FALKLAND ISLANDS GAZETTE

Supplement

PUBLISHED BY AUTHORITY

Vol. 36 *5 December 2025* *No. 31*

The following are published in this Supplement —

Criminal Procedure Rules 2025 (SR&O No 25 of 2025).

FALKLAND ISLANDS

Criminal Procedure Rules 2025

(No. 25 OF 2025)

ARRANGEMENT OF PROVISIONS

Preparing for Trial

PART 15 - PRELIMINARY APPLICATIONS

PART 16 - PLEA AND TRIAL PREPARATION HEARINGS

PART 17 - MEASURES TO HELP A WITNESS, DEFENDANT OR OTHER PERSON TO GIVE EVIDENCE OR OTHERWISE PARTICIPATE IN PROCEEDINGS

Sentence

PART 29 - SENTENCING PROCEDURES

PART 30 - BEHAVIOUR ORDERS

Appeals

PART 31 - APPEALS TO THE SUPREME COURT

FALKLAND ISLANDS

Criminal Procedure Rules 2025

(made: 28 November 2025)
(coming into force: on publication)
(published: 5 December 2025)

I make these rules under section 785 of the Criminal Procedure and Evidence Ordinance 2014.

1.0. Title, commencement and repeal

(1) These Rules are the Criminal Procedure Rules 2025.

(2) These Rules come into force on publication in the *Gazette*.

(3) The Criminal Procedure Rules 2018 and the Criminal Procedure Rules 2020 are repealed.

General Principles

PART 1 - THE OVERRIDING OBJECTIVE

1.1. The overriding objective

(1) The overriding objective of this procedural code is that criminal cases be dealt with justly.

(2) Dealing with a criminal case justly includes —

(a) acquitting the innocent and convicting the guilty;

(b) treating all participants with politeness and respect;

(c) dealing with the prosecution and the defence fairly;

(d) recognising the constitutional rights of a defendant under the Constitution;

(e) respecting the interests of witnesses, victims and jurors and keeping them informed of the progress of the case;

(f) dealing with the case efficiently and expeditiously;

(g) ensuring that appropriate information is available to the court when bail and sentence are considered; and

(h) dealing with the case in ways that take into account —

(i) the gravity of the offence alleged;

(ii) the complexity of what is in issue;

(iii) the severity of the consequences for the defendant and others affected; and

(iv) the needs of other cases.

1.2. The duty of the participants in a criminal case

(1) Each participant, in the conduct of each case, must —

(a) prepare and conduct the case in accordance with the overriding objective;

(b) comply with these Rules and directions made by the court; and

(c) at once inform the court and all parties of any significant failure (whether or not that participant is responsible for that failure) to take any procedural step required by these Rules, any practice direction or any direction of the court. A failure is significant if it might hinder the court in furthering the overriding objective.

(2) Anyone involved in any way with a criminal case is a participant in its conduct for the purposes of this rule.

1.3. The application by the court of the overriding objective

The court must further the overriding objective in particular when —

(a) exercising any power given to it by legislation (including these Rules); or

(b) applying any Practice Direction; or

(c) interpreting any rule or Practice Direction.

PART 2 - UNDERSTANDING AND APPLYING THE RULES

2.1. When the Rules apply

(1) In general, Criminal Procedure Rules apply in all criminal cases in the Summary Court, the Magistrate's Court and the Supreme Court.

(2) Criminal Procedure Rules also apply, with appropriate modification, to applications for behaviour orders made otherwise than after acquittal, conviction or sentence.

(3) If a rule applies only in one or some of those courts, the rule makes that clear.

(4) These Rules apply to all relevant proceedings on and after their publication in the *Gazette* regardless of whether those proceedings commenced before or after publication

(5) Unless the court otherwise directs, they do not affect a right or duty existing under any other legislation or practice direction.

2.2. Definitions

(1) In these Rules, unless the context makes it clear that something different is meant —

"**advocate**" means a person who is entitled to exercise a right of audience in the court;

"**Attorney General**" means the Attorney General of the Falkland Islands or a person authorised to act on the Attorney General's behalf;

"**business day**" means any day except Saturday, Sunday, Christmas Day, Boxing Day, or a public holiday;

"**Clerk of the Magistrate's Court**" means the Clerk of the Magistrate's Court or the person performing those duties or to whom they have been delegated for the time being;

"**Clerk of the Summary Court**" means the Clerk of the Summary Court or the person performing those duties or to whom they have been delegated for the time being;

"**court**" means a tribunal with jurisdiction over criminal cases;

"**court officer**" means the Head of Courts, Registrar, Clerk of the Magistrate's Court, Clerk of the Summary Court or other appropriate member of court staff;

"**defendant**" means a defendant in person or, where the context allows, a defendant's advocate or legal representative;

"**judge**" and "**judiciary**" mean the Chief Justice, acting judge of the Supreme Court, Senior Magistrate or a Justice of the Peace as the context requires;

"**legal representative**" means the person for the time being named as a party's representative and who is entitled to conduct litigation in the court;

"**live link**" means an arrangement by which a person can see and hear or only hear, and be seen and heard or only heard, by the court when that person is not in the courtroom;

"**prosecutor**" means a prosecutor or person authorised to act on the prosecutor's behalf;

"**public interest ruling**" means a ruling about whether it is in the public interest to disclose prosecution material under sections 235 and 236 of the Criminal Procedure and Evidence Ordinance 2014; and

"**Registrar**" means the Registrar of the Supreme Court or the person performing those duties or to whom they have been delegated for the time being.

(2) Definitions of some other expressions are in the rules in which they apply.

2.3. References to legislation, including these Rules

(1) In these Rules, where a rule refers to an Ordinance or to subordinate legislation by title and year, subsequent references to that Ordinance or to that legislation in the rule are shortened: so, for example, after a reference to the Criminal Procedure Rules reference is then made to 'the Rules'.

(2) In the courts to which these Rules apply —

(a) a reference to the Criminal Procedure Rules may be abbreviated to 'CrimPR'; and

(b) a reference to a Part or rule in the Criminal Procedure Rules may be abbreviated to, for example, 'CrimPR Part 3' or 'CrimPR 3.5'.

PART 3 - CASE MANAGEMENT

3.1. When this Part applies

Rules 3.1 to 3.12 apply to the management of each case in the Summary Court, Magistrate's Court and the Supreme Court.

3.2. The duty of the court

(1) The court must further the overriding objective by actively managing the case.

(2) Active case management includes —

(a) the early identification of the real issues;

(b) the early identification of the needs of witnesses;

(c) achieving certainty as to what must be done, by whom, and when, in particular by the early setting of a timetable for the progress of 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; and

(h) making use of technology, including the provision of a live link where appropriate, whether an application for such a direction is made or not.

(3) The court must actively manage the case by giving any direction appropriate to the needs of that case as early as possible.

3.3. The duty of the parties

(1) Each party must —

(a) actively assist the court in fulfilling its duty under rule 3.2, without or if necessary with a direction; and

(b) apply for a direction if needed to further the overriding objective.

(2) Active assistance for the purposes of this rule includes —

(a) at the beginning of the case, communication between the prosecutor and the defendant at the first available opportunity and in any event no later than the beginning of the day of the first hearing;

(b) after that, communication between the parties and with the court officer until the conclusion of the case;

(c) by such communication establishing, among other things —

(i) whether the defendant is likely to plead guilty or not guilty;

(ii) what is agreed and what is likely to be disputed;

(iii) what information, or other material, is required by one party of another, and why; and

(iv) what is to be done, by whom, and when (without or if necessary with a direction);

(d) reporting on that communication to the court —

(i) at the first hearing, and

(ii) after that, as directed by the court;

(e) the use of technology to assist the proceedings;

(f) alerting the court to any reason why —

(i) a live link direction should not be given, or

(ii) such a direction should be varied or rescinded;

(g) alerting the court to any potential impediment to the defendant's effective participation in the case; and

(h) alerting the court to any related family proceedings or anticipated family proceedings, as soon as reasonably practicable after becoming aware of them.

3.4. Case progression officers and their duties

(1) At the beginning of the case each party must, unless the court otherwise directs —

(a) nominate someone responsible for progressing that case; and

(b) tell other parties and the court who that is and how to contact that person.

(2) In fulfilling its duty under rule 3.2, the court must where appropriate —

(a) nominate a court officer responsible for progressing the case; and

(b) make sure the parties know who that is and how to contact that court officer.

(3) In this Part a person nominated under this rule is called a case progression officer.

(4) A case progression officer must —

(a) monitor compliance with directions;

(b) make sure that the court is kept informed of events that may affect the progress of that case;

(c) make sure that he or she can be contacted promptly about the case during ordinary business hours;

(d) act promptly and reasonably in response to communications about the case; and

(e) if he or she will be unavailable, appoint a substitute to fulfil his or her duties and inform the other case progression officers.

3.5. The court's case management powers

(1) In fulfilling its duty under rule 3.2 the court may give any direction and take any step actively to manage a case unless that direction or step would be inconsistent with legislation, including these Rules.

(2) In particular, the court may —

(a) nominate a case management officer;

(b) give a direction on its own initiative or on application by a party;

(c) ask or allow a party to propose a direction;

(d) receive applications, notices, representations and information by email or by any other means of electronic communication, and conduct a hearing by live link or other such electronic means;

(e) give a direction —

(i) at a hearing, in public or in private; or

(ii) where the parties expressly consent, without a hearing;

(f) fix, postpone, bring forward, extend, cancel or adjourn a hearing;

(g) shorten or extend (even after it has expired) a time limit fixed by a direction;

(h) require that issues in the case should be —

(i) identified in writing;

(ii) determined separately, and decide in what order they will be determined;

(i) specify the consequences of failing to comply with a direction;

(j) request information from a court dealing with family proceedings by —

(i) making the request itself, or

(ii) directing the court officer or a party to make the request on the criminal court's behalf.

(k) supply information to a court dealing with family proceedings if a request has been made by —

(i) supplying the information itself; or

(ii) directing the court officer or a party to supply that information on the criminal court's behalf.

(3) The Summary Court, Magistrate's Court and the Supreme Court may give a direction that will apply in another court if the case is to continue there.

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

(5) 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;

(b) exercise its powers to make a costs order; and

(c) impose such other sanction as may be appropriate.

3.6. 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 that party's absence; or

(c) circumstances have changed.

(2) A party who applies to vary a direction must —

(a) apply as soon as practicable after becoming aware of the grounds for doing so; and

(b) give as much notice to the other parties as the nature and urgency of the application permits.

3.7. 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 —

(a) 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;

(b) the court has not prohibited variation by agreement; and

(c) the court's case progression officer is promptly informed.

(2) The court's case progression officer must refer the agreement to the court if in doubt that the condition in paragraph (1)(a) is satisfied.

3.8. Court's power to vary requirements under this Part

(1) The court may —

(a) shorten or extend (even after it has expired) a time limit set by this Part; and

(b) allow an application or representations to be made orally.

(2) A person who wants an extension of time must —

(a) apply when serving the application or representations for which it is needed; and

(b) explain the delay.

3.9. Case preparation and progression

(1) At every hearing, if a case cannot be concluded there and then the court must 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 defendant is absent, decide whether to proceed nonetheless;

(b) if the defendant is unrepresented, explain to the defendant their right to be represented and/or to be supported during the course of the proceedings;

(c) take the defendant's plea (unless already done) or if no plea can be taken then find out whether the defendant is likely to plead guilty or not guilty;

(d) set, follow or revise a timetable for the progress of the case, which may include a timetable for any hearing including a trial or appeal;

(e) in giving directions, ensure continuity in relation to the court and to the parties' representatives where that is appropriate and practicable; and

(f) where a direction has not been complied with, find out why, identify who was responsible, and take appropriate action.

(3) In order to prepare for the trial, 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 defendant.

(4) Facilitating the participation of the defendant includes finding out whether the defendant needs interpretation because —

(a) the defendant does not speak or understand English; or

(b) the defendant has a hearing or speech disorder.

(5) Where the defendant needs interpretation —

(a) the court officer must arrange for interpretation to be provided at every hearing which the defendant is due to attend;

(b) interpretation may be by an intermediary where the defendant has a speech disorder, without the need for a defendant's evidence direction;

(c) on application or on its own initiative, the court may require a written translation to be provided for the defendant of any document or part of a document, unless —

(i) translation of that document, or part, is not needed to explain the case against the defendant; or

(ii) the defendant agrees to do without and the court is satisfied that the agreement is clear and voluntary and that the defendant has had legal advice or otherwise understands the consequences;

(d) on application by the defendant, the court must give any direction which the court thinks appropriate, including a direction for interpretation by a different interpreter, where —

(i) no interpretation is provided;

(ii) no translation is ordered or provided in response to a previous application by the defendant; or

(iii) the defendant complains about the quality of interpretation or of any translation.

(6) Facilitating the participation of any person includes—

(a) giving directions for someone to accompany a witness while the witness gives evidence, including directions about seating arrangements for that companion;

(b) giving directions for the appropriate treatment and questioning of a witness or a defendant, especially where the court directs that such questioning is to be conducted through an intermediary; and

(c) making use of technology, including the provision of a live link where appropriate.

(7) Where directions for appropriate treatment and questioning are required, the court must—

(a) invite representations by the parties and by any intermediary; and

(b) set ground rules for the conduct of the questioning, which rules may include —

(i) a direction relieving a party of any duty to put that party's case to a witness or a defendant in its entirety;

(ii) directions about the manner of questioning;

(iii) directions about the duration of questioning;

(iv) if necessary, directions about the questions that may or may not be asked;

(v) directions about the means by which any intermediary may intervene in questioning, if necessary;

(vi) where there is more than one defendant, the allocation among them of the topics about which a witness may be asked; and

(vii) directions about the use of models, plans, body maps or similar aids to help communicate a question or an answer.

(8) Every interpreter and intermediary shall be provided with a copy of the relevant Code of Conduct which shall set out the duties of interpreters and intermediaries to the court and to the parties.

