satisfied.

44. Case preparation and progression

- (1) At every hearing, if a case cannot be concluded immediately, the court may give directions so that it can be concluded at the next hearing, or as soon as possible after that.
- (2) At every hearing the court must, where relevant#
- (a) if the accused is absent, decide whether to proceed nonetheless;

- (b) take the accused's plea (unless already done) or if no plea can be taken, then ascertain whether the accused is likely to plead guilty or not guilty;
 - (c) set, follow or revise a timetable for the progress of the case, which may include a timetable for any hearing including the trial;
 - (d) in giving directions, ensure continuity in relation to the court and to the parties' representatives where that is appropriate and practicable; and
 - (e) where a direction has not been complied with, enquire into the reasons for non-compliance, identify who was responsible, and take appropriate action.
- (3) To prepare for the hearing, the court must take every reasonable step#
- (a) to encourage and to facilitate the attendance of witnesses when they are needed; and
 - (b) to facilitate the participation of any person, including the accused.

45. Disclosure of material

- (1) Directions given by the court pursuant to rule 44 should include—
- (a) fixing a date by which the prosecution must disclose to the accused all the evidence they intend to rely upon at trial;
 - (b) fixing a date by which the prosecution must disclose all other material in its possession including material that they do not intend to use at trial which materially weakens the prosecution case or assists the accused; and
 - (c) fixing a date by which the prosecution must confirm if any material in its possession that they do not intend to use at trial, which materially weakens its case or assists the accused, has been served on the accused.
- (2) The prosecution shall disclose material under subrule (1)(b) unless the Magistrate or Judge orders that such material should not be disclosed in the public interest.
- (3) Any application for an order under subrule (2) may be made with or without notice to the accused depending on the sensitivity of the material concerned.
- (4) An accused person or his Attorney may make an application to the court to permit the accused and his Attorney to inspect and copy relevant prosecution material if not made available under subrule (1)(b).

46. Notice of alibi

Where an accused intends to rely on an alibi at the trial, the accused must give notice of this intention using Form 5 set out in the Schedule, no later than seven clear days of the first Case Management Conference in the Magistrate's Court and seven clear days of the first Plea and Directions Hearing in the Supreme Court and must give particulars in writing to the Director of Public Prosecutions consistent with the requirements of section 5 of the Evidence (Special Provisions) Ordinance.

47. Notice of acting

At or prior to an initial hearing, the defendant or his Attorney shall file with the court a Notice of Acting in Form 6 set out in the Schedule annexed.

48. Initial hearing in summary matters

- (1) An initial hearing in a summary matter shall include—
 - (a) verifying the defendant's identity and contact information, unless verified previously at an orientation session;
 - (b) verifying the Notice of Acting, if the defendant is represented;
 - (c) verifying the service of the initial papers or giving directions for the service of these papers;
 - (d) reading the charges to the defendant;
 - (e) explaining the defendant's rights;
 - (f) explaining the plea process and taking of the plea;
 - (g) considering bail;
 - (h) hearing and reviewing any applications made by the prosecution or the defendant; and
 - (i) notifying the defendant of the next court date at which his appearance is required.
- (2) Where the defendant is charged with an offence triable summarily, 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 will not be tried and will be sentenced by the Magistrate;
 - (c) that if the defendant pleads not guilty, the case will be set down for case management or trial as the case may be and that a Scheduling Order that includes a projected trial date will be entered.
- (3) At an initial hearing in summary matters, the Magistrate may—
 - (a) conduct a trial at once if the defendant or prosecutor requests an immediate trial and the defendant or prosecutor, as the case may be, consents;
 - (b) make a Scheduling Order that establishes a schedule of pre-trial events and a projected trial date in accordance with these Rules;
 - (c) make an order that copies of the police investigation reports be made available to the defendant by a specified time; or
 - (d) commit a matter listed on the early guilty plea scheme for an early guilty plea hearing.

49. Initial hearing in indictable matters

- (1) An initial hearing in an indictable matter shall include all the items in rule 48(1), except that a Magistrate shall not accept a plea to an indictable offence and shall forward the case to be dealt with by a Judge.
- (2) At an initial hearing in an indictable matter, the Magistrate shall make a scheduling order fixing dates—
 - (a) for the sufficiency hearing;
 - (b) by which the defendant must retain an Attorney or apply for legal aid;
 - (c) by which the defendant's application for appointment of an Attorney must be determined;
 - (d) by which the Attorney, whether retained or appointed, must file a Notice of Acting with the court, if a Notice of Acting has not been filed; and

- (e) by which the initial papers and other disclosure if not already served, must be served.
- (3) At an initial hearing in an indictable matter, the Magistrate may commit a matter listed for an early guilty plea, for an early guilty plea hearing.
- (4) Nothing in this rule shall be construed as preventing a defendant from retaining legal representation at a subsequent stage of the proceedings.
- (5) The court shall cause a Scheduling Order made at the initial hearing to be served on—
 - (a) the defendant;
 - (b) the Attorney for the defendant;
 - (c) the Director of Public Prosecutions; and
 - (d) in cases where the defendant seeks legal aid pursuant to the Legal Aid Rules, on the Legal Aid Panel.

50. Explanation of rights

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 understands;
- (b) the right to bail, if any;
- (c) the right to retain legal representation, including the right to request an adjournment to retain legal representation;
- (d) the ability to have legal aid assigned upon application;
- (e) the right to remain silent, except as to plea and the right to know that any statement made may be used against him;
- (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 to an interpreter, if necessary.

51. Accepting a guilty plea (generally)

- (1) Before accepting a plea of guilty, a Judge or Magistrate must assure himself, by questioning the defendant personally or, at his discretion, by calling upon the Attorney for the defendant to lead questions as to whether—
 - (a) the defendant committed the offence;
 - (b) the plea of guilty is voluntarily made, and not as a result of any threats or inducements not disclosed on the record; and
 - (c) the plea of guilty is made with an understanding of the consequences of the plea.
- (2) A Judge or Magistrate may refuse to accept a plea of guilty if he believes it is not in the interest of justice to do so.
- (3) If a plea of guilty is rejected, no admission made by the defendant at that stage of the proceedings shall be admissible against the defendant in any subsequent hearing of the proceedings.
- (4) Where the defendant enters a guilty plea, the Judge or Magistrate may order a pre-sentence report and the case, along with the pre-sentence report shall be fixed for sentencing.

52. Conduct of a trial (generally)

- (1) In order to manage a trial the court—
 - (a) must establish, with the active assistance of the parties, the disputed issues;
 - (b) must consider setting a timetable that—
 - (i) takes account of the issues and of any timetable proposed by a party;
 - (ii) limits the duration of any stage of the hearing;
 - (c) may require a party to identify—
 - (i) the witnesses that party wants to give evidence;
 - (ii) the order in which that party wants those witnesses to give their evidence;
 - (iii) whether that party requires an order compelling the attendance of a witness;
 - (iv) the desired arrangements to facilitate the giving of evidence by a witness;
 - (v) the desired arrangements to facilitate the participation of any other person, including the defendant;
 - (vi) the length of time each party intends to be examination in chief and cross examination of witnesses;
 - (vii) the written evidence that party intends to introduce;
 - (viii) any other material that person intends to make available to the court in the presentation of the case; and
 - (ix) whether that party intends to raise any point of law that could affect the conduct of the trial;
 - (d) may limit the examination, cross-examination or re-examination of witnesses;
 - (e) may limit the duration of any stage of the hearing;
 - (f) may make a direction that the case be heard in another court.
- (2) The court will require the prosecutor and the Attorney for the accused to file a certificate of readiness before the trial, as set out in Form 7 set out in the Schedule.
- (3) In matters before the Supreme Court, the court will require a completed hearing questionnaire as set out in Form 8 set out in the Schedule, to be filed by the parties before the matter is listed for a case management hearing.

Part VI – Scheduling orders and omnibus conference**53. Scheduling Order (general)**

- (1) A Scheduling Order required by these Rules shall be made by a Judge or Magistrate and may be used to set out the date—
 - (a) by which the Attorney for the defendant must file a Notice of Acting in Form 6 set out in the Schedule with the court office if the defendant is granted an adjournment to retain a legal practitioner;
 - (b) by which the prosecution must make disclosure;
 - (c) by which the defence must disclose its defence statement, alibi, or special defences;

- (d) by which any pre-trial motions must be filed;
 - (e) of the omnibus conference;
 - (f) the projected trial date; and
 - (g) the court may hold a case management conference as required.
- (2) The Scheduling Order set out in Form (9) or 10 of the Schedule may be used where appropriate.