3.10. Readiness for trial or appeal

(1) This rule applies to a party's preparation for trial or appeal, and in this rule and rule 3.11 "trial" includes any hearing at which evidence will be introduced.

(2) In fulfilling the duty under rule 3.3, each party must —

(a) comply with directions given by the court;

(b) take every reasonable step to make sure that party's witnesses will attend when they are needed;

(c) make appropriate arrangements to present any written or other material; and

(d) promptly inform the court and the other parties of anything that may —

(i) affect the date or duration of the trial or appeal; or

(ii) significantly affect the progress of the case in any other way.

(3) The court may require a party to give a certificate of readiness.

3.11. Conduct of a trial or an appeal

In order to manage a trial or an appeal, the court —

(a) must establish, with the active assistance of the parties, what are the disputed issues;

(b) must consider setting a timetable that —

(i) takes account of those issues and of any timetable proposed by a party; and

(ii) may limit the duration of any stage of the hearing;

(c) may require a party to identify —

(i) which witnesses that party wants to give evidence in person and why;

(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) what arrangements are desirable to facilitate the giving of evidence by a witness;

(v) what arrangements are desirable to facilitate the participation of any other person, including the defendant;

(vi) what written evidence that party intends to introduce;

(vii) what other material, if any, that person intends to make available to the court in the presentation of the case; and

(viii) whether that party intends to raise any point of law that could affect the conduct of the trial or appeal; and

(d) may limit —

(i) the examination, cross-examination or re-examination of a witness, and

(ii) the duration of any stage of the hearing.

3.12. Duty and powers of court officer

(1) The court officer must —

(a) where a person is entitled or required to attend a hearing, give as much notice as reasonably practicable to —

(i) that person, and

(ii) that person's custodian (if any);

(b) where the court gives directions, promptly make a record available to the parties.

(2) A court officer may exercise a relevant function for which paragraph (4) provides —

(a) subject to the same conditions as apply to its exercise by the court; and

(b) where a party affected by the exercise of that function is entitled to make representations before its exercise, only if each such party has had a reasonable opportunity to make such representations.

(3) Permitting the exercise of a relevant function by a court officer includes a power to decline to exercise that function.

(4) A court officer may —

(a) lay an information charging a person with an offence, including an information substantiated on oath;

(b) issue any summons, including a witness summons;

(c) mark a charge as withdrawn;

(d) make an order for the payment of defence costs where that order is not an order that is based on the fault of another party to the proceedings;

(e) grant bail where the defendant is already on bail and the conditions, if any, to which the bail is subject will remain the same; or

(f) where a defendant has been summonsed or granted police bail to appear at a court for their first appearance, appoint a different time for their appearance following consultation with the parties;

(g) ask a defendant whether they plead guilty or not guilty to a charge;

(h) where a defendant has been convicted of an offence, make an order for them to produce their driving licence;

(i) issue of a warrant of distress;

(j) require a person to provide a statement of their assets and other financial circumstances;

(5) Where a court officer exercises a function in accordance with paragraph (4) any party to the proceedings may apply, in writing, to the court for a review of the court officer's action.

(6) The court may determine an application for a review of the action of a court officer, with or without a hearing, having invited representations from the parties.

3.13. Directions for commissioning medical reports, other than for sentencing purposes

(1) This rule applies where, because of a defendant's suspected mental ill-health —

(a) a court requires expert medical opinion about the potential suitability of a hospital order under section 50 (Power of court to order detention in hospital or guardianship) of the Mental Health Ordinance 2010;

(b) a court requires expert medical opinion about the defendant's fitness to participate at trial, under section 762 (Finding of unfitness to be tried) of the Criminal Procedure and Evidence Ordinance 2014; or

(c) a court requires expert medical opinion to help the court determine a question of intent or insanity,

other than such opinion introduced by a party.

(2) A court may exercise the power to which this rule applies on its own initiative having regard to —

(a) an assessment of the defendant's health by a mental health practitioner acting independently of the parties to assist the court;

(b) representations by a party; or

(c) observations by the court.

(3) A court that requires expert medical opinion to which this rule applies must —

(a) identify each issue in respect of which the court requires such opinion and any legislation applicable;

(b) specify the nature of the expertise likely to be required for giving such opinion;

(c) identify each party or participant by whom a commission for such opinion must be prepared, who may be —

(i) a party (or party's representative) acting on that party's own behalf;

(ii) a party (or party's representative) acting on behalf of the court, or

(iii) the court officer acting on behalf of the court;

(d) where there are available to the court arrangements with the Department of Health and Social Services under which an assessment of a defendant's mental health may be prepared, give such directions as are needed under those arrangements for obtaining the expert report or reports required;

(e) where no such arrangements are available to the court, or they will not be used, give directions for the commissioning of an expert report or expert reports, including —

(i) such directions as can be made about supplying the expert or experts with the defendant's medical records;

(ii) directions about the other information, about the defendant and about the offence or offences alleged to have been committed by the defendant, which is to be supplied to each expert; and

(iii) directions about the arrangements that will apply for the payment of each expert;

(f) set a timetable providing for —

(i) the date by which a commission is to be delivered to each expert;

(ii) the date by which any failure to accept a commission is to be reported to the court;

(iii) the date or dates by which progress in the preparation of a report or reports is to be reviewed by the court officer; and

(iv) the date by which each report commissioned is to be received by the court; and

(g) identify the person (each person, if more than one) to whom a copy of a report is to be supplied, and by whom.

(4) A commission addressed to an expert must —

(a) identify each issue in respect of which the court requires expert medical opinion and any legislation applicable;

(b) include —

(i) the information required by the court to be supplied to the expert;

(ii) details of the timetable set by the court; and

(iii) details of the arrangements that will apply for the payment of the expert;

(c) identify the person (each person, if more than one) to whom a copy of the expert's report is to be supplied; and

(d) request confirmation that the expert from whom the opinion is sought —

(i) accepts the commission; and

(ii) will adhere to the timetable.

PART 4 - SERVICE OF DOCUMENTS

4.1. When this Part applies

(1) The rules in this Part apply to the service of every document in a case to which these Rules apply; and

(2) The rules apply subject to any special rules in other legislation (including other Parts of these Rules).

4.2. Methods of service

(1) A document may be served by any of the methods described in these rules.

(2) Where a document may be served by electronic means, the general rule is that the person serving it must use that method.

4.3. Service by handing over a document

(1) A document may be served on —

(a) an individual by handing it to him or her;

(b) a corporation by handing it to a person holding a senior position in that corporation;

(c) an individual or corporation who is legally represented in the case by handing it to that legal representative;

(d) the prosecution by handing it to the prosecutor or to the prosecution representative;

(e) the court by handing it to a court officer.

(2) If an individual is under 18, a copy of a document served under paragraph (1)(a) must be handed to his or her parent, or another appropriate adult, unless no such person is readily available.

(3) Unless the court otherwise directs, for the purposes of paragraph (1)(c) or (d) (service by handing a document to a party's representative) "representative" includes an advocate appearing for that party at a hearing.

4.4. Service by leaving or posting a document

(1) A document may be served by addressing it to the person to be served and leaving it at the appropriate address for service under this rule, or by sending it to that address by post.

(2) The address for service under this rule on —

(a) an individual is an address where it is reasonably believed that he or she will receive it;

(b) a corporation is its principal office in the Falkland Islands, and if there is no readily identifiable principal office in the Falkland Islands then any place where it carries on its activities or business;

(c) an individual or corporation who is legally represented in the case is that legal representative's office;

(d) the prosecution is the prosecutor's office; and

(e) the court is the relevant court office.

4.5. Service by electronic means

(1) This rule applies where —

(a) the person to be served—

(i) has given an electronic address and has not refused to accept service at that address; or

(ii) is given access to an electronic address at which the document may be deposited and has not refused to accept service by the deposit of a document at that address; or

(b) the person to be served is legally represented in the case and the legal representative has —

(i) given an electronic address; or

(ii) is given access to an electronic address at which the document may be deposited.

(2) A document may be served —

(a) by sending it by electronic means to the address which the recipient has given; or;

(b) by depositing it at an address to which the recipient has been given access and —

(i) in every case, making it possible for the recipient to read the document, or view or listen to its content, as the case may be; and

(ii) unless the court otherwise directs, making it possible for the recipient to make and keep an electronic copy of the document; and

(iii) notifying the recipient of the deposit of the document (which notice may be given by electronic means).

4.6. Paper copies of certain documents

At the request of the recipient, paper copies of the following documents must also be provided notwithstanding that such documents may also have been served in accordance with rule 4.5 —

(a) the indictment, charge or summons;

(b) early details of the prosecution case; and

(c) disclosure made in accordance with Part 14 of the Criminal Procedure and Evidence Ordinance 2014.

4.7. Service by person in custody

(1) A person in custody may serve a document by handing it to the custodian addressed to the person to be served.

(2) The custodian must —

(a) endorse it with the time and date of receipt;

(b) record its receipt; and

(c) forward it promptly to the addressee.

4.8. Service by another method

(1) The court may allow service of a document by a method other than those described in these rules.

(2) An order allowing service by another method must specify —

(a) the method to be used; and

(b) the date on which the document will be served.

4.9. Documents that may not be served on a legal representative

Unless the court otherwise directs, service on a party's legal representative of any of the following documents is not service of that document on that party —

(a) a summons or witness summons;

(b) notice of a court hearing date or notice of when and where an adjourned hearing will resume;

(c) any notice or document served in accordance with Part 14 (Bail and Custody Time Limits);

(d) notice of an application to vary or discharge a compensation order;

(e) notice of the location of the sentencing or enforcing court;

(f) a notice requiring payment;

(g) an application or written statement, and notice, alleging contempt of court.

4.10. Date of service

(1) A document served under rule 4.3 or 4.6 is served on the day it is handed over.

(2) Unless something different is shown, a document served on a person by any other method is served —

(a) in the case of a document left at an address, on the next business day after the day on which it was left;

(b) in the case of a document sent by post, on the second business day after the day on which it was posted or despatched;

(c) in the case of a document served by electronic means —

(i) on the day on which it is sent, if that day is a business day and if it is sent by no later than 4pm that day;

(ii) on the day on which notice of its deposit is given under rule 4.5(2)(iii), if that day is a business day and if that notice is given by no later than 4pm that day; or

(iii) otherwise, on the next business day after it was sent; and

(d) in any case, on the day on which the addressee responds to it, if that is earlier.

(3) Unless something different is shown, a document produced by a computer system for dispatch by post is to be taken as having been sent by first class post, or by the equivalent of first class post, to the addressee on the business day after the day on which it was produced.

(4) Where a document is served on or by the court officer, "**business day**" does not include a day on which the court office is closed.

4.11. Proof of service

The person who serves a document may prove service by signing a certificate explaining how and when it was served.

4.12. Court's power to give directions about service

(1) The court may specify the time as well as the date by which a document must be —

(a) served; or

(b) sent or deposited by electronic means.

(2) The court may treat a document as served if the addressee responds to it even if it was not served in accordance with the rules in this Part.

PART 5 - FORMS AND COURT RECORDS

5.1. When this Part applies and the open justice principle

(1) In this Part "audio recording" means a sound recording on any medium from which any sound may be produced or reproduced.

(2) This Part applies where a rule, practice direction or the court requires a person to —

(a) make an application or give a notice;

(b) supply information for the purposes of case management by the court; or

(c) supply information needed for other purposes by the court.

(3) Where this Part applies, as well as furthering the overriding objective, the court officer and the court must have regard to the open justice principle by considering the importance of —

(a) dealing with criminal cases in public;

(b) allowing a public hearing to be reported to the public; and

(c) the rights of a person affected by a direction or order made, or warrant issued, by the court to understand why that decision was made.

5.2. Applications, etc. by forms or electronic means

Unless the court otherwise directs, a person making an application, giving notice or supplying information must —

(a) use such electronic arrangements as the court officer may make for that purpose, in accordance with those arrangements; or

(b) if no such arrangements have been made, make the application, give the notice, or supply the information in writing and use the appropriate form where required.

5.3. Signature of forms

(1) This rule applies where a form provides for its signature.

(2) Unless legislation otherwise requires, or the court otherwise directs, signature may be by any written or electronic authentication (including the use of an electronic signature) of the form by, or with the authority of, the signatory.

5.4. Duty to make records

(1) For each case, as appropriate, the court officer must record, by such means as the court may direct —

(a) each charge or indictment count against the defendant;

(b) the defendant's plea to each charge or count;

(c) each acquittal, conviction, sentence, determination, direction or order;

(d) each decision about bail;

(e) any indication of sentence given by the court;

(f) the court's reasons for a decision;

(g) any appeal;

(h) each party's presence or absence at each hearing;

(i) in the Supreme Court —

(i) any request for assistance or other communication about the case received from a juror;

(ii) the date and time at which the court gives the jury directions about the law;

(iii) the date and time at which the court gives the jury other assistance in writing;

(iv) the date, time and subject matter of submissions and rulings that relate to such directions and assistance;

(j) the identity of —

(i) the prosecutor;

(ii) the defendant;

(iii) any other applicant to whom these Rules apply;

(iv) any interpreter or intermediary;

(v) the parties' legal representatives and advocates, if any; and

(vi) the judge or justices of the peace who made each recorded decision,

(k) where a defendant is entitled to attend a hearing, any agreement by the defendant to waive that right; and

(l) where interpretation is required for a defendant, any agreement by that defendant to do without the written translation of a document where a rule or legislation otherwise requires such translation to be provided.

(2) Such records must include —

(a) each party's and representative's address, including any electronic address and telephone number available;

(b) the defendant's date of birth, if available; and

(c) the date of each event and decision recorded.

5.5. Audio recording of proceedings

For each hearing, the court officer must arrange for the audio recording of the proceedings, unless the court otherwise directs;

5.6. Custody of case materials

(1) Unless the court otherwise directs, in respect of each case the court officer must —

(a) keep —

(i) any evidence, application, representation or other material served by the parties; and

(ii) any evidence or other material prepared for the court; or

(b) arrange for the whole or any part to be kept by some other appropriate person, subject to —

(i) any condition imposed by the court, and

(ii) the rules about keeping exhibits pending any appeal.

(2) Case materials may be stored in an electronic format and by electronic means.

5.7. Request for information about a case

(1) This rule applies where anyone, including a member of the public or a reporter, requests information about a case including information contained in materials kept by the court officer for the purposes of the case.

(2) A person requesting information must —

(a) make a request in writing to the court officer;

(b) specify the information requested;

(c) explain why the information is requested unless a rule requires the court officer to supply the information; and

(d) pay any fee required.

(3) The court officer must supply to the person making the request —

(a) the date of a hearing in public;

(b) each alleged offence and any plea entered;

(c) the court's decision —

(i) at a hearing in public;

(ii) about bail; or

(iii) about the committal, sending or transfer of the case to another court;

(d) whether the case is under appeal;

(e) the outcome of the case;

(f) the identity of —

(i) the prosecutor;

(ii) the defendant, including the defendant's date of birth;

(iii) the parties' representatives, including their business addresses; and

(iv) the judge or justices of the peace by whom a decision at a hearing in public was made;

(g) details of any reporting or access restriction that applies.

(4) Where paragraph (3) applies and the court officer must supply the information requested the supply may be —

(a) by word of mouth;

(b) in writing, including by written certificate or extract from a court record; or

(c) by such other arrangements, including supply by electronic means.

(5) The court officer must not supply the information requested if —

(a) the supply of that information is prohibited by a reporting restriction; or

(b) the information is an audio recording, or a transcript of an audio recording, of all or part of a court hearing; or

(c) the information is the date of a hearing in public of which a party has yet to be notified; or

(d) the information concerns a trial in which the verdict was more than 6 months ago; or

(e) the information is not readily available to the court officer (for example, because of the location or conditions of its storage).

(6) Where paragraph (5) applies and the court officer must not supply the information requested then unless that information can be supplied under rule 5.8 —

(a) the court officer must refer the request to the court; and

(b) rule 5.9 applies.

(7) The court officer may at any stage refer a request made under this rule to the court and rule 5.9 applies.

5.8. Request for information by a party or person directly affected by a case

(1) This rule applies where a party, or a person directly affected by a direction or order made, or warrant issued by the court, wants information about their case including information contained in records or materials kept by the court officer for the purposes of that case.

(2) Such a party or person must —

(a) make a request in writing to the court officer;

(b) specify the information requested;

(c) explain why the information is requested unless a rule requires the court officer to supply the information; and

(d) pay any fee required.

(3) The court officer must supply to the party or person making the request —

(a) information about the terms of any direction or order made, or warrant issued, which was —

(i) served on, or addressed or directed to, that party or person, or

(ii) made on an application by that party or person; and

(b) information received from that party or person (which might be, for example, to establish what information the court holds, or in case of a loss of that information by the party or person making the request).

(4) A party who wants to hear an audio recording of proceedings must —

(a) apply in writing; and

(b) explain the reasons for the request; and

(c) pay any fee required.

(5) The court officer must allow that party to hear an audio recording of —

(a) a hearing in public;

(b) a hearing in private, if the applicant was present at that hearing.

(6) Where paragraph (3) or (5) applies and the court officer must supply the information requested the supply may be, at the choice of the party or person making the request —

(a) by word of mouth;

(b) in writing, including by written certificate or extract from a court record;

(c) by allowing access to the information, including an audio recording; or

(d) by a copy of a document served by, or on, that party or person (but not of a document not so served).

(7) The court officer must not supply the information requested if that information —

(a) concerns the grounds on which a direction or order was made, or a warrant issued, in the absence of the party or person making the request; or

(b) is a transcript of an audio recording of proceedings; or

(c) is not readily available to the court officer (for example, because of the location or conditions of its storage).

(8) Where paragraph (7) applies and the court officer must not supply the information requested —

(a) the court officer must refer the request to the court; and

(b) rule 5.9 applies.

(9) The court officer may at any stage refer a request made under this rule to the court and rule 5.9 applies.

5.9. Request for information determined by the court

(1) This rule applies where the court officer refers to the court a request for information under rule 5.7 (Request for information about a case) or rule 5.8 (Request for information by a party or person directly affected by a case).

(2) The court officer must serve the request —

(a) on the parties; and

(b) any other person as the court directs.

(3) Where a party or person served with the request objects to the supply of information requested the objector must —

(a) give notice of the objection not more than 7 days after service of the request, or within any longer period allowed by the court;

(b) serve that notice on the court officer and on the party or person making the request; and

(c) if the objector wants a hearing, explain why one is needed.

(4) A notice of objection must explain —

(a) whether the objection is to the supply of the whole of the information requested, or only to the supply of a specified part or specified parts;

(b) whether the objection applies without limit of time, or only for a specified period (for example, until a date or event specified by the objector); and

(c) the grounds of the objection.

(5) Where a notice of objection includes material that the objector thinks ought not be revealed to the party or person making the request, the objector must —

(a) omit that material from the notice served on that party or person;

(b) mark the material to show that it is only for the court; and

(c) with that material include an explanation of why it has been withheld.

(6) The court must not determine the request, and information requested must not be supplied, until —

(a) each party or person served with the request has had at least 7 days, or any longer period allowed by the court, in which to object or make other representations; and

(b) the court is satisfied that in all the circumstances every such party or person has had a reasonable opportunity to do so.

(7) The court may determine the request —

(a) without a hearing; or

(b) at a hearing, which —

(i) may be in public or private, but

(ii) must be in private, unless the court otherwise directs, where the request concerns a direction, order or warrant made or issued in the absence of the party or person making the request.

(8) Where a notice of objection includes material that the objector thinks ought not be revealed to the party or person making the request —

(a) any hearing of the request may take place, wholly or in part, in the absence of the party or person making it; and

(b) at any such hearing the general rule is that the court must consider, in the following sequence —

(i) representations first by the party or person making the request and then by the objector, in the presence of both, and then

(ii) further representations by the objector, in the absence of the party or person making the request

but the court may direct other arrangements for the hearing.

(9) In deciding whether to order the supply of the information requested the court must have regard to —

(a) the open justice principle;

(b) any reporting restriction;

(c) rights and obligations under other legislation;

(d) the importance of any public interest in the withholding of that information, or in its supply only in part or subject to conditions (which public interest might be, for example, in preventing injustice, protecting others' rights, protecting the confidentiality of a criminal investigation or protecting national security);

(e) the extent to which that information is otherwise available to the party or person making the request; and

(f) the availability of court resources and the cost involved in redacting or summarising the information to comply with a reporting or access restriction.

(10) Where the court orders the supply of the information requested the supply may be on such terms as the court directs —

(a) by word of mouth;

(b) in writing, including by written certificate or extract from a court record;

(c) by providing a copy of a document;

(d) by allowing access to a document, including an audio recording;

(e) by authorising a transcript of an audio recording to be made; or

(f) on payment of any fee required, including payment in advance, in whole or in part, where the court authorises a transcript of an audio recording to be made.

(11) Where the court orders the supply of information to any person or party, the court officer must not supply the information unless there has been payment by the person or party of any fee required.

5.10. Transcription of proceedings

(1) The court officer must arrange for the transcription of an audio recording of proceedings if —

(a) a court hearing an appeal wants such a transcript; or

(b) a court orders such a transcript in accordance with rule 5.9.

(2) Unless the court otherwise directs, a person who transcribes an audio recording of proceedings under such arrangements may only supply a transcript of an audio recording to the court officer.

5.11. Supply of written certificate or extract from records

(1) This rule applies where —

(a) a party to the proceedings requests a certificate of conviction or acquittal, or an extract from records kept by the court; or

(b) legislation —

(i) allows a certificate of conviction or acquittal, or an extract from records kept by the court, to be introduced in evidence in criminal proceedings; or

(ii) requires such a certificate or extract to be supplied by the court officer to a specified person for a specified purpose.

(2) A person who wants such a certificate or extract must —

(a) apply in writing to the court officer;

(b) specify the certificate or extract required;

(c) explain under what legislation and for what purpose it is required; and

(d) pay any fee required.

(3) If the application satisfies the requirements of this rule, the court officer must, unless the court otherwise directs, supply the certificate or extract requested —

(a) to a party; and

(b) to any other applicant.

5.12. Publication of information about court hearings

(1) Where a case is due to be heard in public, the court officer must —

(a) publish the information listed in paragraph (2) —

(i) if that information is available to the court officer, and

(ii) unless the publication of that information is prohibited by a reporting restriction; and

(b) publish that information for no longer than 7 business days —

(i) by notice displayed somewhere prominent in the vicinity of a court room in which the hearing is due to take place, and

(ii) by such other arrangements as the court directs, including arrangements for publication by electronic means, but only to the extent needed to comply with the open justice principle.

(2) The information that paragraph (1) requires the court officer to publish is —

(a) the date, time and place of the hearing;

(b) the identity of the defendant; and

(c) such other information as it may be practicable to publish concerning —

(i) the type of hearing,

(ii) the identity of the court, and

(iii) any reporting or access restriction that applies.

PART 6 - PROCEEDINGS IN PUBLIC AND REPORTING RESTRICTIONS

6.1. When this Part applies

(1) This Part applies where the court can —

(a) impose a restriction on —

(i) reporting what takes place at a public hearing; or

(ii) public access to what otherwise would be a public hearing;

(b) vary or remove a reporting or access restriction that is imposed by legislation;

(c) withhold information from the public during a public hearing;

(d) allow there to take place during a hearing —

(i) sound recording; or

(ii) communication by electronic means.

(2) This Part does not apply to arrangements required by legislation, or directed by the court, in connection with —

(a) sound recording during a hearing, or the transcription of such a recording; or

(b) measures to assist a witness or defendant to give evidence.

6.2. Exercise of court's powers to which this Part applies

(1) When exercising a power to which this Part applies, as well as furthering the overriding objective, in accordance with rule 1.3, the court must have regard to the importance of —

(a) dealing with criminal cases in public; and

(b) allowing a public hearing to be reported to the public.

(2) The court may determine an application or appeal under this Part —

(a) at a hearing, in public or in private; or

(b) without a hearing.

(3) But the court must not exercise a power to which this Part applies unless each party and any other person directly affected —

(a) is present; or

(b) has had an opportunity —

(i) to attend; or

(ii) to make representations.

6.3. Court's power to vary requirements under this Part

(1) The court may —

(a) shorten or extend (even after it has expired) a time limit under this Part;

(b) require an application to be made in writing instead of orally;

(c) consider an application or representations made orally instead of in writing;

(d) dispense with a requirement to —

(i) give notice; or

(ii) serve a written application.

(2) Someone who wants an extension of time must —

(a) apply when making the application or representations for which it is needed; and

(b) explain the delay.

6.4. Reporting and access restrictions

(1) This rule applies where the court can —

(a) impose a restriction on —

(i) reporting what takes place at a public hearing; or

(ii) public access to what otherwise would be a public hearing;

(b) withhold information from the public during a public hearing.

(2) Unless other legislation otherwise provides, the court may do so —

(a) on application by a party; or

(b) on its own initiative.

(3) A party who wants the court to do so must —

(a) apply as soon as reasonably practicable;

(b) notify —

(i) each other party; and

(ii) such other person (if any) as the court directs;

(c) specify the proposed terms of the order, and for how long it should last;

(d) explain —

(i) what power the court has to make the order; and

(ii) why an order in the terms proposed is necessary;

(e) where the application is for a restriction on reporting of criminal proceedings for lifetime of witnesses and victims under 18, explain —

(i) how the circumstances of the person whose identity is concerned meet the conditions prescribed by that section, having regard to the factors which that section lists; and

(ii) why such a reporting direction would be likely to improve the quality of any evidence given by that person, or the level of co-operation given by that person to any party in connection with the preparation of that party's case, taking into account the factors listed in that section;

(f) where the application is for a reporting direction to restrict reports about certain adult witnesses in criminal proceedings, explain —

(i) how the witness is eligible for assistance, having regard to the factors listed in section 460 of the Criminal Procedure and Evidence Ordinance; and

(ii) why such a reporting direction would be likely to improve the quality of the witness' evidence, or the level of co-operation given by the witness to the applicant in connection with the preparation of the applicant's case, taking into account the factors which section 460 lists.

6.5. Varying or removing restrictions

(1) This rule applies where the court can vary or remove a reporting or access restriction.

(2) Unless other legislation otherwise provides, the court may do so —

(a) on application by a party or person directly affected; or

(b) on its own initiative.

(3) A party or person who wants the court to do so must —

(a) apply as soon as reasonably practicable;

(b) notify —

(i) each other party; and

(ii) such other person (if any) as the court directs;

(c) specify the restriction;

(d) explain, as appropriate, why it should be varied or removed.

6.6. Sound recording, video recording and electronic communication

(1) This rule does not apply to the audio recording of proceedings in accordance with Part 5.

(2) During a hearing, except with the permission of the court, no person is permitted to use a device for —

(a) recording sound; or

(b) recording video; or

(c) communicating the hearing by electronic means.

(3) Except with the permission of the court, no person is permitted to publish a sound or video recording made during a hearing.

(4) A person who wants the court to give such permission must —

(a) apply as soon as reasonably practicable;

(b) notify —

(i) each party; and

(ii) such other person (if any) as the court directs; and

(c) explain why the court should permit the use or publication proposed.

(5) As a condition of the applicant using such a device, the court may direct arrangements to minimise the risk of its use —

(a) contravening a reporting restriction;

(b) disrupting the hearing; or

(c) compromising the fairness of the hearing, for example by affecting —

(i) the evidence to be given by a witness; or

(ii) the verdict of a jury.

(6) Such a direction may require that the device is used only —

(a) in a specified part of the courtroom;

(b) for a specified purpose;

(c) for a purpose connected with the applicant's activity as a member of a specified group, for example representatives of news-gathering or reporting organisations; or

(d) at a specified time, or in a specified way.