54. Monitoring and follow-up of scheduling orders and other cases

The court, through a case progression officer, shall actively monitor and follow-up on scheduling orders in order to keep cases moving on a timely basis and it shall cause to be reviewed on a regular basis all pending cases, to ensure that proper notifications have been given, and other necessary action taken.

55. Omnibus conference

- (1) The omnibus conference serves the following purposes—
- (a) to review the status of disclosure;
 - (b) to discuss trial readiness issues and action to be taken to cure any defects in readiness;
 - (c) to set out issues to be resolved at trial;
 - (d) to arrange for mediation or restitution discussions when appropriate;
 - (e) to review a defendant's sentence options;
 - (f) to discuss plea and sentence reduction possibilities if available in consideration of guilty plea;
 - (g) to discuss witness lists and the need to summon witnesses;
 - (h) to identify possible scheduling conflicts and ways to resolve them;
 - (i) to determine whether an interpreter will be needed at trial;
 - (j) to set a firm trial date;
 - (k) to set down for hearing any legal issues that must be resolved prior to trial; and
 - (l) to set a hearing date for a defendant who desires to withdraw his plea of not guilty and enter a plea of guilty instead.
- (2) Unless the court orders otherwise, an omnibus conference shall be held on the date specified in the Scheduling Order.
- (3) The Attorney for the defendant, and the prosecutor shall attend the conference.

Part VII – Summary case management – Trial and sentence

56. Trial and sentence in the Magistrate's Court

- (1) Where the court tries a case, or the accused is found guilty or pleads guilty, the general rule is that the hearing must be in public, but the court may exercise any power it has to—
- (a) impose reporting restrictions;
 - (b) withhold information from the public; or
 - (c) order a hearing in private.

- (2) Unless the court otherwise directs, only the following may attend a hearing where a person who is a juvenile or a vulnerable person is tried—
 - (a) the parties and their Attorneys;
 - (b) an accused's parent, guardian or other supporting adult;
 - (c) a witness; and
 - (d) anyone else directly concerned in the case.
- (3) Unless already done, the court must—
 - (a) read the allegation of the offence to the accused;
 - (b) explain, in terms the accused can understand (with help, if necessary)—
 - (i) the allegation; and
 - (ii) what the procedure at the hearing will be;
 - (c) ask whether the accused has been advised that he can request a sentence indication for a guilty plea;
 - (d) explain the right of the accused to appoint his attorney or to be represented at the expense of the state;
 - (e) ask whether the accused pleads guilty or not guilty; and
 - (f) take the accused's plea.

57. Procedure on plea of not guilty

- (1) This rule applies if the accused has—
 - (a) entered a plea of not guilty;
 - (b) not entered a plea; or
 - (c) if, in either case, it appears to the court that there may be grounds for making an incapacity to plead order without convicting the accused.
- (2) If a not guilty plea was taken on a previous occasion, the court must ask the accused to confirm that plea.
- (3) The prosecution—
 - (a) may summarize its case, identifying the relevant law and facts; and
 - (b) must introduce the evidence on which it relies.
- (4) At the conclusion of the case for the prosecution, on the application of the accused or on its own initiative, the court—
 - (a) may acquit on the ground that a *prima facie* case has not been made out and the prosecution evidence is insufficient for any reasonable court to properly convict, but must not do so unless the prosecution has had an opportunity to make representations; and
 - (b) must inform the accused or his Attorney of his right to address the court at the commencement or conclusion of his case.
- (5) The court must explain in terms the accused can understand (with help, if necessary)—
 - (a) the right to give evidence; and
 - (b) that the accused may introduce evidence.

- (6) A party may introduce further evidence if it is then admissible.
- (7) Where a party wants to introduce evidence or make representations after that party's opportunity to do so has passed, the court—
 - (a) may refuse to receive any such evidence or representations; and
 - (b) must not receive any such evidence or representations after it has announced its verdict.
- (8) Where the Magistrate's Court convicts or acquits the accused, it must give sufficient reasons for its decision.

58. Procedure on plea of guilty

- (1) This rule applies if—
 - (a) the accused pleads guilty; and
 - (b) the court is satisfied that the plea represents a clear acknowledgement of guilt.
- (2) The prosecution must summarise its case against the accused to the court.
- (3) The court may convict the accused without receiving evidence.

59. Application to withdraw a guilty plea (summary matters)

- (1) This rule applies where the accused wants to withdraw a guilty plea in summary matters.
- (2) The accused must apply to withdraw a guilty plea—
 - (a) as soon as practicable after becoming aware of the reasons for doing so; and
 - (b) before sentence.
- (3) The application may be in writing and where it is in writing, the accused must serve it on—
 - (a) the court office; and
 - (b) the prosecutor.
- (4) The application must—
 - (a) explain why it would be unjust not to allow the accused to withdraw the guilty plea;
 - (b) identify—
 - (i) any witness that the accused wants to call; and
 - (ii) any other proposed evidence.
- (5) The court shall consider the application and, in its discretion, may grant or refuse an application, as the justice of the case requires.

60. Procedure if the court convicts

- (1) If the court convicts the accused the court may, where appropriate, exercise its power to require—
 - (a) statement of the accused's financial circumstances;
 - (b) a pre-sentence or probation report; and
 - (c) a victim impact statement.

- (2) The prosecution must—
 - (a) provide the court with information relevant to sentence, including any statement of the effect of the offence on the victim, the victim's family or persons connected to the victim or the offence; and
 - (b) where it is likely to assist the court, identify any other relevant consideration to sentence, including—
 - (i) aggravating and mitigating factors;
 - (ii) the legislation applicable; and
 - (iii) any sentencing guidelines, or guideline cases.
- (3) Where the accused pleads guilty but wants to be sentenced on a different basis to that disclosed by the prosecution—
 - (a) the court may require the accused to set out that basis in writing, identifying what is in dispute; and
 - (b) the court may invite the parties to make representations about whether the dispute is material to the sentence to be imposed on the accused, and decide the dispute.
- (4) Before the court passes sentence the court must—
 - (a) give the accused an opportunity to make representations and introduce evidence relevant to sentence; and
 - (b) where the accused is a juvenile, give the parents of the accused, guardian or other supporting adult, if present, such an opportunity as well.
- (5) The court may elicit any further information relevant to sentence that the Court may deem necessary.
- (6) If the court requires more information, it may exercise its power to adjourn the hearing for not more than 28 days at a time.
- (7) When the court has taken into account all the evidence, information and any report available, the Court must as a general rule, pass sentence immediately.
- (8) When passing sentence, the court must—
 - (a) explain the reasons for deciding on that sentence, even in circumstances where the accused is not present;
 - (b) in circumstances where there is a power to review the sentence, explain to the accused its effect and the consequences of failing to comply with any order or payment of any fine;
 - (c) give any such explanation in terms the accused, if present, can understand (with help, if necessary); and
 - (d) consider exercising any power it has to make a costs or other order.

61. Failure to prosecute in the Magistrate's Court

The Magistrate Court may dismiss any summary matter that can be disposed of summarily—

- (a) if the charge has been pending for more than 90 days;
- (b) if the trial has not commenced and the delay is not attributable to the defendant; and
- (c) consider exercising any power it has to make a costs or other order.

Part VIII – Hybrid cases procedure

62. Court to begin by considering which mode of trial appears more suitable

- (1) At the initial hearing of a triable either way offence, the court shall consider whether, having regard to the matters mentioned in subrule (3) and any representations made by the prosecutor or the accused, the offence appears to the court more suitable for summary trial or for trial on indictment.
- (2) Before making a consideration, the court—
 - (a) shall cause the charge to be written down, if this has not already been done, and read to the accused; and
 - (b) shall afford the prosecutor and then the accused an opportunity to make representations as to which mode of trial would be more suitable.
- (3) The matters to which the court is to have regard under subrule (1) are—
 - (a) the nature of the case;
 - (b) whether the circumstances make the offence one of a serious character;
 - (c) whether the punishment which a Magistrate's Court is empowered to pass would be adequate; and
 - (d) any other circumstances which the court considers necessary.