6.7. Forfeiture of unauthorised sound or video recording

(1) This rule applies where someone without the court's permission —

(a) uses a device for recording sound or video during a hearing; or

(b) publishes a sound or video recording made during a hearing.

(2) The court may exercise its power to forfeit the device or recording —

(a) on application by a party, or on its own initiative; and

(b) provisionally, despite paragraph (4), to allow time for representations.

(3) A party who wants the court to forfeit a device or recording must —

(a) apply as soon as reasonably practicable;

(b) notify —

(i) as appropriate, the person who used the device, or who published the recording, and

(ii) each other party; and

(c) explain why the court should exercise that power.

(4) Before deciding whether to exercise its power to forfeit, the court should take reasonable steps to allow the person who used the device or who published the recording, to make representations.

(5) The court may invite any other person to make representations before deciding whether to exercise its power to forfeit.

6.8. Recording and broadcasting

(1) In this rule —

"**appeal proceedings**" mean proceedings before the Supreme Court sitting in its appellate capacity;

"**broadcast**" means the transmission to members of the public of a recording of sentencing remarks or appeal proceedings to which this rule applies;

"**court**" means the Supreme Court or the Magistrate's Court;

"**judge**" means the Chief Justice, an Acting Judge of the Supreme Court or the Senior Magistrate;

"**legal representative**" means a representative who is an authorised person entitled to exercise a right of audience before the court;

"**recording**" means a visual or sound recording on any medium from which a single image, a moving image or any sound may be produced or reproduced, or the making of any such recording; and

"**record**" and "**recorded**" are to be construed accordingly.

(2) This rule applies to the recording and broadcasting of —

(a) appeal proceedings in the Supreme Court in open court; and

(b) sentencing remarks in a court to which this rule applies made by the judge in open court.

(3) Sections 461 (taking photographs, etc. in court) and 467 (use of tape recorders) of the Crimes Ordinance 2014 do not apply where (and only where) appeal proceedings or sentencing remarks are —

(a) recorded in accordance with the conditions in paragraph (4) or (5); and

(b) broadcast in accordance with the conditions in paragraph (6).

(4) The conditions of recording appeal proceedings are that —

(a) the recording is only of —

(i) submissions of a legal representative;

(ii) exchanges between a legal representative and the court;

(iii) the court giving judgment;

(b) in a hearing where any party is not legally represented, recording is only of the court giving judgment;

(c) the recording is by a person who —

(i) is permitted in writing by the Chief Justice to record sentencing remarks in court; and

(ii) assigns any copyright in the recording of sentencing remarks to the Chief Justice, for and on behalf of the Crown; and

(d) the recording takes place only with the permission in writing of the judge and in accordance with any conditions imposed by the judge.

(5) The conditions of recording sentencing remarks are that —

(a) the recording is only of the judge when making sentencing remarks in open court;

(b) the recording is by a person who —

(i) is permitted in writing by the Chief Justice to record sentencing remarks in court; and

(ii) assigns any copyright in the recording of sentencing remarks to the Chief Justice, for and on behalf of the Crown.

(c) the recording takes place only with the permission in writing of the judge and in accordance with any conditions imposed by the judge.

(6) The conditions of broadcasting are that —

(a) only recordings made in accordance with paragraphs (4) or (5) are broadcast;

(b) a broadcast must not breach any applicable reporting restriction;

(c) a report or presentation of proceedings that includes a broadcast of appeal proceedings or sentencing remarks must be fair and accurate having regard to —

(i) the overall content of the report or presentation; and

(ii) the context in which the broadcast is presented.

(d) a broadcast must not be for the purposes of —

(i) a party political broadcast;

(ii) advertisement or promotion, except where such advertisement or promotion relates to a report or presentation of proceedings that includes a broadcast;

(iii) light entertainment; or

(iv) satire.

PART 7 - COMMENCING A PROSECUTION

7.1. When this Part applies

This Part applies where a prosecutor commences criminal proceedings by information charging a person with an offence in accordance with section 257 of the Criminal Procedure and Evidence Ordinance 2014.

7.2. Commencing proceedings

(1) A prosecutor who wants the court to issue a summons must —

(a) serve on the court officer a written information; or

(b) unless other legislation prohibits this, present an information orally to the court, with a written statement of the allegation or allegations made by the prosecutor.

(2) A prosecutor who wants the court to issue a warrant must —

(a) serve on the court officer —

(i) a written information; or

(ii) a copy of a written charge that has been issued; or

(b) present to the court either of those documents.

(3) An information for the issue of a summons or warrant must —

(a) set out the allegation or allegations made by the applicant in terms that comply with rule 7.3 (Allegation of offence); and

(b) include a statement —

(i) that the information is laid in time, if legislation imposes a time limit;

(ii) that the information has the necessary consent, if legislation requires it;

(iii) that to the best of the prosecutor's knowledge, information and belief, the allegations contained in the information are substantially true and the evidence on which the prosecution relies will be available at trial;

(iv) that the prosecutor has not reached a binding agreement with the defendant not to prosecute or made representations that no prosecution would be brought, on which the defendant has acted to the defendant's detriment; and

(c) disclose —

(i) details of any previous such applications in respect of any allegation now made; and

(ii) details of any current or previous proceedings brought by another prosecutor in respect of any allegation now made.

(4) As well as complying with paragraph (3), an information for the issue of a warrant must —

(a) demonstrate that the offence or offences alleged can be punished with imprisonment; or

(b) concisely outline the applicant's grounds for asserting that the defendant's address is not sufficiently established for a summons to be served.

(5) A single information may contain more than one charge alleging an offence.

(6) Where an offence carries a maximum penalty of six months imprisonment or less or is not an imprisonable offence, then unless legislation otherwise provides, a prosecutor must serve an information for the issue of a summons or warrant on the court officer or present it to the court not more than 6 months after the date of the commission of the offence alleged.

(7) The court may determine an application to issue or withdraw a summons or warrant —

(a) without a hearing as a general rule; or

(b) at a hearing (which must be in private unless the court otherwise directs), with or without the defendant.

(8) The court may decline to issue a summons or warrant if, for example —

(a) a court has previously determined an application by the same prosecutor which alleged the same or substantially the same offence against the same defendant;

(b) the prosecutor fails to disclose all the information that is material to what the court must decide;

(c) the prosecutor has —

(i) reached a binding agreement with the defendant not to prosecute, or

(ii) made representations that no prosecution would be brought, on which the defendant has acted to the defendant's detriment; and

(iii) the prosecutor's dominant motive would render the prosecution an abuse of the process of the court.

7.3. Allegation of offence

(1) An allegation of an offence must —

(a) contain a statement of the offence;

(b) describe the offence in ordinary language;

(c) identify any legislation that creates it;

(d) provide particulars of the offence as to make clear what the prosecutor alleges against the defendant.

(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 of purpose of commission.

PART 8 - EARLY DETAILS OF THE PROSECUTION CASE

8.1. Providing early details of the prosecution case

(1) The prosecutor must serve early details of the prosecution case on the court officer —

(a) as soon as practicable; and

(b) in any event, no later than the beginning of the day of the first hearing.

(2) Where a defendant requests those details, the prosecutor must serve them on the defendant —

(a) as soon as practicable; and

(b) in any event, no later than the beginning of the day of the first hearing.

(3) Where a defendant does not request those details, the prosecutor must make them available to the defendant at, or before, the beginning of the day of the first hearing.

8.2. Content of early details

Early details of the prosecution case must include —

(a) sufficient information of the circumstances of the offence to progress the case in accordance with rule 3;

(b) the defendant's criminal record, if any;

(c) any written witness statement or exhibit that the prosecutor then has available and considers material to plea, or to the allocation of the case for trial, or to sentence;

(d) any account given by the defendant in interview, whether contained in a transcript or in a summary; and

(e) any available statement of the effect of the offence on a victim, a victim's family or others.

PART 9 - DISCONTINUING A PROSECUTION

9.1. When this Part applies

This Part applies where —

(a) the Attorney General has the conduct of the proceedings in the Magistrate's Court or the Summary Court and can discontinue proceedings at a preliminary stage;

(b) the Attorney General has the conduct of the proceedings in the Supreme Court and an indictment has not been preferred.

9.2. Discontinuing a case

(1) The Attorney General exercising a power to which this Part applies must serve notice on —

(a) the court officer; and

(b) the defendant.

(2) Such a notice must —

(a) identify —

(i) the defendant and each offence to which the notice relates;

(ii) the person serving the notice; and

(iii) the power that that person is exercising;

(b) explain —

(i) in the copy of the notice served on the court officer, the reasons for discontinuing the case;

(ii) that the notice brings the case to an end;

(iii) if the defendant is in custody for any offence to which the notice relates, that the defendant must be released from that custody; and

(iv) if the notice is under section 174 of the Criminal Procedure and Evidence Ordinance 2014, that the defendant has a right to require the case to continue.

(3) Where the defendant is on bail, the court officer must notify —

(a) any surety; and

(b) any person responsible for monitoring or securing the defendant's compliance with a condition of bail.

9.3. Defendant's notice to continue

(1) This rule applies where the Attorney General serves a notice to discontinue under section 174 of the Criminal Procedure and Evidence Ordinance 2014.

(2) A defendant who wants the case to continue must serve notice not more than 21 days after service of the notice to discontinue —

(a) on the court officer; and

(b) the Attorney General.

(3) If the defendant serves such a notice, the court officer must refer the case to the court.

Jurisdiction and Allocation

PART 10 - CRIMINAL JURISDICTION

10.1. Criminal jurisdiction of the Summary Court

The Summary Court has the powers and jurisdiction as set out in section 178 of the Criminal Procedure and Evidence Ordinance 2014.

10.2. Duty of Clerk of the Summary Court

(1) This rule applies only in the Summary Court.

(2) The Clerk of the Summary Court has a duty to ensure that every case is conducted justly and in accordance with these rules.

(3) The Clerk of the Summary Court must provide the justices with any advice they require to perform their functions, whether or not the advice has been requested, on —

(a) questions of law;

(b) questions of mixed law and fact;

(c) matters of practice and procedure;

(d) the process to be followed at sentence and the matters to be taken into account, together with the range of penalties and ancillary orders available in accordance with the relevant sentencing guidelines;

(e) any relevant case law or other guidelines;

(f) the appropriate decision-making structure to be applied in any given case; and

(g) any other issues relevant to the matter before the court.

(4) The Clerk of the Summary Court must provide the parties with an opportunity to make representations on any advice given.

(5) As a general rule advice should be given in open court but where advice is given to members of the court outside the courtroom the Clerk of the Summary Court must —

(a) inform the members of the court that the advice is provisional;

(b) repeat the substance of the provisional advice in open court;

(c) provide the parties with the opportunity to make representations on the provisional advice; and

(d) state in open court whether the provisional advice is confirmed or vary the provisional advice and state the nature of the variation.

(6) Immediately prior to the commencement of a trial, the Clerk of the Summary Court must summarise for the court the agreed and disputed issues, together with the way in which the parties propose to present their cases. Where this is done by way of pre-court briefing, it should be confirmed in open court.

(7) The Clerk of the Summary Court may ask questions of witnesses and the parties to clarify the evidence and any issues in the case.

(8) The Clerk of the Summary Court must not play any part in deciding a verdict, making a decision or making findings of fact, but may assist the court by —

(a) reminding the court of the evidence and may use any notes of the proceedings for this purpose;

(b) repeating any advice that has been given in open court or providing further advice in accordance with paragraph (5); and

(c) clarifying the issues which are agreed and those which are to be determined.

(9) The Clerk of the Summary Court must assist the court with the formulation of reasons for their verdict or decision and the recording of those reasons.

(10) When a defendant is acting in person the Clerk of the Summary Court must explain the procedure and provide such assistance to the defendant as may be required.

10.3. Criminal jurisdiction of the Magistrate's Court

(1) The Magistrate's Court has the jurisdiction to try and determine any summary offence.

(2) The Senior Magistrate has the powers and jurisdiction as set out in section 177 of the Criminal Procedure and Evidence Ordinance 2014.

10.4. Criminal jurisdiction of the Supreme Court

The Supreme Court has unlimited jurisdiction to hear and determine any criminal proceedings under any law.

PART 11 - ALLOCATION, TRANSFER, SENDING AND COMMITTAL

11.1. Allocation of offences

(1) All criminal proceedings commence in the Summary Court but where for any reason the Summary Court cannot sit the proceedings can commence in the Magistrate's Court.

(2) At the first hearing the court will determine where the proceedings will be heard using the allocation procedure —

(a) if an offence before the court is an indictable offence the court must —

(i) send the defendant to the Supreme Court; and

(ii) send any other defendant charged jointly with them; and

(iii) send any related summary offences with which the defendants are charged.

(b) if an offence before the Summary Court is a summary offence the court must take a plea in accordance with rule 16.5 and where the defendant pleads not guilty the court will hear representations as to allocation from —

(i) the prosecutor; and

(ii) the defendant.

(3) In deciding the question of allocation the court shall consider —

(a) whether the defendant is already awaiting trial on other matters in the Magistrate's Court;

(b) whether a co-defendant charged with the same offence is already awaiting trial in the Magistrate's Court;

(c) the value of any damage caused or compensation sought;

(d) whether complex points of evidence or law are likely to arise in the trial;

(e) whether a sentence in excess of that which the Summary Court can impose is likely to be justified if the defendant is convicted;

(f) the extent to which a case concerns matters of public interest; and

(g) any other consideration required by the interests of justice.

11.2. Transfer between courts

(1) If at any point prior to the proceedings coming to trial it is in the interests of justice to do so —

(a) the Summary Court may transfer the proceedings to the Magistrate's Court;

(b) the Magistrate's Court may transfer the proceedings to the Summary Court.

(2) The proceedings may be transferred from one court to the other even if they have been transferred on one or more previous occasions.

(3) Either the Summary Court or the Magistrate's Court may make an order for the proceedings to be transferred from one court to the other.

(4) An order for the proceedings to be transferred from one court to the other may be made—

(a) on an application from one or more of the parties to the case; or

(b) on the court's own initiative.