63. Procedure where summary trial appears more suitable

- (1) Where the court has considered rule 62 and it appears that the offence is more suitable for summary trial, the provisions of this rule shall apply.
- (2) The court shall explain to the accused in terms the accused can understand (with help, if necessary) —
 - (a) that it appears to the court more suitable for the accused to be tried summarily for the offence, and that he can either consent to be so tried or, if he wishes, be tried by the Supreme Court; and
 - (b) that if he is tried summarily and is convicted by the court, he may be committed for sentence to the Supreme Court if the convicting court, on obtaining information about his character and antecedents, is of opinion that they are such, that greater punishment should be imposed than the convicting court has power to impose.
- (3) After explaining to the accused as provided by the preceding subrule, the court shall ask the accused whether he consents to be tried summarily or wishes to be tried by the Supreme Court.
- (4) In pursuance of subrule (3), if the accused—
 - (a) consents to be tried summarily, the court shall proceed to the summary trial of the complaint; or
 - (b) consents to be tried by the Supreme Court, the court shall set the matter down for the next sufficiency hearing.

64. Procedure where trial on indictment appears more suitable

Where the court has considered the requirements of rule 62 and it appears that the offence is more suitable for trial on indictment, and the accused so elects, the court shall fix the matter for the next sufficiency hearing and shall complete a scheduling order in Form 9 set out in the Schedule.

65. Procedure for matters remitted for hearing

Where an indictable offence is remitted to the Magistrate's Court to be dealt with summarily—

- (a) the same procedure shall apply as if the offence were a summary offence and not an indictable offence, and the provisions of these Rules shall apply accordingly;
- (b) the evidence of any witness taken before the court exercised its power to try the offence summarily need not be taken again, but every witness shall, if the defendant so requires it, be recalled for the purpose of cross-examination.

Part IX – Indictable case progression – Initial hearing to trial**66. Indictable case cause list**

The date of the initial hearing of the complaint shall be the summons return date or a date as soon as possible after charge unless the defendant has not been granted bail in which case, the initial hearing shall be scheduled for a date within 48 hours of charge.

67. Transmission of documents

- (1) The court office shall transmit to the Director of Public Prosecutions a copy of the Notice of Acting entered by the Attorney for the defendant or shall notify the Director of Public Prosecutions if the notice has not been entered in accordance with the Scheduling Order.
- (2) The Magistrate's Court Office shall transmit to the Supreme Court Office, the initial case papers.
- (3) The initial case papers must include—
 - (a) a summary of the evidence on which the case will be based;
 - (b) any document, witness statement or extract setting out facts or other matters on which the case will be based;
 - (c) any combination of such a summary, statements, document, or extract, if any;
 - (d) video footage or CCTV footage where available; or
 - (e) records of statements or interviews under caution.
- (4) A failure to comply with the requirements may lead to comments being made by the court, or an appropriate sanction being imposed.

68. Sufficiency hearing

- (1) A sufficiency hearing shall be held before a Judge to determine if the prosecution has disclosed sufficient evidence to meet the burden of going forward with the criminal prosecution and thereby to require the defendant to stand trial, not less than 35 days of the initial hearing, or such other reasonable time fixed by order of the court.
- (2) At the sufficiency hearing a Judge shall examine only such documentary evidence as the prosecution may submit, including, but not limited to, the complaint, police investigation reports, and victim and witness statements.
- (3) If not provided before, the prosecution shall provide to the defendant, not less than seven days before the date of the sufficiency hearing, copies of all documents he intends to use at the sufficiency hearing.
- (4) The documentary evidence submitted by the prosecution must disclose *prima facie* evidence that an indictable offence has been committed and that the defendant has committed it.

- (5) The probative value of the documentary evidence submitted by the prosecution must be sufficient for a Judge to find as a matter of law that a jury properly directed, taking the written evidence at its highest, could return a verdict of guilty against the defendant.
- (6) Where a defendant does not have legal representation at a sufficiency hearing, the court shall cause all documentary evidence submitted by the prosecution to be tendered by being read out aloud, except where the court directs otherwise.
- (7) The sufficiency hearing shall be attended by the prosecutor, police officer in charge of the investigation, the defendant, and the Attorney for the defence, if any.
- (8) During the sufficiency hearing the Attorneys representing the parties may make submissions in support of or to challenge the finding of a sufficient case; such submissions shall be in writing except otherwise ordered by the court. The submissions shall be filed and served no later than two days before the hearing.
- (9) A sufficiency hearing shall be held in open court unless—
 - (a) a provision of the law or these Rules provide otherwise; or
 - (b) the circumstances require confidentiality as to certain charges, in which case the proceedings shall be held in Chambers.
- (10) 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.

69. Written statements at sufficiency hearing

- (1) Witness statements submitted to the court and used in a sufficiency hearing shall, if the conditions mentioned in subrule (2) are satisfied, be admissible as evidence to the like extent as oral evidence by that person at trial but the judge may exclude such evidence if he is of the opinion that such evidence ought to be excluded in the interest of justice.
- (2) The conditions referred to in subrule (1) are that—
 - (a) the statement purports to be signed by the deponent;
 - (b) the statement contains a declaration by the deponent to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that, if it were tendered in evidence, he would be liable to prosecution if he wilfully stated in it anything which he knew to be false or did not believe to be true;
 - (c) before the statement is tendered in evidence a copy of the statement is given by or on behalf of the prosecutor, to each of the other parties to the proceedings; and
 - (d) not less than seven days prior to the sufficiency hearing the court and other parties to the proceedings were informed of the intention to have the witness statements submitted in evidence and none of the other parties, before the statement is tendered in evidence at the sufficiency hearing, objects to the statement being tendered.
- (3) Any document or object referred to as an exhibit and identified in a written statement tendered in evidence shall be treated as if it had been produced as an exhibit and identified by the maker of the statement.

70. Director of Public Prosecutions may prefer or decline to prefer indictment

- (1) If the court commits a defendant to stand trial, the Director of Public Prosecutions may prefer an indictment or may decline to prefer an indictment.
- (2) If the Director of Public Prosecutions declines to prefer an indictment, he shall give written notice to the Presiding Judge and the defendant.

- (3) If the Director of Public Prosecutions intends to indict, the indictment must be preferred within a reasonable time after the conclusion of the sufficiency hearing and in any event, at least seven working days before and no later than three working days before the Plea and Directions Hearing.

71. Dismissal for delay

- (1) If there is unreasonable delay in preferring an indictment, the Presiding Judge may order dismissal of the complaint on his own motion or that of the defendant.
- (2) The Director of Public Prosecutions shall be given notice and an opportunity to be heard before an order dismissing a complaint is made.

72. Signing of indictments

- (1) Subject to subrules (2) and (3), all indictments shall be signed by the Director of Public Prosecutions or his designee and a statement that such person is acting on the Director of Public Prosecution's behalf is sufficient evidence of that fact.
- (2) Where under any enactment any injured party or complainant is entitled to prosecute privately, the indictment shall be signed by that party or an Attorney acting on his behalf but not by the Director of Public Prosecutions.
- (3) The Supreme Court shall not accept 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 has seen such indictment and declines to prosecute at the public instance, the offence set out in the indictment;
 - (b) the private prosecutor has given the required security to prosecute the indictment to conclusion; and
 - (c) the defendant undertakes to pay such costs as may be ordered by the court in exceptional circumstances.

73. Filing of indictments

- (1) Indictments shall be filed in the office of the Supreme Court.
- (2) A copy of the indictment filed against a defendant shall be served on the defendant.

Part X – Plea and direction hearings

74. Arraignment and Scheduling Order

- (1) Upon the return of an indictment, a Judge shall arraign the defendant and enter a Scheduling Order setting forth the next steps in the process, including—
 - (a) the date by which the prosecution and defence, if applicable, must make required disclosure;
 - (b) the date by which pre-trial applications must be filed;
 - (c) the date of the omnibus conference; and
 - (d) the projected trial date,and the court may hold a scheduling conference to establish a plan for the case.
- (2) Arraignments shall take place at least once per month before a Judge.
- (3) Arraignment in each case shall ordinarily take place on the next available arraignment day following transmittal or committal of a case, and each party may be allowed one administrative

adjournment where the arraignment day immediately following transmittal or committal is less than 14 days from that date.

- (4) Arraignments shall ordinarily proceed no later than 14 days following transmittal of a case except where there are outstanding experts' reports as to fitness to plead or the court is satisfied that the case is complex.
- (5) On arraignment of an accused in the Supreme Court, where a trial is required, the Court shall fix a date for—
 - (a) trial within six months of arraignment for a custody matter (that is, a case in which the defendant is remanded in custody) and nine months of arraignment for a non-custody matter;
 - (b) a case management hearing shall be within two months of the arraignment date for a custody matter and within four months of the arraignment date for a non-custody matter; and
 - (c) an Omnibus Conference, not later than four weeks before the trial date, to enable any outstanding issues to be considered before the trial and to confirm readiness for trial.
- (6) Where it is in the interest of justice to do so, a Judge may extend or abridge any time limit under this rule and rules 15 and 41(3) and (4) shall apply.
- (7) Upon the arraignment of an accused the Court must—
 - (a) read the indictment or charge to the accused;
 - (b) explain, in terms the accused can understand (with help, if necessary);
 - (i) the charge; and
 - (ii) what the procedure at the hearing will be;
 - (c) ask whether the accused has been advised (in keeping with *R v Goodyear* [2005] 1 WLR 2532) that he can request a maximum sentence indication for a guilty plea; and
 - (d) ask whether the accused has been advised of the possible discount for an early guilty plea.
- (8) For the purposes of this rule, the court shall enquire from the parties, whether at this stage, sufficient information has been provided about the prosecution's case for the defendant to make an informed decision about the defendant's plea and specifically to decide whether to offer an early plea of guilt.

75. Plea of guilty

- (1) Before accepting a plea of guilty to an indictment, the Judge must assure himself, either by questioning the defendant personally, or, at the judge's discretion, by calling upon the Attorney for the defendant to lead the questioning, that—
 - (a) the defendant committed the offence;
 - (b) the plea of guilty is voluntarily made; and
 - (c) the plea of guilty is made with an understanding of the consequences of the plea.
- (2) A Judge may refuse to accept a plea of guilty if he believes it is not in the interest of justice to do so.
- (3) 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 against the defendant in any subsequent hearing of the proceedings.

76. Plea - sentence indication and reduction in sentence

- (1) 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.
- (2) Where the defendant who intends to plead guilty to an offence alleged in a charge, or any other specified offence, makes an application for a maximum sentence indication, the Judge may give such an indication.
- (3) Where a defendant makes an application for a sentence indication hearing, a Judge may fix a hearing for the indication in order to allow time for the filing of the agreed facts and the submissions of the prosecution and the defence.
- (4) The Chief Justice shall, by practice direction, authorise the procedure for sentence indication on an early guilty plea.

77. Plea of not guilty

Where the defendant pleads not guilty at arraignment, the Court may schedule a case management conference to develop a plan for the case and take such other action as may be necessary to streamline and expedite the case for trial.

78. Case management conference

- (1) Immediately following the arraignment of the defendant or at such other time as may be fixed by the Judge, the Judge may make case management orders, as required.
- (2) Upon application of the prosecutor or the defendant, the court may order that a witness give testimony under oath and be subjected to cross-examination prior to the trial and that the sworn testimony be used as evidence at the trial, if the court is satisfied that the witness' evidence is material and that there is a high probability that the witness will not be available to the court on the date of the trial.
- (3) At the case management conference, the Judge shall make an order scheduling further events in the case, including—
 - (a) the date by which the Director of Public Prosecutions must disclose to the defendant any prosecution material which has not previously been disclosed;
 - (b) the date by which the defendant must plead an alibi or any other special defence;
 - (c) the date by which the defendant must give the defence statement as required by these Rules.
 - (d) the date for the filing of any pre-trial motions;
 - (e) the date for any subsequent case management conference that may be required;
 - (f) the date for the omnibus conference; and
 - (g) the projected trial date.
- (4) The Court may hold one or more case management conferences as the interests of justice require.
- (5) Rules 39 to 41 apply to the conduct of the Case Management Hearing.

79. Disclosure by prosecution

- (1) The prosecutor must disclose to the accused any prosecution material used or unused which has not previously been disclosed to the accused.

- (2) The prosecutor must disclose evidence which may be exculpatory or in the opinion of the prosecutor might undermine the case for the prosecution against the accused unless the judge excludes such material in the public interest.
- (3) Give to the accused a written statement that there is no material of a description mentioned in subrule (2).
- (4) A defendant or his Attorney may make an application to the Court to permit the defendant to inspect and copy relevant prosecution material if not made available under subrule (1) or (2).

80. Disclosure by defence

- (1) Where the defendant intends to plead and give evidence of a special defence other than an alibi, he shall give notice of such defence to the Court and to the prosecutor and shall make available to the prosecutor, any information which might be of material assistance to that defence.
- (2) Where the defendant intends to plead an alibi, he shall give notice of such defence to the Court and to the prosecutor in accordance with section 5 of the Evidence (Special Provisions) Ordinance and rule 46, by giving notice of such defence to the Court and to the prosecutor and shall make available to the prosecutor, any information which might be of material assistance, including—
 - (a) the name and address of any witness the defendant believes is able to give evidence in support of the special defence, if the name and address are known to the defendant when the statement is given;
 - (b) any information in the defendant's possession which might be of material assistance in finding any such witness, if his name and address are not given.
- (3) The accused shall where the prosecutor has complied with rule 79 file and serve a defence statement on the prosecutor; and the Court on the date fixed in the Scheduling Order.
- (4) For the purposes of this rule a defence statement is a written statement—
 - (a) setting out in general terms the nature of the accused's defence;
 - (b) indicating the matters on which he or she takes issue with the prosecution; and
 - (c) setting out in the case of each such matter, the reason why he or she takes issue with the prosecution,and signed by the Defendant and his Attorney.

81. Protective Order

Upon application for good cause shown, the Court may at any time order that the disclosure sought pursuant to rule 80 be denied, restricted, or deferred or make such other order as is appropriate and may hear the application in chambers.

82. Trial management

- (1) In order to manage a trial, the court—
 - (a) must consider setting a timetable that takes account of the disputed issues and any timetable proposed by a party;
 - (b) may require a party to identify either orally or in writing—
 - (i) the relevant disclosure a party requests to be made;
 - (ii) which witnesses the party wants to give evidence in person;
 - (iii) the order in which the party's witnesses are to give evidence;

- (iv) whether the party requires an order compelling the attendance of a witness;
 - (v) what arrangements or special measures are desirable to facilitate the giving of evidence by a witness;
 - (vi) what arrangements are desirable to facilitate the participation of any other person, including the accused;
 - (vii) what written or other evidence the party intends to introduce;
 - (viii) what facts and evidence can be agreed between the parties;
 - (ix) what other material, if any, the party intends to make available to the court in the presentation of the case; and
 - (x) whether the party intends to raise any point of law that could affect the conduct of the trial or is required to be argued as a preliminary issue at the start of the trial;
- (c) may set a timetable—
- (i) for the service of additional evidence that the party intends to rely on;
 - (ii) for the service of written submissions and lists of authorities that the party intends to rely on;
 - (iii) for the service of case openings or case statements, and trial bundles;
- (d) may limit —
- (i) the examination, cross-examination or reexamination of a witness; and
 - (ii) the duration of any stage of the hearing; and
- (e) may make a direction that the case be heard in a particular courtroom, subject to availability.
- (2) A completed case management hearing questionnaire as set out in Form 8 set out in the Schedule to be filed by the parties no later than seven days before the matter is scheduled for the case management hearing.
- (3) The Court will require the prosecutor and the Attorney for the accused to file a certificate of readiness in Form 7 set out in the Schedule respectively no later than seven days before the matter is scheduled for the Omnibus Conference to determine trial readiness.

83. Election of trial by judge alone

- (1) In accordance with section 58 of the Criminal Procedure Ordinance, a party who wishes to apply for trial without a Jury, must apply within 28 days of Committal for trial, using Form 11 set out in the Schedule.
- (2) A party wishing to oppose the application made in subrule (1) must do so within seven days of receiving that application and shall file with the court and serve on all interested parties, written submissions for its opposition.
- (3) The Court will consider the application at the Case Management Conference or at an appropriate subsequent hearing.

Part XI – Trial and sentence in the Supreme Court

84. When this Part applies

This Part applies in a court where—

- (a) the court tries a case; or

- (b) the accused—
 - (i) is found guilty; or
 - (ii) pleads guilty

85. General rule (trial and sentence in the Supreme Court)

- (1) The general rule is that the hearing must be in public.
- (2) Notwithstanding subrule (1)—
 - (a) the court may exercise any power the court has to—
 - (i) impose reporting restrictions;
 - (ii) withhold information from the public; or
 - (iii) order a hearing in private; and
 - (b) unless the court otherwise directs, only the following may attend a hearing in a court where a person who is a juvenile is tried—
 - (i) the parties and their legal representatives;
 - (ii) an accused's parent, guardian or other supporting adult;
 - (iii) a witness; and
 - (iv) anyone else directly concerned in the case.