(5) An order for the proceedings to be transferred from one court to the other shall not be made unless the parties to the proceedings have been given the opportunity to make representations.

11.3. Sending indictable offences to the Supreme Court

(1) Where the Summary Court or the Magistrate's Court sends a defendant to the Supreme Court it must issue a sending notice specifying the offence or offences for which the person is being sent to the Supreme Court including any related summary offences.

(2) The court officer shall, as soon as is reasonably practicable, serve a copy of the sending notice on —

(a) the Supreme Court;

(b) the defendant being sent to the Supreme Court; and

(c) the prosecutor.

(3) Within 56 days of the order sending the defendant to the Supreme Court the prosecutor must —

(a) file an indictment in the registry of the Supreme Court in accordance with rule 11.4; and

(b) file a copy of the evidence upon which the prosecution relies and comply with the duty of disclosure under section 216 of the Criminal Procedure and Evidence Ordinance 2014.

(4) The court that sends the defendant to the Supreme Court may, at the time of the order sending the defendant to the Supreme Court, make any case management direction necessary to manage the case including shortening the time for filing the indictment, the evidence and complying with the duty of disclosure but will not do so without allowing the prosecutor to make representations.

11.4. Form and content of the indictment

(1) An indictment must be in a form that contains, in a paragraph called a "count" —

(a) a statement of the offence charged that —

(i) describes the offence in ordinary language; and

(ii) identifies any legislation that creates it; and

(b) such particulars of the conduct constituting the commission of the offence as to make clear what the prosecutor alleges against the defendant.

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

(3) An indictment may contain more than one count if all the offences charged —

(a) are founded on the same facts; or

(b) form or are a part of a series of offences of the same or a similar character.

(4) The counts must be numbered consecutively.

(5) An indictment may contain —

(a) any count charging substantially the same offence as one specified in the notice of the offence or offences for which the defendant was sent for trial; and

(b) any other count based on the prosecution evidence already served.

(6) The indictment filed in the registry of the Supreme Court must be in the name of and signed by the Attorney General.

11.5. Committal for sentence

(1) Where the Summary Court convicts a defendant the court may commit the defendant to be sentenced in the Magistrate's Court after considering —

(a) the maximum penalty that is prescribed by law;

(b) the character and antecedents of the defendant;

(c) whether a sentence greater than that which the Summary Court can lawfully impose should be imposed;

(d) any representations from the prosecutor; and

(e) any representations from the defendant.

(2) Where the Summary Court commits the defendant to the Magistrate's Court the court officer must, as soon as practicable, provide the Magistrate's Court with —

(a) a certificate of conviction;

(b) record of a decision about bail;

(c) a note of evidence if evidence was called;

(d) any statement or other document introduced in evidence;

(e) any medical or other report; and

(f) a record of any driving disqualification.

Court Practice

PART 12 - MODES OF ADDRESS AND COURT ATTIRE

12.1. When this Part applies

This Part applies to all hearings before the Summary Court, the Magistrate's Court and the Supreme Court unless the court directs otherwise.

12.2. Modes of address

(1) A justice of the peace shall be addressed as 'Sir', 'Madam' or 'Your Worship' when sitting in the Summary Court.

(2) The Senior Magistrate shall be addressed as 'Your Honour' when sitting in the Magistrate's Court.

(3) The Chief Justice and the Acting Judge of the Supreme Court shall be addressed as 'Your Lordship' or 'Your Ladyship' when sitting in the Supreme Court.

12.3. Court attire

(1) The Chief Justice shall wear the wig and robes of the Chief Justice of the Falkland Islands.

(2) The Senior Magistrate shall wear the wig and robes of the Senior Magistrate of the Falkland Islands.

(3) The Registrar of the Supreme Court shall wear the gown of the Registrar of the Supreme Court of the Falkland Islands.

(4) A court officer sitting as the Clerk of the Magistrate's Court shall wear a court gown.

(5) When appearing before the Supreme Court and the Magistrate's Court the Attorney General shall wear the wig and robes of the Attorney General of the Falkland Islands.

(6) Advocates appearing before the Supreme Court and the Magistrate's Court shall wear court robes. The advocate shall —

(a) wear the wig and court robes they are entitled to wear by virtue of their professional qualification in their country of qualification; and

(b) in addition any advocate, whether entitled to do so by virtue of their professional qualification or not, shall be entitled to wear the wig of a barrister of England and Wales unless they choose not to do so; or

(c) in all other cases wear the collar, bands and gown of a solicitor of England and Wales.

(7) A justice of the peace sitting in the Summary Court shall wear business attire.

(8) A court officer sitting as the Clerk of the Summary Court shall wear business attire.

(9) Advocates appearing before the Summary Court shall wear business attire.

Detainment and Bail

PART 13 - WARRANTS FOR ARREST, DETENTION OR IMPRISONMENT

13.1. When this Part applies

(1) This Part applies where the court can issue a warrant for arrest, detention or imprisonment.

(2) In this Part, "**defendant**" means anyone against whom such a warrant is issued.

13.2. Terms of a warrant for arrest

(1) A warrant for arrest must require each person to whom it is directed to arrest the defendant and —

(a) bring the defendant to a court —

(i) specified in the warrant, or

(ii) required or allowed by law; or

(b) release the defendant on bail (with conditions or without) to attend court at a date, time and place —

(i) specified in the warrant, or

(ii) to be notified by the court.

13.3. Terms of a warrant for detention or imprisonment

A warrant for detention or imprisonment must —

(a) require each person to whom it is directed to detain the defendant and —

(i) take the defendant to any place specified in the warrant or required or allowed by law; and

(ii) deliver the defendant to the custodian of that place; and

(b) require that custodian to detain the defendant, as ordered by the court, until in accordance with the law —

(i) the defendant is delivered to the appropriate court or place; or

(ii) the defendant is released.

13.4. Information to be included in a warrant

(1) A warrant must identify —

(a) each person to whom it is directed;

(b) the defendant against whom it was issued;

(c) the reason for its issue; and

(d) the court that issued it.

(2) A warrant for detention or imprisonment must contain a record of any decision by the court.

(3) A warrant for detention or imprisonment must include such indication of the defendant's physical and mental health as may be needed to alert those to whom the warrant is directed —

(a) to any vulnerability of the defendant; and

(b) to any risk to others that may be posed by the defendant.

(4) A warrant that contains an error is not invalid, as long as —

(a) it was issued in respect of a lawful decision by the court; and

(b) it contains enough information to identify that decision.

13.5. Execution of a warrant

(1) A warrant may be executed by any person to whom it is directed.

(2) The person who executes a warrant must —

(a) explain, in terms the defendant can understand, what the warrant requires, and why;

(b) show the defendant the warrant, if that person has it; and

(c) if the defendant asks —

(i) arrange for the defendant to see the warrant, if that person does not have it; and

(ii) show the defendant any written statement of that person's authority.

(3) The person who executes a warrant of arrest that requires the defendant to be released on bail must —

(a) make a record of —

(i) the defendant's name;

(ii) the reason for the arrest;

(iii) the defendant's release on bail; and

(iv) when and where the warrant requires the defendant to attend court; and

(b) serve the record on —

(i) the defendant; and

(ii) the court officer.

(4) The person who executes a warrant of detention or imprisonment must —

(a) take the defendant —

(i) to any place specified in the warrant, or

(ii) if that is not immediately practicable, to any other place at which the defendant may be lawfully detained (and the warrant then has effect as if it specified that place);

(b) obtain a receipt from the custodian; and

(c) notify the court officer that the defendant has been taken to that place.

PART 14 - BAIL AND CUSTODY TIME LIMITS

14.1. When this Part applies

(1) This Part applies where a court can —

(a) grant or withhold bail, or impose or vary a condition of bail, and

(b) where bail has been withheld, extend a custody time limit.

(2) In this Part, "defendant" includes a person who has been granted bail by a police officer.

14.2. Exercise of court's powers to which this Part applies

(1) The court must not make a decision to which this Part applies unless —

(a) each party to the decision and any surety directly affected by the decision —

(i) is present, in person or by live link; or

(ii) has had an opportunity to make representations;

(b) on an application for bail by a defendant who is absent and in custody, the court is satisfied that the defendant —

(i) has waived the right to attend; or

(ii) was present when a court withheld bail in the case on a previous occasion and has been in custody continuously since then;

(c) on a prosecutor's appeal against a grant of bail, application to extend a custody time limit or appeal against a refusal to extend such a time limit —

(i) the court is satisfied that a defendant who is absent has waived the right to attend; or

(ii) the court is satisfied that it would be just to proceed even though the defendant is absent.

(2) The court may make a decision to which this Part applies at a hearing, in public or in private.

(3) The court may determine without a hearing an application to vary a condition of bail if—

(a) the parties to the application have agreed the terms of the variation proposed; or

(b) on an application by a defendant, the court determines the application no sooner than the fifth business day after the application was served.

(4) The court may adjourn a determination to which this Part applies, if that is necessary to obtain information sufficient to allow the court to make the decision required.

(5) At any hearing at which the court makes one of the following decisions, the court must announce in terms the defendant can understand (with help, if necessary) its reasons for —

(a) withholding bail, or imposing or varying a bail condition; or

(b) granting bail, where the prosecutor opposed the grant.

(6) At any hearing at which the court grants bail, the court must —

(a) tell the defendant where and when to surrender to custody; or

(b) arrange for the court officer to give the defendant, as soon as practicable, notice of where and when to surrender to custody.

14.3. General duties of the court officer

(1) The court officer must arrange for a note or other record to be made of —

(a) the parties' representations about bail; and

(b) the court's reasons for a decision —

(i) to withhold bail, or to impose or vary a bail condition; or

(ii) to grant bail, where the prosecutor opposed the grant.

(2) The court officer must serve notice of a decision about bail on —

(a) the defendant;

(b) the prosecutor (but only where the court granted bail, the prosecutor opposed the grant, and the prosecutor asks for such a notice);

(c) a party to the decision who was absent when it was made;

(d) a surety who is directly affected by the decision;

(e) the defendant's custodian, where the defendant is in custody and the decision requires the custodian —

(i) to release the defendant (or will do so, if a requirement ordered by the court is met); or

(ii) to transfer the defendant to the custody of another custodian;

(f) the court officer for any other court at which the defendant is required by that decision to surrender to custody.

(3) Where the court postpones the date on which a defendant who is on bail must surrender to custody, the court officer must serve notice of the postponed date on —

(a) the defendant; and

(b) any surety.

14.4. Prosecutor's representations about bail

(1) This rule applies whenever the court can grant or withhold bail.

(2) The prosecutor must provide the court with all the information in the prosecutor's possession which is material to what the court must decide.

(3) A prosecutor who opposes the grant of bail must specify —

(a) each exception to the general right to bail on which the prosecutor relies; and

(b) each consideration that the prosecutor thinks relevant.

(4) A prosecutor who wants the court to impose a condition on any grant of bail must —

(a) specify each condition proposed; and

(b) explain what purpose would be served by such a condition.

14.5. Reconsideration of police bail

(1) This rule applies where a party wants a court to reconsider a bail decision by a police officer.

(2) An application under this rule must be made to —

(a) the court to whose custody the defendant is under a duty to surrender, if any; or

(b) the Summary Court in any other case.

(3) The applicant party must —

(a) apply in writing; and

(b) serve the application on —

(i) the court officer;

(ii) the other party; and

(iii) any surety affected or proposed.

(4) The application must —

(a) specify —

(i) the decision that the applicant wants the court to make;

(ii) each offence charged, or for which the defendant was arrested; and

(iii) the police bail decision to be reconsidered and the reasons given for it;

(b) explain, as appropriate —

(i) why the court should grant bail itself, or withdraw it, or impose or vary a condition; and

(ii) if the applicant is the prosecutor, what material information has become available since the police bail decision was made;

(c) propose the terms of any suggested condition of bail; and

(d) if the applicant wants an earlier hearing than paragraph (7) requires, ask for that, and explain why it is needed.

(5) A prosecutor who applies under this rule must serve on the defendant, with the application, 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 party who opposes an application must —

(a) notify the court officer and the applicant at once; and

(b) serve on each notice of the reasons for opposition.

(7) Unless the court otherwise directs, the court officer must arrange for the court to hear the application as soon as practicable and in any event —

(a) if it is an application to withdraw bail, no later than the second business day after it was served;

(b) in any other case, no later than the fifth business day after it was served.

(8) The court may —

(a) vary or waive a time limit under this rule;

(b) allow an application to be in a different form to one set out in this Part.

14.6. Notice of application to consider bail

(1) This rule applies where —

(a) a party wants the court to grant bail that has been withheld, or to withdraw bail that has been granted, or to impose a new bail condition or to vary a present one; or

(b) a defendant wants the court to reconsider such bail before the next hearing in the case.

(2) Such a party must —

(a) apply in writing;

(b) serve the application on —

(i) the court officer;

(ii) the other party; and

(iii) any surety affected or proposed; and

(c) serve the application not less than 2 business days before any hearing in the case at which the applicant wants the court to consider it, if such a hearing is already due.

(3) The application must —

(a) specify —

(i) the decision that the applicant wants the court to make;

(ii) each offence charged; and

(iii) each relevant previous bail decision and the reasons given for each;

(b) if the applicant is a defendant, explain —

(i) as appropriate, why the court should not withhold bail, or why it should vary a condition; and

(ii) what further information or legal argument, if any, has become available since the most recent previous bail decision was made;

(c) if the applicant is the prosecutor, explain —

(i) as appropriate, why the court should withdraw bail, or impose or vary a condition; and

(ii) what material information has become available since the most recent previous bail decision was made;

(d) propose the terms of any suggested condition of bail; and

(e) if the applicant wants an earlier hearing than paragraph (6) requires, ask for that, and explain why it is needed.

(4) A prosecutor who applies under this rule must serve on the defendant, with the application, 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.

(5) A party who opposes an application must —

(a) notify the court officer and the applicant at once; and

(b) serve on each notice of the reasons for opposition.