86. Requirement to comply with rule 74(7)

Unless already done, the court must comply with the procedures set out under rule 74(7) except that at this stage (where there is to be a trial) it would ordinarily be too late to give a Goodyear indication out of concern that this might be seen as applying undue pressure upon an accused to forego the accused's trial.

87. Procedure on plea of not guilty

- (1) This rule applies if the accused has—
 - (a) entered a plea of not guilty; or
 - (b) not entered a plea.
- (2) At the conclusion of the case for the prosecution, on the application of the accused or on the court's own initiative, the court—
 - (a) may record a finding of not guilty in accordance with section 37(1) of the Criminal Procedure Ordinance;
 - (b) may direct an acquittal or discharge the jury but must not do so unless the prosecution has had an opportunity to make representations; and
 - (c) must inform the accused (if unrepresented) of the accused's right to address the court at the commencement or conclusion of the accused's case.
- (3) The court must explain—
 - (a) in terms the accused can understand (with help, if necessary) of the right to give evidence;
 - (b) that the accused may introduce evidence.
- (4) Where the Supreme Court in a Judge alone trial convicts or acquits the accused, the court must give sufficient reasons for its decision.

88. Evidence of a witness in person

- (1) This rule applies where a party wants to introduce evidence by calling a witness to give that evidence in person.
- (2) Unless the court otherwise directs—
 - (a) a witness waiting to give evidence must not wait in the courtroom, unless that witness—
 - (i) is a party;
 - (ii) is an expert witness; or
 - (iii) has both parties' consent to wait in the courtroom;
 - (b) a witness who gives evidence in the courtroom must do so from the place provided for that purpose or in some other place as directed by the court; and
 - (c) a witness's address must not be given unless it is relevant to an issue in the case.
- (3) Unless any written law otherwise provides, before giving evidence, a witness must take an oath or affirm.
- (4) The examination of a witness must be done in the following sequence—
 - (a) the party who calls a witness must ask questions in examination-in-chief;
 - (b) every other party may ask questions in cross-examination;
 - (c) the party who called the witness may ask questions in re-examination.
- (5) Notwithstanding subrule (4), the court may allow questions outside of the sequence referred to under that subrule.
- (6) The court may ask such questions as it deems necessary in keeping with settled common law principles.

89. Evidence of a witness in writing

- (1) This rule applies where a party wants to introduce in evidence the written statement of a witness in accordance with section 6 of the Evidence (Special Provisions) Ordinance.
- (2) If the court admits such evidence, a written statement of a witness must contain the address of the witness and the statement must be read aloud by the party introducing the evidence.

90. Application to withdraw a guilty plea before Supreme Court

- (1) This rule applies where the accused wants to withdraw a guilty plea.
- (2) The accused must apply to withdraw a guilty plea—
 - (a) as soon as practicable after becoming aware of the reasons for doing so; and
 - (b) before sentence.
- (3) The application must (unless the court otherwise directs) be in writing and where the application is in writing, the accused must serve the application—
 - (a) at the court office; and
 - (b) on the prosecution; or
 - (c) if in custody, to the Superintendent of Prisons to be transmitted to the court office as soon as practicable.

- (4) The application must—
 - (a) explain why it would be unjust not to allow the accused to withdraw the guilty plea;
 - (b) identify—
 - (i) any witness that the accused wants to call; and
 - (ii) any other proposed evidence; and
 - (c) state whether the accused waives legal professional privilege, giving any relevant name and date.
- (5) The court shall consider the matters stated under subrule (4) and may in its discretion, grant or refuse an application made in accordance with this rule, as the justice of the case requires.
- (6) The court may, for the purposes of subrule (5)—
 - (a) list the case for directions;
 - (b) ensure that the accused understands where necessary, the import of waiving privilege; and
 - (c) give direction for the application to be sent to the previous Attorney (together with a confirmation that privilege has been waived), for the detailed comments of the previous Attorney to be incorporated in a witness statement.

91. Procedure if the court convicts

- (1) This rule applies if the court convicts the accused or the accused is convicted by the decision of a jury.
- (2) The court may, where appropriate, exercise its power to require —
 - (a) a statement of the accused's financial circumstances;
 - (b) a Pre-sentence Report (PSR);
 - (c) a Victim Impact Statement (VIS), or any other type of report deemed appropriate in the court's discretion.
- (3) The prosecution must—
 - (a) provide information relevant to sentence, including any victim impact statements; and
 - (b) where it is likely to assist the court, identify any other matter relevant to sentence, including —
 - (i) aggravating and mitigating factors;
 - (ii) the legislation applicable; and
 - (iii) any sentencing guidelines, or guideline cases.
- (4) The accused must provide details of financial circumstances—
 - (a) in any form required by the court; or
 - (b) by any date directed by the court.
- (5) Where the accused pleads guilty but wants to be sentenced on a different basis to that disclosed by the prosecution—
 - (a) the court may require the accused to set out that basis in writing, identifying what is in dispute;

- (b) the court may invite the parties to make representations about whether the dispute is material to the sentence to be imposed on the accused; and
 - (c) if the court decides that the dispute is a material dispute, the court must—
 - (i) invite such further representations or evidence as the court may require; and
 - (ii) decide the dispute.
- (6) Before the court passes sentence—
 - (a) the court must—
 - (i) give the accused an opportunity to make representations and introduce evidence relevant to sentence; and
 - (ii) where the accused is a juvenile, give the parents of the accused, guardian or other supporting adult, if present, such an opportunity as well; and
 - (b) the court may elicit any further information relevant to sentence that the court may deem necessary.
- (7) If the court requires more information, the court may exercise the court's power to adjourn the hearing for not more than 30 days at a time.
- (8) When the court has taken into account all the evidence, information and any report available, the court must—
 - (a) as a general rule, pass sentence immediately;
 - (b) when passing sentence, explain the reasons for deciding on that sentence;
 - (c) in circumstances where there is a power to review the sentence (such as one for probation), explain to the accused its effect, and when passing sentence, explain to the accused its effect and the consequences of failing to comply with any order or payment of any fine;
 - (d) give any such explanation in terms the accused, if present, can understand (with help, if necessary); and
 - (e) consider exercising any power the court has, to make an order as to costs, compensation, or any other order.

92. Application for excusal from jury service

- (1) Applications for excusal from jury service must be made at least 14 days prior to the commencement of the session from which excusal is sought, and such applications may be heard by a Judge in Chambers.
- (2) The Judge in Chambers may decide the application on the basis of the documentation provided by the applicant without an oral hearing.
- (3) The Judge in Chambers may, in his discretion, permit the applicant to make oral submissions.
- (4) An application for excusal must be made in writing, either on the form provided by the court or by a letter addressed to the clerk of court.
- (5) As far as possible, any ground relied upon for exemption, must be supported by documents.
- (6) Where the applicant relies on medical grounds, the following shall be applicable—
 - (a) a medical report signed by a registered medical practitioner; and
 - (b) if the medical report is handwritten, the handwriting must be legible and be upon the medical practitioner's letterhead.

- (7) The medical report referred to in subrule (6) must include the following information—
 - (a) the name of the patient;
 - (b) the date of birth of the patient;
 - (c) the length of time the doctor has been treating the patient;
 - (d) the last date on which the patient was seen by the doctor;
 - (e) where applicable, whether the patient is able to continue his employment notwithstanding the diagnosed condition or whether the patient requires sick leave and the length of such recommended sick leave.
- (8) Where the applicant relies on the ground of travel out of the jurisdiction, the following shall be applicable—
 - (a) a valid ticket or travel itinerary must be provided; and
 - (b) the ticket should have been booked or purchased before the jury summons was served on the juror.
- (9) Where the applicant relies on the ground of being a student the following shall be applicable—
 - (a) a letter from the school administration indicating that the applicant is a fulltime student of that institution;
 - (b) if the student attends school part time during normal court hours, a letter from the school administration indicating the times at which the juror must attend classes; and
 - (c) if the juror is scheduled to write exams, a valid examination timetable must be provided.

Part XII – Service of documents

93. Personal service

- (1) A document is served personally on an individual by handing the document to, or leaving the document with, the person to be served.
- (2) Where a document is served in accordance with subrule (1), the nature and the contents of the document when not self-explanatory, must be explained by the serving party where practicable.
- (3) Service is deemed to be effected on the day the document is handed to, or left with, the person being served.
- (4) Where a person is refusing to accept service of a document, personal service will be effected if the document is left at the feet of the person and the content of the document explained.

94. Service on an entity or other legal person

- (1) A document is served on an entity or other legal person by handing the document to, or leaving the document with a director, receiver, receiver manager, liquidator or other officer of the entity or other legal person or by prepaid post addressed to the registered office of the entity or other legal person.
- (2) Where service is effected on an entity or other legal person by prepaid post addressed to the registered office of that body corporate or other legal person, service is deemed to be effected on the fourteenth day from the date the document was posted.

95. Service on a person in custody

- (1) Service on a person in custody may be effected by handing the document to the Superintendent of Prisons or a person nominated by him and addressed to the person to be served.
- (2) The Superintendent of Prisons or a person nominated by him must—
 - (a) endorse the document with time and date of receipt;
 - (b) record the receipt of the document; and
 - (c) forward the document promptly to the addressee.
- (3) The Superintendent or his nominee shall transmit the document to the accused as soon as practicable and in any event no later than 24 hours after receipt.

96. Address for serving documents not required to be served personally

- (1) Where a document is not required to be served personally, and a party has given an address at which documents for the party may be served, the documents may be delivered or posted to the party at that address.
- (2) If the party has given a facsimile transmission number in the party's address for service, the documents may be sent by facsimile transmission to that number.

97. Service by electronic means

- (1) This rule applies where—
 - (a) the person to be served—
 - (i) has given an electronic address; and
 - (ii) has agreed to accept service by electronic means; or
 - (b) the person to be served is legally represented in the case and the representative has given an electronic address.
- (2) A document may be served by transmitting the document by electronic means to that person or that person's representative, as appropriate, at that address.
- (3) Where a document is served under this rule, the person serving the document need not provide a paper copy as well, except for trial bundles containing in excess of thirty-six pages.
- (4) Where service is effected by electronic means, service is deemed to be effected on the next working day after the document was transmitted.

98. Alternative methods of service

- (1) Instead of personal service, a party may apply to the court for an alternative method of service.
- (2) Where a party chooses an alternative method of service and the court is asked to take any step on the basis that the document has been served, the party who served the document must prove service to the satisfaction of the court by filing an affidavit—
 - (a) giving details of the method of service used; and
 - (b) stating—
 - (i) that the person intended to be served was able to, or was likely to be able to, ascertain the contents of the documents; and

- (ii) the time when the person served was, or was likely to be, in a position to ascertain the contents of the documents.
- (3) The case progression officer must immediately refer to the court for consideration any affidavit filed under subrule (2).
- (4) If the court is not satisfied with the method of service the court must fix a date, time and place to consider making an order and give at least three days' notice to the party making the application.

99. Service by person in custody

- (1) In instituted proceedings, a person in custody may serve a document by handing the document to the Superintendent of Prisons or a person nominated by him and addressed to the person to be served.
- (2) The Superintendent of Prisons or his nominee must—
 - (a) endorse the document with time and date of receipt;
 - (b) record the document's receipt; and
 - (c) forward the document as soon as practicable to the court office for transmission to the addressee.
- (3) The court office will effect service.

100. Proof of personal service

- (1) Personal service of any document may be proved by an affidavit sworn by the server of the document stating—
 - (a) the date and time of service;
 - (b) the precise place or address at which the document was served;
 - (c) precisely how the person served was identified; and
 - (d) precisely how service was effected.
- (2) Where the server identified the person to be served by means of a photograph or description, there must also be filed an affidavit by a person verifying the description or photograph as being the person intended to be served and stating how that person was able to verify the description or photograph as being the person intended to be served.

101. Power of court to dispense with service

- (1) The court may dispense with service of a document if it is appropriate to do so.
- (2) An application for an order to dispense with service may be made without notice.

102. Service of court process outside the jurisdiction

- (1) Where process is required to be served outside the jurisdiction, it shall be served in accordance with existing mutual legal assistance treaties or other international procedures which may be available.
- (2) For the purposes of this rule, "process" includes a summons, order, or other similar document issued by a court requiring a person to attend the court in relation to criminal proceedings.

Part XIII – Miscellaneous

103. Issuance of practice direction and procedure in the absence of a practice direction

- (1) A practice direction may be issued by the Chief Justice in any case where provision for such a direction is made by these Rules.
- (2) Where there is no express provision in these Rules for such a direction, the Chief Justice may give a direction as to the practice and procedure to be followed.

104. Pending matters

- (1) Any matter pending on the date of commencement of these Rules shall be dealt with as if it were commenced under these Rules and for this purpose all documents forming part of the record of the proceedings shall be read with all necessary adaptations.
- (2) The provisions of these Rules shall not affect the execution or enforcement of any decision given in respect of an application or matter prior to the commencement of these Rules.

105. Forms

The forms set out in the Schedule annexed to the Rules shall be used where relevant and where there is no form, then no specific formality is required.

Schedule

Form 1 – Application for bail (Rules 31(1) and 32(1))

Application to review a decision of a Magistrate about bail

The court of the Turks and Caicos

Case No. _____

Between

A.B. _____ Applicant

and

C.D. _____ Respondent

Notice of application

The Applicant, _____ A.B. (full names), of _____ (full address) applies to the Court for an order that bail be granted under the following conditions –

A draft of the order that I seek is attached. The grounds of the application are –

[An affidavit in support accompanies this application]

Dated _____

Signed _____

[Attorney for the] Applicant

Notice:

This application will be heard by the Judge in Chambers on day the day of, _____ at _____ am/pm

If you do not attend this hearing an order may be made in your absence.

Or

The Judge in Chambers will deal with this application by —

NB This notice of _____ application must be served as quickly as possible on the respondent to the application.

The office of the Supreme Court is at [xxx xxx xxx] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between [_____ am.] and [_____ p.m.] to _____ except public holiday

Form 2 – Bail application form for unrepresented persons (Rule 31(3))***The court of the Turks and Caicos******Claim no:******Bail application form******For unrepresented and indigent persons***

Length of time in custody so far: _____

Date when you were placed on remand: _____

Surname: _____

Given Names: _____

Alias: _____ Date of Birth: _____

Age: _____ Male _____ Female _____

Name of Parent/Guardian (if under 16) and phone number: _____

Home address: _____

Nationality: _____

Immigration Status (if non-national): _____

Identification Number (Driver's License, National ID, or Passport if known): _____

Whereabouts of Passport if known (include name of person who can get it and their phone number):

Occupation – type of work: _____

Name of employer and place of work (if any): _____

Work phone: _____

Offence(s) for which bail is sought (attach charge sheet if available): _____

Date(s) of offence(s) if known: _____

Date(s) when charge(s) laid if known: _____

Police station and name of arresting officer(s) if known: _____

Name(s) of co-accused (if any): _____

List of Crimes for which you have been charged at this time: _____

Have you applied for Bail before and been denied?

Yes _____ No _____

If yes, Judge or Magistrate who refused Bail: _____

Date(s) bail refused: _____

Reasons given for the refusal of bail: _____

REASONS FOR THIS APPLICATION. Explain:

- a) Why the court should grant you bail. _____
- b) If this is not your first application for bail, what further information if any, has become available since the last bail decision was made. _____

Date of next Court appearance and where: _____

List all matters for which you were on bail at the time of your arrest: _____

State whether you have complied with previous bail conditions and if not why not: _____

Previous Convictions: _____

Name of possible surety(s): _____

Address of surety(s):

Phone number of surety(s):

Community ties of surety(s):

The statements in this form of four pages are true to the best of my knowledge and belief and I sign the from knowing that if it is tendered in evidence I shall be liable to prosecution if I have wilfully stated anything I know to be false or do not believe to be true.

Applicant's signature or mark if signature not possible:

Date: _____

Before Commissioner for Oaths or Justice of the Peace,

Senior Prison/Police Officer (sign and print name and

stamp/seal where applicable):

**Form 3 –
Notice of opposition to bail application to withdraw, impose or vary a condition of bail
(Rule 31(4))**

The Supreme Court of the Turks and Caicos

Case No. _____ of _____

Between

A.B. _____ Applicant

and

C.D. _____

Respondent's notice of application

The Applicant, A.B. (full names), of (full address) applies to the court for an order that bail be withheld/ withdrawn/condition be varied.

A draft of the order that I seek is attached.

The existing bail conditions are _____

The grounds of the application are _____

Dated _____

Signed _____

[Attorney for the] Applicant/Crown

Notice:

This application will be heard by the Judge in Chambers on _____ day the day of, _____ at _____ am/pm _____ at [xxx xxx xxx] If you do not attend this hearing an order may be made in your absence.