(6) Unless the court otherwise directs, the court officer must arrange for the court to hear the application as soon as practicable and in any event —

(a) if it is an application to grant or withdraw bail, no later than the second business day after it was served;

(b) if it is an application to impose or vary a condition, no later than the fifth business day after it was served.

(7) The court may —

(a) vary or waive a time limit under this rule;

(b) allow an application to be in a different form to one set out in the Part, or to be made orally;

(c) if this Part allows, determine without a hearing an application to vary a condition.

14.7. Defendant's application or appeal to the Supreme Court

(1) This rule applies where a defendant wants to —

(a) apply to the Supreme Court for bail after bail has been withheld by the Summary Court or the Magistrate's Court; or

(b) appeal to the Supreme Court after the Summary Court or the Magistrate's Court has refused to vary a bail condition as the defendant wants.

(2) The defendant must —

(a) apply to the Supreme Court in writing as soon as practicable after the decision; and

(b) serve the application on —

(i) the Registrar of the Supreme Court;

(ii) the Summary Court or Magistrate's Court officer;

(iii) the prosecutor; and

(iv) any surety affected or proposed.

(3) The application must —

(a) specify —

(i) the decision that the applicant wants the Supreme Court to make; and

(ii) each offence charged;

(b) explain —

(i) as appropriate, why the Supreme Court should not withhold bail, or why it should vary the condition under appeal; and

(ii) what further information or legal argument, if any, has become available since the original decision;

(c) propose the terms of any suggested condition of bail;

(d) if the applicant wants an earlier hearing than paragraph (6) requires, ask for that, and explain why it is needed; and

(e) on an application for bail, attach a copy of the certificate of full argument.

(4) The Summary Court or the Magistrate's Court officer must as soon as practicable serve on the Registrar of the Supreme Court —

(a) a copy of the note or record made in connection with the court's decision; and

(b) the date of the next hearing, if any.

(5) A prosecutor who opposes the application must —

(a) notify the Registrar of the Supreme Court and the defendant at once; and

(b) serve on each notice of the reasons for opposition.

(6) Unless the Supreme Court otherwise directs, the Registrar of the Supreme Court must arrange for the court to hear the application or appeal as soon as practicable and in any event no later than the business day after it was served.

(7) The Supreme Court may vary a time limit under this rule.

14.8. Prosecutor's appeal against grant of bail

(1) This rule applies where a prosecutor wants to appeal against a grant of bail by the Summary Court in accordance with section 151 of the Criminal Procedure and Evidence Ordinance 2014.

(2) The prosecutor must tell the Summary Court of the decision to appeal —

(a) at the end of the hearing during which the court granted bail; and

(b) before the defendant is released on bail.

(3) The Summary Court which has granted bail must exercise its power to remand the defendant in custody pending determination of the appeal.

(4) The prosecutor must serve an appeal notice —

(a) on the court officer and on the defendant;

(b) not more than 2 hours after telling that court of the decision to appeal.

(5) The appeal notice must specify —

(a) each offence with which the defendant is charged;

(b) the decision under appeal;

(c) the reasons given for the grant of bail; and

(d) the grounds of appeal.

(6) On an appeal to the Magistrate's Court, the Summary Court officer must, as soon as practicable, serve on the Magistrate's Court officer —

(a) the appeal notice;

(b) a copy of the note or record of bail decision; and

(c) notice of the date of the next hearing in the Summary Court which has granted bail.

(7) If the Magistrate's Court so directs, the Magistrate's Court officer must arrange for the defendant to be assisted by a legal representative in a case in which the defendant —

(a) has no legal representative; and

(b) asks for such assistance.

(8) On an appeal to the Magistrate's Court, the Magistrate's Court officer must arrange for the court to hear the appeal as soon as practicable and in any event no later than the second business day after the appeal notice was served.

(9) The prosecutor —

(a) may abandon an appeal to the Magistrate's Court without the court's permission, by serving a notice of abandonment, signed by or on behalf of the prosecutor, on —

(i) the defendant;

(ii) the Magistrate's Court officer; and

(iii) the Summary Court officer

before the hearing of the appeal begins; but

(b) after the hearing of the appeal begins, may only abandon the appeal with the Magistrate's Court's permission.

(10) The court officer for the court which has granted bail must instruct the defendant's custodian to release the defendant on the bail granted by that court, subject to any condition or conditions of bail imposed, if —

(a) the prosecutor fails to serve an appeal notice within the time to which paragraph (4) refers; or

(b) the prosecutor serves a notice of abandonment under paragraph (9).

14.9. Consideration of bail in a murder or treason case

(1) This rule applies in a case in which —

(a) the defendant is charged with murder or treason; and

(b) the Supreme Court has not yet considered bail.

(2) The Summary Court or Magistrate's Court officer must arrange with the Registrar of the Supreme Court for the Supreme Court to consider bail as soon as practicable and in any event no later than the second business day after —

(a) the Summary Court or the Magistrate's Court sends the defendant to the Supreme Court for trial; or

(b) the first hearing in the Summary Court or the Magistrate's Court, if the defendant is not at once sent for trial.

(3) Neither the Summary Court nor the Magistrate's Court may grant bail in a case of murder or treason.

14.10. Condition of residence

(1) The defendant must notify the prosecutor of the address at which the defendant will live and sleep if released on bail with a condition of residence —

(a) as soon as practicable after the institution of proceedings, unless already done; and

(b) as soon as practicable after any change of that address.

(2) The prosecutor must help the court to assess the suitability of an address proposed as a condition of residence.

14.11. Requirement for a surety or payment, etc.

(1) This rule applies where the court imposes as a condition of bail a requirement for —

(a) a surety;

(b) a payment; or

(c) the surrender of a document or thing.

(2) The court may direct how such a condition must be met.

(3) Unless the court otherwise directs, if any such condition or direction requires a surety to enter into a recognisance —

(a) the recognisance must specify —

(i) the amount that the surety will be required to pay if the purpose for which the recognisance is entered is not fulfilled; and

(ii) the date, or the event, upon which the recognisance will expire;

(b) the surety must enter into the recognisance in the presence of —

(i) the court officer;

(ii) the defendant's custodian, where the defendant is in custody; or

(iii) someone acting with the authority of either; and

(c) the person before whom the surety enters into the recognisance must at once serve a copy on —

(i) the surety; and

(ii) as appropriate, the court officer and the defendant's custodian.

(4) Unless the court otherwise directs, if any such condition or direction requires someone to make a payment, or surrender a document or thing —

(a) that payment, document or thing must be made or surrendered to —

(i) the court officer;

(ii) the defendant's custodian, where the defendant is in custody; or

(iii) someone acting with the authority of either; and

(b) the court officer or the custodian, as appropriate, must serve immediately on the other a statement that the payment, document or thing has been made or surrendered.

(5) The custodian must release the defendant when each requirement ordered by the court has been met.

14.12. Forfeiture of a recognisance given by a surety

(1) This rule applies where the court imposes as a condition of bail a requirement that a surety enter into a recognisance and, after the defendant is released on bail —

(a) the defendant fails to surrender to custody as required; or

(b) it appears to the court that the surety has failed to comply with a condition or direction.

(2) The court officer must serve notice of the hearing at which the court will consider the forfeiture of the recognisance on —

(a) the surety; and

(b) each party to the decision to grant bail.

(3) The court must not forfeit the recognisance less than 5 business days after service of notice under paragraph (2).

14.13. When these rules about custody time limits apply

These rules do not apply in relation to proceedings for an offence instituted before the date of commencement of these Rules, except where the defendant is sent on or after that date for trial in the Supreme Court.

14.14. Custody time limits

(1) In the case of a summary offence that is not a serious offence as defined by section 2 of the Criminal Procedure and Evidence Ordinance; the maximum period of custody between a defendant's first appearance and the start of a summary trial is 70 days.

(2) In the case of a serious offence as defined by section 2 of the Criminal Procedure and Evidence Ordinance the maximum period of custody between a defendant's first appearance and the start of a summary trial is 182 days.

(3) In the case of an indictable offence the maximum period of custody between the defendant's first appearance before the Summary Court or the Magistrate's Court and the start of a trial in the Supreme Court is 182 days.

14.15. Application for extension of custody time limit

(1) An application to a court for the extension or further extension of a custody time limit under section 170 of the Criminal Procedure and Evidence Ordinance must be made in writing and be given to —

(a) the court officer; and

(b) the defendant or the defendant's representative;

not less than 2 days before making an application.

(2) If the court is satisfied that it is not practicable in all the circumstances for the prosecution to comply with the requirement to give notice in accordance with this rule, the court may direct that the prosecution need not give notice.

14.16. Bail on expiry of the custody time limit

(1) The prosecution must, not less than 5 days before the expiry of the time custody limit, give notice in writing as to whether or not the prosecution intends to apply for conditions to be attached to the grant of bail —

(a) to the appropriate court officer; and

(b) to the defendant or the defendant's representative.

(2) The court officer will make arrangements for the defendant to be brought before the court within the period of 2 days preceding the expiry of the time limit.

(3) If the court is satisfied that it is not practicable in all the circumstances for the prosecution to give notice in accordance with this rule, the court may direct that the prosecution need not give notice.

(4) The prosecution need not comply with rule this rule if it has made an application in accordance with rule 14.15.

14.17. Appeal against custody time limit decision

(1) This rule applies where —

(a) a defendant wants to appeal to the Supreme Court against a decision by the Summary Court or the Magistrate's Court to extend a custody time limit;

(b) a prosecutor wants to appeal to the Supreme Court against a decision by the Summary Court or the Magistrate's Court not to extend a custody time limit;

(2) The appellant must serve an appeal notice —

(a) on —

(i) the other party to the decision;

(ii) the Registrar of the Supreme Court; and

(iii) the Summary Court or Magistrate's Court officer;

(b) in a defendant's appeal, as soon as practicable after the decision under appeal;

(c) in a prosecutor's appeal —

(i) as soon as practicable after the decision under appeal; and

(ii) before the relevant custody time limit expires.

(3) The appeal notice must specify —

(a) each offence with which the defendant is charged;

(b) the decision under appeal;

(c) the date on which the relevant custody time limit will expire;

(d) on a defendant's appeal, the date on which the relevant custody time limit would have expired but for the decision under appeal; and

(e) the grounds of appeal.

(4) The Registrar of the Supreme Court must arrange for the Supreme Court to hear the appeal as soon as practicable and in any event no later than the second business day after the appeal notice was served.

(5) The appellant —

(a) before the hearing of the appeal begins may abandon an appeal without the Supreme Court's permission, by serving a notice of abandonment, signed by or on behalf of the appellant, on —

(i) the other party;

(ii) the Registrar of the Supreme Court; and

(iii) the Summary Court or the Magistrate's Court officer; but

(b) after the hearing of the appeal begins, may only abandon the appeal with the Supreme Court's permission.

PART 15 - PELIMINARY APPLICATIONS

15.1. Application to dismiss offence sent for Supreme Court trial

(1) This rule applies where a defendant wants the Supreme Court to dismiss an offence sent for trial there in accordance with section 199 of the Criminal Procedure and Evidence Ordinance 2014.

(2) The defendant must —

(a) apply in writing —

(i) not more than 14 business days after service of the prosecution evidence, and

(ii) before the defendant has entered a plea to the charge or charges or a plea to the charge or charges has been entered for the defendant.

(b) serve the application on —

(i) the court officer, and

(ii) each other party; and

(c) in the application —

(i) explain why the prosecution evidence would not be sufficient for the defendant to be properly convicted,

(ii) ask for a hearing, if the defendant wants one, and explain why it is needed,

(iii) identify any witness whom the defendant wants to call to give evidence in person, with an indication of what evidence the witness can give,

(iv) identify any material already served that the defendant thinks the court will need to determine the application, and

(v) include any material not already served on which the defendant relies.

(3) A prosecutor who opposes the application must —

(a) serve notice of opposition, not more than 10 business days after service of the defendant's notice, on —

(i) the court officer, and

(ii) each other party; and

(b) in the notice of opposition —

(i) explain the grounds of opposition,

(ii) ask for a hearing, if the prosecutor wants one, and explain why it is needed,

(iii) identify any witness whom the prosecutor wants to call to give evidence in person, with an indication of what evidence the witness can give,

(iv) identify any material already served that the prosecutor thinks the court will need to determine the application, and

(v) include any material not already served on which the prosecutor relies.

(4) The court may determine an application under this rule —

(a) at a hearing, in public or in private, or without a hearing; and

(b) in the absence of —

(i) the defendant who made the application, and

(ii) the prosecutor, if the prosecutor has had at least 10 business days in which to serve notice opposing the application.

(5) The court will only determine an application at a hearing where the interests of justice require that the application should be made orally.

(6) The court will only give leave to call evidence where the interests of justice require leave to be given.

(7) The court may —

(a) shorten or extend (even after it has expired) a time limit under this rule; and

(b) allow a witness to give evidence in person even if that witness was not identified in the defendant's application or in the prosecutor's notice.

15.2. Application to stay case for abuse of process

(1) This rule applies where a defendant wants the court to stay the case on the grounds that the proceedings are an abuse of the court's process, or are otherwise unfair.

(2) Such a defendant must —

(a) apply in writing —

(i) as soon as practicable after becoming aware of the grounds for doing so;

(ii) at a pre-trial hearing, unless the grounds for the application do not arise until trial; and

(iii) in any event, before the defendant pleads guilty, is convicted or the jury (if there is one) retires to consider its verdict at trial;

(b) serve the application on —

(i) the court officer; and

(ii) each other party; and

(c) in the application —

(i) explain the grounds on which it is made;

(ii) include, attach or identify all supporting material;

(iii) specify relevant events, dates and propositions of law; and

(iv) identify any witness the applicant wants to call to give evidence in person.

(3) A party who wants to make representations in response to the application must serve the representations on —

(a) the court officer; and

(b) each other party,

not more than 14 days after service of the application.

15.3. Application for indication of sentence

(1) This rule applies where a defendant wants the Magistrate's Court or the Supreme Court to give an indication of the maximum sentence that would be passed if a guilty plea were entered when the indication is sought.