Or

The Judge in Chambers will deal with this application by —

NB This notice of application must be served as quickly as possible on the respondent to the application.

The office of the Supreme Court is at [xxx xxx xxx] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between

[_____ am.] and [_____ p.m.] _____ to _____ except public holidays.

Form 4 – Final trial time table and arrangements (Rule 40(4))

TO BE COMPLETED BY CASE PROGRESSION OFFICER

CASE NUMBER: _____

NAME: _____

TRIAL DATE: (d/m/y) _____

LENGTH OF TRIAL: (weeks) _____; (days) _____

MODE OF TRIAL: _____

IS THE ACCUSED OR ANY WITNESS IN CUSTODY:

Yes # No #

IS THIS A SEX OFFENCE CASE:

Yes # No #

WHICH OF THE FOLLOWING SPECIAL ARRANGEMENTS IS/ARE REQUIRED:

Video/Live Link:

Yes # No #

Playing audio recordings:

Yes # No #

Viewing monitors for the Jury:

Yes # No #

Special Witness Room far from the courtroom –with Live/Video

Link set up: Yes# No #

Special Witness Room close to the courtroom:

Yes # No #

Interpreter(s) (name language(s)):

Yes # No #

Arrangements for a physically impaired witness/defendant:

Yes # No #

Screen to be set up in the courtroom:

Yes # No #

Microphones:

Yes # No #

Police officers for the daily removal of firearms/weapons from court:

Yes # No #

Any other arrangements:

Yes # No #

COMPLETED BY: _____ DATE COMPLETED: (dd/mm/y) _____

Form 5 – Notice of alibi (Rule 46)

Case No:

To: The Director of Public Prosecutions

Complainant:

(Rank) _____

(Name) _____

(Number) _____

Accused:

(Surname) _____

(First Name) _____

The particulars of my claim of Alibi are: (See note 1 overleaf)

The accused intends to rely upon the testimony of the

| No. | Name of Witness | Address | Additional Information (e.g. phone nos., description, relatives) | Occupation |
|-----|-----------------|---------|---|------------|
| 1 | | | | |
| 2 | | | | |

following witnesses to establish the alibi:

Dated this _____ day of _____, 20 _____

Accused/Defendant _____

Attorney for the Accused _____

Important notes

State the specific place(s) where the accused claims he was at the time of the alleged offence and any other person(s) who were present whose identities are known.

In accordance with section 5 of the Evidence (Special Provisions) Ordinance you are required to give the names and addresses of all proposed witnesses or if such information is not known, all information in your possession or which comes into your possession, which would assist in identifying and locating the witnesses you propose to call.

1. If after the giving of this notice you discover the name, address or any other information which would materially assist in the locating of any witness whose name and address is not included in this notice you are required to furnish to the Director of Public Prosecutions forthwith, that information.

2. This Notice must be delivered to or left at the office of the Director of Public Prosecutions no later than seven clear days of the first Case Management Conference in the Magistrate's Court and seven clear days of the first Plea and Directions Hearing in the Supreme Court.

Where a party finds that insufficient space is provided to complete a response, the answer may be given on a separate sheet of paper attached.

Form 6 – Notice of acting (Rules 47 and (53(1)(a))

The Supreme Court of the Turks and Caicos

Case No. _____

Between

CROWN

and

CD _____ Defendant

Notice of acting

To: [The Registrar,]

[The Director of Public Prosecutions]

Take NOTICE that I/We, _____, have been instructed to act on behalf of [name of Defendant], the Defendant in this claim.

Dated _____

Signed _____

[PRINT NAME OF ATTORNEY]

Attorney for the Accused/Defendant

The office of the Court is at [xxx xxx xxx] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between [____ am.] and [____ p.m.] _____ to _____ except public holidays.

Form 7 – Certificate of readiness (prosecutor/attorney) (Rules 52(2) and 82(3))

In the Magistrate's/Supreme Court of Justice

Case No.

Between

THE CROWN

and

A.B. _____ Accused

Certificate of readiness

For Omnibus Conference schedule for

day/month/year

(Check the appropriate items and complete as required)

PROSECUTOR

Name of the accused to which this report applies: (where there is more than one Defendant)

1. I am advised by the Attorney for the accused that the matter will be disposed of at scheduled trial confirmation hearing.
2. (A) I have reviewed the file and confirm that I am ready to proceed.
(B) The prosecutor is seeking an adjournment for the following reasons:

3. It is anticipated that the prosecutor will call—
 - (a) (number) police witnesses (excluding expert witnesses);
 - (b) (number) expert witnesses; and
 - (c) (number) other witnesses.
4. I have confirmed that all witnesses for the prosecution have been notified and are available to attend on the set date.
5. The prosecution's case is expected to take _____ time estimated.
6. To the best of my knowledge, there are no outstanding issues respecting disclosure.
7. All required notices and reports have been provided or will have been provided within applicable time limits.
8. All necessary orders for the attendance of the accused and any witnesses for the prosecution have been obtained and will have been obtained.
9. Since the first case management hearing admissions regarding expert testimony and other evidence have been canvassed with legal counsel for the accused.
10. (A) The time estimated for this matter is adequate OR
(B) The time estimated for this matter is inadequate and a revised time estimate is _____
11. I expect to make an application before/during the hearing.

Attorney for the accused

1. I expect to make an application before/during the hearing.
2. We expect this matter will proceed on the date set.
3. To the best of our knowledge, there are no outstanding issues respecting disclosure.
4. The accused is seeking an adjournment for the following reasons:

Check if more space is required and add another page.

5. It is anticipated that the Defence will call _____ number of witnesses.
6. All necessary orders for the attendance of any witness for the accused have been obtained or will be obtained.
7. The Defence's case is expected to take _____ time estimated.
8. (A) The time estimated for this matter is adequate OR
(B) The time estimated for this matter is inadequate and a revised time estimate is _____
9. I expect to make an application before/during the hearing.

Date: ____/____/____

month/ day / year

Signature of the Prosecutor for the Crown _____ (Print full name) _____

Signature of Attorney for the Accused _____ (Print full name) _____

Form 8 – Hearing questionnaire (Rule 52(3) and 82(2))

The Turks and Caicos Islands

The Supreme Court of the Turks and Caicos Islands

Case No. _____

Between

THE CROWN

and

A.B _____ Defendant

Hearing questionnaire

Before the date set for the first Case Management Hearing, Counsel on record for each Defendant, and the Crown Prosecutor assigned to conduct the prosecution, shall each complete and sign this Case Management Hearing Questionnaire and ensure that the questionnaire is filed and served in accordance with these Rules or any directions of the court.

Where a party finds that insufficient space is provided to complete a response to a particular question, the answer may be given on a separate sheet of paper attached to the back of this form. The fact that the response is provided and attached on a separate sheet is to be indicated in the space provided on the form.

PRELIMINARY INFORMATION:

Name of Case:

Court

Report prepared by:

Prosecution _____ Defence _____

Counsel for

[Insert name of Defendant (s)]

Has Counsel discussed the issues raised in this form with the Defendant? Yes ____ No ____

CASE/BAIL HISTORY:

Date(s) of Offence(s):

Date of Arrest:

Date of any orders made by the court:

Date Indictment filed:

Is the accused remanded in custody on this/these charges? Yes ____ No ____

If yes, how long has the accused spent in custody?

Is the accused remanded in custody on any other charges? Yes ____ No ____

Is this matter a re-trial? Yes ____ No ____

Are notes of evidence from the previous trial available? Yes ____ No ____

If yes, give details of why retrial ordered:

PLEA DISCUSSIONS:

Are the actual/proposed not guilty pleas definitely to be maintained through to a trial?

Yes ____ No ____

Has the Defence counsel advised his client of the appropriate reduction for guilty plea?

Yes ____ No ____

Is the Prosecution open to a plea to a lesser count? (where applicable)

Yes ____ No ____

Will the prosecution accept part guilty or alternative pleas? (where applicable)

Yes ____ No ____

Is the accused going to make an application for a Goodyear/Sentence Indication Hearing?

Yes ____ No ____

Has a basis of plea been agreed? Yes ____ No ____

TIME TABLE:

Mode of Trial Jury _____ Judge Alone _____

How long is the trial likely to take?

PRELIMINARY MATTERS:

Prosecution's Case:

Has the Indictment been prepared and served?

Yes ____ No ____

If not when will this be done?