(2) Such a defendant must —

(a) apply in writing as soon as practicable; and

(b) serve the application on —

(i) the court officer; and

(ii) the prosecutor.

(3) The application must —

(a) specify —

(i) the offence or offences to which it would be a guilty plea; and

(ii) the facts on the basis of which that plea would be entered; and

(b) include the prosecutor's agreement to, or representations on, that proposed basis of plea.

(4) The prosecutor must —

(a) provide information relevant to sentence, including —

(i) any previous conviction of the defendant, and the circumstances where relevant;

(ii) any statement of the effect of the offence on the victim, the victim's family or others; and

(b) identify any other matter relevant to sentence, including —

(i) the legislation applicable;

(ii) any sentencing guidelines, or guideline cases; and

(iii) aggravating and mitigating factors.

(5) The hearing of the application —

(a) may take place in the absence of any other defendant;

(b) must be attended by —

(i) the applicant defendant's legal representatives (if any); and

(ii) the prosecution advocate.

PART 16 - PLEA AND TRIAL PREPARATION HEARINGS

16.1. Application for joint or separate trials

(1) This rule applies where a party wants the court to order —

(a) the joint trial of —

(i) offences charged separately; or

(ii) defendants charged separately;

(b) separate trials of offences charged in the same proceedings;

(c) separate trials of defendants charged in the same proceedings; or

(d) the deletion of a count from an indictment.

(2) Such a party must —

(a) apply in writing —

(i) as soon as practicable after becoming aware of the grounds for doing so, and

(ii) before the trial begins, unless the grounds for the application do not arise until trial;

(b) serve the application on —

(i) the court officer; and

(ii) each other party; and

(c) in the application —

(i) specify the order proposed; and

(ii) explain why it should be made.

(3) A party who wants to make representations in response to the application must serve the representations on —

(a) the court officer; and

(b) each other party,

not more than 14 days after service of the application.

(4) Where the defendant is charged with more than one offence, the court may exercise its power to order separate trials of those offences if of the opinion that —

(a) the defendant otherwise may be prejudiced or embarrassed in their defence by reason of being charged with more than one offence in an indictment (for example, where the offences to be tried together are neither founded on the same facts nor form or are part of a series of offences of the same or similar character); or

(b) for any other reason it is desirable that the defendant should be tried separately for any one or more of those offences.

16.2. Order for joint or separate trials, or amendment etc.

(1) This rule applies where the court makes an order —

(a) for joint or separate trials; or

(b) amending an indictment or charge in any other respect.

(2) Unless the court otherwise directs, the court officer must record —

(a) the court's order; and

(b) the date of that order.

16.3. Arraigning the defendant on the indictment

(1) In order to take the defendant's plea, the Supreme Court must —

(a) ensure that the defendant is correctly identified by the indictment;

(b) in respect of each count in the indictment —

(i) read the count aloud to the defendant, or arrange for it to be read aloud or placed before the defendant in writing;

(ii) satisfy itself that there has been explained to the defendant, in terms the defendant can understand (with help, if necessary) each allegation against him or her;

(iii) ask whether the defendant pleads guilty or not guilty to the offence charged by that count;

(iv) take the defendant's plea.

(2) Where a count is read which is substantially the same as one already read aloud, then only the materially different details need be read aloud.

(3) Where a count is placed before the defendant in writing, the court must summarise its gist aloud.

(4) In respect of each count in the indictment —

(a) if the defendant declines to enter a plea, the court must treat that as a not guilty plea unless the defendant is unfit to plead;

(b) if the defendant pleads not guilty to the offence charged by that count but guilty to another offence of which the court could convict on that count —

(i) if the prosecutor and the court accept that plea, the court must treat the plea as one of guilty of that other offence; but

(ii) otherwise, the court must treat the plea as one of not guilty;

(c) if the defendant pleads a previous acquittal or conviction of the offence charged by that count —

(i) the defendant must identify that acquittal or conviction in writing, explaining the basis of that plea; and

(ii) the court must exercise its power to decide whether that plea disposes of that count.

16.4. Manner of trial on indictment

(1) Upon entering a plea of not guilty the court shall ascertain whether the defendant chooses to be tried by judge alone or by judge and jury.

(2) The defendant must personally state his or her choice by saying it aloud.

(3) The defendant must not be asked to make his or her choice until —

(a) he or she has pleaded to all of the counts on the indictment on which he or she is to be tried on indictment on that occasion; and

(b) the trial judge has, in open court, explained to the defendant in ordinary language—

(i) the respective roles of the judge and jury in a trial upon indictment;

(ii) the different role of the judge sitting alone to try an indictment;

(iii) the defendant's right to choose whether to be tried by a judge and jury or by the judge alone;

(iv) if appropriate, that the jury will consist of 12 jurors;

(v) if appropriate, that the jury will consist of 7 jurors;

(vi) that the choice is irrevocable unless the trial judge otherwise permits and before any juror has been sworn or any person has been called to give evidence; and

(vii) the effect of section 336 (Judgments: Limit on stay and reversal) of the Criminal Procedure and Evidence Ordinance 2014.

(4) If a defendant is unable or refuses to choose he or she is deemed to have chosen to be tried by judge and jury.

16.5. Taking a plea in summary proceedings

(1) In order to take the defendant's plea, the Summary Court and the Magistrate's Court must —

(a) ensure that the defendant is correctly identified by the charge;

(b) in respect of each charge —

(i) read the charge aloud to the defendant, or arrange for it to be read aloud or placed before the defendant in writing;

(ii) satisfy itself that there has been explained to the defendant, in terms the defendant can understand (with help, if necessary) each allegation against him or her;

(iii) ask whether the defendant pleads guilty or not guilty to the offence charged; and

(iv) take the defendant's plea.

(2) Where a charge is read which is substantially the same as one already read aloud, then only the materially different details need be read aloud.

(3) Where a charge is placed before the defendant in writing, the court must summarise its gist aloud.

(4) In respect of charge —

(a) if the defendant declines to enter a plea, the court must treat that as a not guilty plea unless the defendant is unfit to plead;

(b) if the defendant pleads not guilty to the offence charged but guilty to another offence of which the court could convict —

(i) if the prosecutor and the court accept that plea, the court must treat the plea as one of guilty of that other offence; but

(ii) otherwise, the court must treat the plea as one of not guilty;

(c) if the defendant pleads a previous acquittal or conviction of the offence charged —

(i) the defendant must identify that acquittal or conviction in writing, explaining the basis of that plea; and

(ii) the court must exercise its power to decide whether that plea disposes of that charge.

16.6. Fitness to be tried

(1) Where it appears to the court, on application or on its own initiative, that the defendant may not be fit to be tried the court will resolve the issue in accordance with Part 34 (Mentally Disordered Offenders) of the Criminal Procedure and Evidence Ordinance 2014.

(2) The duties of case active management under Part 3 apply with appropriate modification to proceedings to determine fitness to be tried.

16.7. Written plea of guilty in absence

(1) Where the court is satisfied that section 271 of the Criminal Procedure and Evidence Ordinance 2014 applies the procedure shall be —

(a) the prosecutor shall read out the statement of facts; and

(b) the court officer shall read out any submission received; and

(c) the court shall decide whether to accept the plea of guilty and convict the defendant in the defendant's absence.

(2) If the court convicts the defendant then the court can pass sentence as if the defendant had appeared and pleaded guilty save that the court must not without adjourning to secure the attendance of the defendant subject the defendant to any disqualification.

(3) If the defendant appears before the court having nonetheless pleaded guilty in writing the court shall not proceed to convict the defendant without first giving the defendant the opportunity to make oral submissions.

16.8. Application to vacate a guilty plea

(1) This rule applies where a party wants the court to vacate a guilty plea.

(2) Such a party must —

(a) apply in writing —

(i) as soon as practicable after becoming aware of the grounds for doing so; and

(ii) in any event, before the final disposal of the case, by sentence or otherwise; and

(b) serve the application on —

(i) the court officer; and

(ii) the prosecutor.

(3) Unless the court otherwise directs, the application must —

(a) explain why it would be unjust for the guilty plea to remain unchanged;

(b) indicate what, if any, evidence the applicant wishes to call;

(c) identify any proposed witness; and

(d) indicate whether legal professional privilege is waived, specifying any material name and date.

16.9. Trial preparation hearings and pre-trial case management hearings

(1) The court —

(a) must conduct a trial preparation hearing in every case where a defendant pleads not guilty;

(b) may conduct a further pre-trial case management hearing (and if necessary more than one such hearing) only where —

(i) the court anticipates a guilty plea;

(ii) it is necessary to conduct such a hearing in order to give directions for an effective trial; or

(iii) such a hearing is required to set ground rules for the conduct of the questioning of a witness or defendant.

(2) A trial preparation hearing or a pre-trial case management hearing —

(a) must be in public, as a general rule, but all or part of the hearing may be in private if the court so directs; and

(b) must be recorded, in accordance with Part 5 (Forms and Court Records).

(3) Where the court determines a pre-trial application in private, it must announce its decision in public.

(4) Prior to the trial preparation hearing the parties must complete the trial preparation and case management form as prescribed by the court.

(5) At the trial preparation hearing the court must —

(a) give directions for an effective trial;

(b) satisfy itself that there has been explained to the defendant, in terms the defendant can understand (with help, if necessary), that the defendant will receive credit for a guilty plea;

(c) unless the defendant pleads guilty, satisfy itself that there has been explained to the defendant, in terms the defendant can understand (with help, if necessary), that at the trial —

(i) if the defendant does not attend, the trial may take place in the defendant's absence;

(ii) if the trial takes place in the defendant's absence, the judge may inform the jury (if there is one) of the reason for that absence; and

(d) where the defendant is released on bail, warn the defendant that a failure to attend court when required is an offence for which the defendant may be arrested and punished and bail may be withdrawn.

(6) A trial preparation hearing and a pre-trial hearing are preliminary hearings for the purposes of Part 15 of the Criminal Procedure and Evidence Ordinance 2014.

16.10. Ground rules hearing

(1) A ground rules hearing is a pre-trial case management hearing convened for the purposes of making directions for the appropriate treatment and questioning of a witness or defendant.

(2) At the hearing —

(a) the parties and any intermediary must —

(i) attend, unless the court otherwise directs, and

(ii) actively assist the court in setting ground rules and giving directions;

(b) the court must —

(i) discuss proposed ground rules and directions with the parties and any intermediary;

(ii) set ground rules for the conduct of questioning of the witness or defendant, as applicable; and

(iii) give such other directions as may be required to facilitate the effective participation of that witness or defendant.

(3) In setting such ground rules and giving such directions, the court must have regard to—

(a) any intermediary's report;

(b) the parties' representations; and

(c) such other information or advice as the court requires.

(4) The directions given by the court may include —

(a) the timetable for the submission of proposed questions;

(b) the timetable for the trial, including the taking of breaks during proceedings;

(c) seating arrangements in the court room for the defendant, the defendant's advocate and legal representative, any intermediary and any parent, guardian or other companion of the defendant; and

(d) any explanation to be given to the jury, if there is one, of —

(i) the witness' or the defendant's communication needs and behaviour, as applicable; and

(ii) the role of the intermediary, if there is one.

16.11. Place of trial

(1) Unless the Chief Justice otherwise directs, the court officer must arrange for the trial to take place in a courtroom in the Falkland Islands.

(2) The court officer must arrange for the court and the jury (if there is one) to view any place required by the court.

PART 17 - MEASURES TO HELP A WITNESS, DEFENDANT OR OTHER PERSON TO GIVE EVIDENCE OR OTHERWISE PARTICIPATE IN PROCEEDINGS

17.1. Making an application for a direction or order

A party who wants the court to exercise its power to give or make a direction pursuant to Part 22 of the Criminal Procedure and Evidence Ordinance 2014 (Vulnerable Witnesses) must —

(a) apply in writing as soon as reasonably practicable, and in any event not more than 14 days after the defendant pleads not guilty; and

(b) serve the application on —

(i) the court officer; and

(ii) each other party.

17.2. Decisions and reasons

(1) A party who wants to introduce the evidence of a witness who is the subject of an application, direction or order must —

(a) inform the witness of the court's decision as soon as reasonably practicable; and

(b) explain to the witness the arrangements that as a result will be made for him or her to give evidence.

(2) The court must allow a party sufficient time to comply with the requirements of paragraph (1).

(3) The court must announce, at a hearing in public before the witness gives evidence, the reasons for a decision —

(a) to give, make, vary or discharge a direction or order; or

(b) to refuse to do so.

17.3. Court's power to vary requirements under this Part

(1) The court may —

(a) shorten or extend (even after it has expired) a time limit under this Part; and

(b) allow an application or representations to be made in a different form to one set out in this Part, or to be made orally.

(2) A person who wants an extension of time must —

(a) apply when serving the application or representations for which it is needed; and

(b) explain the delay.

17.4. Custody of documents

Unless the court otherwise directs, the court officer may —

(a) keep a written application or representations; or

(b) arrange for the whole or any part to be kept by some other appropriate person, subject to any conditions that the court may impose.

17.5. Special measures directions – exercise of court's powers

(1) The court may decide whether to give, vary or discharge a special measures direction —

(a) at a hearing, in public or in private, or without a hearing;

(b) in a party's absence, if that party —

(i) applied for the direction, variation or discharge; or

(ii) has had at least 14 days in which to make representations.

(2) The court may exercise its power to give a special measures direction without requiring an application under rule 17.1 where no other party opposes the giving of a special measures direction.