Has the trial bundle been prepared and served?

Yes ____ No ____

If not when will this be done?

Has the Prosecution reviewed and disclosed all unused material in this case? Yes ____ No ____

If not when will this be done?

Does the Prosecution intend to serve more evidence in the case or is there any outstanding investigation or inquiry?

Yes ____ No ____

If so when will this be done or completed?

When will a Prosecution opening note or case statement (if appropriate) be filed and served?

When will an exhibit bundle (if appropriate) be filed and served?

Will the prosecution be relying on any of the following expert evidence at trial?

i. CCTV evidence Yes ____ No ____

ii. DNA evidence Yes ____ No ____

iii. Fingerprint evidence Yes ____ No ____

iv. Phone evidence Yes ____ No ____

v. Medical evidence Yes ____ No ____

vi. Psychiatric evidence Yes ____ No ____

vii. Forensic video analysis Yes ____ No ____

What equipment if any, will the Prosecution require in the courtroom at trial?

Does the Prosecution intend to make a Public Interest Immunity Application? Yes ___ No ___

Does the Prosecution intend to make a special measures application? Yes ___ No ___

Are there Prosecution witnesses who are out of the jurisdiction in respect of which an application is to be made for their evidence to be taken by live link?

Yes ___ No ___

Does the Defence object to these witnesses giving evidence by live link? Yes ___ No ___

Are there any witnesses in the trial bundle that the prosecution does not intend to call/rely upon?

Yes ___ No ___

Are there any prosecution witnesses in the trial bundle that are required but are or may not be available on the trial date for any reason?

Yes ___ No ___

DEFENCE:

Have the disclosure issues been resolved?

Yes ___ No ___

If not, what is it that you are requesting or have requested which is outstanding?

Is there likely to be an application to the court for order(s), in relation to Disclosure?

Yes ___ No ___

Has a Defence Statement been filed and served? Yes ___ No ___

If not, do you intend to make an application for time to file the Defence Statement?

Yes ___ No ___

Has the Defence Disclosure narrowed the Core issues?

Yes ___ No ___

If so which issues have been narrowed?

THIRD PARTY DISCLOSURE:

Is it believed that any Third Party holds relevant material?

Yes ___ No ___

If so which Third Party holds this material?

Is a Court order or subpoena required?

Yes ___ No ___

For what material?

CORE ISSUES IN CASE:

What are the core issues in this case?

APPLICATIONS:

The Prosecution/Defence intends to make any of the following applications:

| | | |
|---|----------|---------|
| Amendment | Yes ____ | No ____ |
| Severance | Yes ____ | No ____ |
| Application to Quash Indictment | Yes ____ | No ____ |
| Application to Stay Proceedings | Yes ____ | No ____ |
| Abuse of Process | Yes ____ | No ____ |
| Fitness to Plead | Yes ____ | No ____ |
| Mental Health Issues – Psychiatric Evaluation/Report | Yes ____ | No ____ |
| Application for leave to adduce hearsay evidence | Yes ____ | No ____ |
| Fresh Evidence (if a retrial) | Yes ____ | No ____ |
| Bad Character | Yes ____ | No ____ |
| To admit Written Statements | Yes ____ | No ____ |
| To admit Video Recordings | Yes ____ | No ____ |
| Breach of Constitutional Rights | Yes ____ | No ____ |
| Application to exclude electronically recorded interview/ caution statement | Yes ____ | No ____ |
| To exclude specific pieces of evidence | Yes ____ | No ____ |
| Social Inquiry Report | Yes ____ | No ____ |
| Special measures | Yes ____ | No ____ |
| Other | Yes ____ | No ____ |

If you have ticked "yes" to any of the above-mentioned applications, please specify in writing to the court on a separate page if the space provided below is insufficient the following information—

- (1) The specific application(s) to be made.
- (2) The *Jurisdiction (Common Law/Statute)* under which the Application is being made.
- (3) Whether there is anything precluding the court from ruling on these Applications at the Case Management Hearing.

Do you propose to make any other application to the court not mentioned above?

Yes ___ No ___

If yes, please specify,

ADMISSIONS:

Have the parties discussed the possibility of agreeing non-contentious evidence? Yes ___ No ___

If yes, please indicate areas that may be admitted:

If no, are you prepared to consider agreeing evidence that is not in dispute? Yes ___ No ___

Are there witness statements which can be read.

Yes ___ No ___

What statements are these?

ORAL/WRITTEN STATEMENTS OF THE ACCUSED:

Is the Prosecution relying upon a written/oral statement of the accused? Yes ___ No ___

Is the accused challenging the statement?

Yes ___ No ___

If yes, please specify grounds:

If no, is the Defence making any allegation of improper conduct on the part of any police officer or other official in relation to any oral or written statement?

Yes ___ No ___

Has the Prosecution been informed of the grounds of objection or allegation of improper conduct?

Yes ___ No ___

STATEMENT/ AUDIO/VIDEO RECORDED INTERVIEW:

Have the parties agreed as to any edits to be made to a statement or transcript of interview with accused?

Yes ___ No ___

If not, when will this be done?

If the Parties have not agreed, will there be any application to edit a statement of the accused or transcript of interview?

Yes ___ No ___

SPECIAL DEFENCE ISSUES:

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Does the Defence propose to rely on Good Character evidence?

Yes ___ No ___

Is the Defence relying on an alibi? Yes ___ No ___

Form 9 (Rules 48 and 53(2))***In the Magistrate's Court***

Case No.

THE QUEEN

Vs

Defendant

Before: His/Her Honour, Magistrate _____

Date of Hearing:

APPEARANCES: _____

Police Prosecution

Defendant _____

Initial hearing in indictable matters- Scheduling Order

(Upon the initial hearing of an indictable matter at the Magistrate's Court)

Order

1. Attorney to file Notice of Appearance on or before _____
2. Defendant to apply for Legal Aid on or before _____
3. Notice of Acting by Attorney assigned by Legal Aid or other Attorney to be filed on or before _____
4. Sufficiency Hearing fixed at the Supreme Court on _____

Dated this ____ day of ____ 20 ____

Magistrate

This Order shall be served on the Defendant, Attorney for the Defendant, The Police Prosecutor, the Director of Public Prosecutions and where the Defendant is represented by or is applying for Legal Aid, on the Legal Aid Panel.

Form 10 (Rule 49(2),53(3) and 74)***The Supreme Court of the Turks and Caicos***

Case No.

THE QUEEN

vs

Defendant

BEFORE: The Honourable (A Judge in Open Court)

APPEARANCES: _____ of Counsel for the Prosecution _____ of Counsel for the Defendant _____
 Defendant in person _____

Scheduling Order

(Upon arraignment at the Plea and Direction Hearing or at Case Management Conference)

Order

1. Counsel to file Notice of Appearance on or before _____
2. Defendant to apply for appointment legal Aid assigned Counsel on or before _____
3. Notice of Appearance by Legal Aid assigned or other counsel to be filed on or before _____
4. Disclosure of any additional prosecution material shall be on or before _____
5. The Defendant shall give notice of alibi defence on or before ____ and shall disclose to the prosecution relevant material information on or before _____
6. The Defendant shall give notice of special defence(s) on or before _____ and shall disclose to the prosecution material information on or before _____
7. All Pre-Trial Applications and Defence Statement shall be filed and served on the opposite party on or before _____ by Crown and ____ by the Defendant.
8. The Case Management Conference shall be held on _____
9. The Omnibus Conference is fixed for _____
10. The projected trial date/window is _____

Dated this _____ day of _____ 2021

 Supreme Court Judge/Magistrate

This Order shall be served on the Defendant, Counsel for the Defendant, the Director of Public Prosecutions and where the Defendant is represented by or is applying for Legal Aid, on the Legal Aid Panel.

Form 11 – Election for judge alone trial (Rule 83)

In the Supreme Court of the Turks and Caicos Islands

Case No. _____

Between

The Crown

and

C.D. _____ Defendant

Election for Judge alone trial

Pursuant to section 58 (2) of the Criminal Procedure Ordinance

Election:

I _____ (the Accused/Director of Public Prosecution) of _____ having been fully advised as to my option to elect for either trial by Judge and Jury or a trial by Judge alone, hereby elect for my case to be tried by Judge Alone.

Signature of Accused: _____

Signature of Attorney: _____

DATE OF ELECTION: _____

Made this 1st day of August 2021.

Mabel M. Agyemang - Chief Justice

In conjunction with:

Jolyon Hatmin - Chief Magistrate