17.6. Content of application for a special measures direction

An applicant for a special measures direction must —

(a) explain how the witness is eligible for assistance;

(b) explain why special measures would be likely to improve the quality of the witness' evidence;

(c) propose the measure or measures that in the applicant's opinion would be likely to maximise, so far as practicable, the quality of that evidence;

(d) report any views that the witness has expressed about —

(i) his or her eligibility for assistance;

(ii) the likelihood that special measures would improve the quality of his or her evidence; and

(iii) the measure or measures proposed by the applicant;

(e) in a case in which a child witness or a qualifying witness does not want the primary rule to apply, provide any information that the court may need to assess the witness' views;

(f) in a case in which the applicant proposes that the witness should give evidence by live link —

(i) identify someone to accompany the witness while the witness gives evidence;

(ii) name that person, if possible; and

(iii) explain why that person would be an appropriate companion for the witness, including the witness' own views;

(g) in a case in which the applicant proposes the admission of video recorded evidence, identify —

(i) the date and duration of the recording;

(ii) which part the applicant wants the court to admit as evidence, if the applicant does not want the court to admit all of it;

(h) attach any other material on which the applicant relies; and

(i) if the applicant wants a hearing, ask for one, and explain why it is needed.

17.7. Application to vary or discharge a special measures direction

(1) A party who wants the court to vary or discharge a special measures direction must —

(a) apply in writing, as soon as reasonably practicable after becoming aware of the grounds for doing so; and

(b) serve the application on —

(i) the court officer; and

(ii) each other party.

(2) The applicant must —

(a) explain what material circumstances have changed since the direction was given (or last varied, if applicable);

(b) explain why the direction should be varied or discharged; and

(c) ask for a hearing, if the applicant wants one, and explain why it is needed.

17.8. Application containing information withheld from another party

(1) This rule applies where —

(a) an applicant serves an application for a special measures direction, or for its variation or discharge; and

(b) the application includes information that the applicant thinks ought not be revealed to another party.

(2) The applicant must —

(a) omit that information from the part of the application that is served on that other party;

(b) mark the other part to show that, unless the court otherwise directs, it is only for the court; and

(c) in that other part, explain why the applicant has withheld that information from that other party.

(3) Any hearing of an application to which this rule applies —

(a) must be in private, unless the court otherwise directs; and

(b) if the court so directs, may be, wholly or in part, in the absence of a party from whom information has been withheld.

(4) At any hearing of an application to which this rule applies —

(a) the general rule is that the court must consider, in the following sequence —

(i) representations first by the applicant and then by each other party, in all the parties' presence; and then

(ii) further representations by the applicant, in the absence of a party from whom information has been withheld; but

(b) the court may direct other arrangements for the hearing.

17.9. Representations in response

(1) This rule applies where a party wants to make representations about —

(a) an application for a special measures direction;

(b) an application for the variation or discharge of such a direction; or

(c) a direction, variation or discharge that the court proposes on its own initiative.

(2) Such a party must —

(a) serve the representations on —

(i) the court officer; and

(ii) each other party;

(b) do so not more than 14 days after, as applicable —

(i) service of the application; or

(ii) notice of the direction, variation or discharge that the court proposes; and

(c) ask for a hearing, if that party wants one, and explain why it is needed.

(3) Where representations include information that the person making them thinks ought not be revealed to another party, that person must —

(a) omit that information from the representations served on that other party;

(b) mark the information to show that, unless the court otherwise directs, it is only for the court; and

(c) with that information include an explanation of why it has been withheld from that other party.

(4) Representations against a special measures direction must explain, as appropriate —

(a) why the witness is not eligible for assistance;

(b) if the witness is eligible for assistance, why —

(i) no special measure would be likely to improve the quality of the witness' evidence;

(ii) the proposed measure or measures would not be likely to maximise, so far as practicable, the quality of the witness' evidence; or

(iii) the proposed measure or measures might tend to inhibit the effective testing of that evidence;

(c) in a case in which the admission of video recorded evidence is proposed, why it would not be in the interests of justice for the recording, or part of it, to be admitted as evidence.

(5) Representations against the variation or discharge of a special measures direction must explain why it should not be varied or discharged.

17.10. Defendant's evidence direction

The court may decide whether to give, vary or discharge a defendant's evidence direction—

(a) at a hearing, in public or in private, or without a hearing;

(b) in a party's absence, if that party —

(i) applied for the direction, variation or discharge; or

(ii) has had at least 14 days in which to make representations.

17.11. Content of application for a defendant's evidence direction

An applicant for a defendant's evidence direction must —

(a) explain how the proposed direction meets the conditions prescribed by Part 22 (Vulnerable Witnesses) of the Criminal Procedure and Evidence Ordinance 2014;

(b) in a case in which the applicant proposes that the defendant give evidence by live link —

(i) identify a person to accompany the defendant while the defendant gives evidence; and

(ii) explain why that person is appropriate;

(c) ask for a hearing, if the applicant wants one, and explain why it is needed.

17.12. Application to vary or discharge a defendant's evidence direction

(1) A party who wants the court to vary or discharge a defendant's evidence direction must—

(a) apply in writing, as soon as reasonably practicable after becoming aware of the grounds for doing so; and

(b) serve the application on —

(i) the court officer; and

(ii) each other party.

(2) The applicant must —

(a) on an application to discharge a live link direction, explain why it is in the interests of justice to do so;

(b) on an application to discharge a direction for an intermediary, explain why it is no longer necessary in order to ensure that the defendant receives a fair trial;

(c) on an application to vary a direction for an intermediary, explain why it is necessary for the direction to be varied in order to ensure that the defendant receives a fair trial; and

(d) ask for a hearing, if the applicant wants one, and explain why it is needed.

17.13. Representations in response

(1) This rule applies where a party wants to make representations about —

(a) an application for a defendant's evidence direction;

(b) an application for the variation or discharge of such a direction; or

(c) a direction, variation or discharge that the court proposes on its own initiative.

(2) Such a party must —

(a) serve the representations on —

(i) the court officer; and

(ii) each other party;

(b) do so not more than 14 days after, as applicable —

(i) service of the application; or

(ii) notice of the direction, variation or discharge that the court proposes; and

(c) ask for a hearing, if that party wants one, and explain why it is needed.

(3) Representations against a direction, variation or discharge must explain why the conditions prescribed by the Criminal Procedure and Evidence Ordinance 2014 are not met.

17.14 Witness Anonymity Orders - exercise of court's powers

(1) The court may decide whether to make, vary or discharge a witness anonymity order —

(a) at a hearing (which must be in private, unless the court otherwise directs), or without a hearing (unless any party asks for one);

(b) in the absence of a defendant.

(2) The court must not exercise its power to make, vary or discharge a witness anonymity order, or to refuse to do so —

(a) before or during the trial, unless each party has had an opportunity to make representations;

(b) on an appeal by the defendant unless in each party's case —

(i) that party has had an opportunity to make representations; or

(ii) the appeal court is satisfied that it is not reasonably practicable to communicate with that party;

(c) after the trial and any such appeal are over, unless in the case of each party and the witness —

(i) each has had an opportunity to make representations; or

(ii) the court is satisfied that it is not reasonably practicable to communicate with that party or witness.

17.15. Content and conduct of application for a witness anonymity order

(1) An applicant for a witness anonymity order must —

(a) include in the application nothing that might reveal the witness' identity;

(b) describe the measures proposed by the applicant;

(c) explain how the proposed order meets the conditions prescribed by section 471 of the Criminal Procedure and Evidence Ordinance 2014;

(d) explain why no measures other than those proposed will suffice, such as —

(i) an admission of the facts that would be proved by the witness;

(ii) an order restricting public access to the trial;

(iii) reporting restrictions;

(iv) a direction for a special measure;

(v) introduction of the witness' written statement as hearsay evidence; or

(vi) arrangements for the protection of the witness;

(e) attach to the application —

(i) a witness statement setting out the proposed evidence, edited in such a way as not to reveal the witness' identity;

(ii) where the prosecutor is the applicant, any further prosecution evidence to be served, and any further prosecution material to be disclosed, similarly edited; and

(iii) any defence statement that has been served, or as much information as may be available to the applicant that gives particulars of the defence; and

(f) ask for a hearing, if the applicant wants one.

(2) At any hearing of the application, the applicant must —

(a) identify the witness to the court, unless at the prosecutor's request the court otherwise directs; and

(b) present to the court, unless it otherwise directs —

(i) the unedited witness statement from which the edited version has been prepared;

(ii) where the prosecutor is the applicant, the unedited version of any further prosecution evidence or material from which an edited version has been prepared; and

(iii) such further material as the applicant relies on to establish that the proposed order meets the conditions prescribed by section 471 of the 2014 Ordinance.

(3) At any such hearing —

(a) the general rule is that the court must consider, in the following sequence —

(i) representations first by the applicant and then by each other party, in all the parties' presence; and then

(ii) information withheld from a defendant, and further representations by the applicant, in the absence of any (or any other) defendant; but

(b) the court may direct other arrangements for the hearing.

(4) Before the witness gives evidence, the applicant must identify the witness to the court—

(a) if not already done;

(b) without revealing the witness' identity to any other party or person; and

(c) unless at the prosecutor's request the court otherwise directs.

17.16. Duty of court officer to notify the Attorney General

The court officer must notify the Attorney General of an application for a witness anonymity order, unless the prosecutor is, or acts on behalf of, the Attorney General.

17.17. Application to vary or discharge a witness anonymity order

(1) A party who wants the court to vary or discharge a witness anonymity order, or a witness who wants the court to do so when the case is over, must —

(a) apply in writing, as soon as reasonably practicable after becoming aware of the grounds for doing so; and

(b) serve the application on —

(i) the court officer; and

(ii) each other party.

(2) The applicant must —

(a) explain what material circumstances have changed since the order was made (or last varied, if applicable);

(b) explain why the order should be varied or discharged, taking account of the conditions for making an order; and

(c) ask for a hearing, if the applicant wants one.

(3) Where an application includes information that the applicant thinks might reveal the witness' identity, the applicant must —

(a) omit that information from the application that is served on a defendant;

(b) mark the information to show that it is only for the court and the prosecutor (if the prosecutor is not the applicant); and

(c) with that information include an explanation of why it has been withheld.

(4) Where a party applies to vary or discharge a witness anonymity order after the trial and any appeal are over, the party who introduced the witness' evidence must serve the application on the witness.

17.18. Representations in response

(1) This rule applies where a party or, where the case is over, a witness, wants to make representations about —

(a) an application for a witness anonymity order;

(b) an application for the variation or discharge of such an order; or

(c) a variation or discharge that the court proposes on its own initiative.

(2) Such a party or witness must —

(a) serve the representations on —

(i) the court officer; and

(ii) each other party;

(b) do so not more than 14 days after, as applicable —

(i) service of the application; or

(ii) notice of the variation or discharge that the court proposes; and

(c) ask for a hearing, if that party or witness wants one.

(3) Where representations include information that the person making them thinks might reveal the witness' identity, that person must —

(a) omit that information from the representations served on a defendant;

(b) mark the information to show that it is only for the court (and for the prosecutor, if relevant); and

(c) with that information include an explanation of why it has been withheld.

(4) Representations against a witness anonymity order must explain why the conditions for making the order are not met.

(5) Representations against the variation or discharge of such an order must explain why it would not be appropriate to vary or discharge it, taking account of the conditions for making an order.

(6) A prosecutor's representations in response to an application by a defendant must include all information available to the prosecutor that is relevant to the conditions and considerations specified by sections 471 and 472 of the Criminal Procedure and Evidence Ordinance 2014.

17.19. Appointment of intermediary to facilitate a defendant's participation

(1) The court must exercise its power to appoint an intermediary to facilitate a defendant's effective participation in the trial where —

(a) the defendant's ability to participate is likely to be diminished by reason of —

(i) age, if the defendant is under 18, or

(ii) mental disorder, a significant impairment of intelligence and social functioning, or a physical disability or disorder; and

(b) the appointment is necessary for that purpose.

(2) In determining whether such an appointment is necessary, who to appoint and the duration or purpose of the appointment, the court must have regard to —

(a) the defendant's communication needs as reported to the court;

(b) the recommendations in any intermediary's report received by the court;

(c) any views that the defendant has expressed about —

(i) receiving the assistance of an intermediary, or

(ii) other measures or arrangements to facilitate the defendant's effective participation in the trial;

(d) the likely impact of the defendant's age, if under 18, level of intellectual ability or social functioning on the ability to —

(i) give evidence, and

(ii) understand what is said and done by the court and other participants;

(e) the likely impact on such participation and on such understanding of any mental disorder or other significant impairment of intelligence or social functioning;

(f) the adequacy of arrangements for questioning the defendant in the absence of an intermediary;

(g) any assistance that the defendant has received in the past —

(i) while giving evidence in legal proceedings,

(ii) while being questioned during the investigation of an alleged offence, or

(iii) as a defendant in a criminal case;

(h) any assessment of the defendant's health by a medical officer acting independently of the parties to assist the court;

(i) any expert medical opinion that the court may have received; and

(j) any other matter that the court thinks relevant.

(3) The court may exercise its power to appoint an intermediary —

(a) for the duration of every hearing that the defendant is due to attend;

(b) for the duration of any specified such hearing or hearings, or for the duration of a specified part of such a hearing; or

(c) for a specified purpose during a hearing.

(4) Unless the court otherwise directs, the appointment of an intermediary extends to facilitating the defendant's communication with that defendant's legal representatives for the duration and for the purpose of the appointment.

(5) The court may decide whether to appoint an intermediary to facilitate a defendant's effective participation in the trial and whether to vary or discharge any such appointment—

(a) on application or on the court's own initiative;

(b) at a hearing, in public or in private, or without a hearing; and

(c) in a party's absence, if that party —

(i) applied for the appointment, variation or discharge, or

(ii) has had at least 14 days in which to make representations.

(6) The court must not exercise its power to vary or discharge a direction for the appointment of an intermediary unless satisfied that —

(a) since the direction was made —

(i) the defendant's communication needs have changed materially, or

(ii) any other material circumstance has changed materially; and

(b) the defendant will be able to participate effectively in the trial despite the variation or discharge of the direction.

17.20. Application to vary or discharge the appointment of an intermediary for a defendant

(1) A party who wants the court to vary or discharge the appointment of an intermediary to facilitate a defendant's effective participation in the trial must —

(a) apply in writing, as soon as reasonably practicable after becoming aware of the grounds for doing so; and

(b) serve the application on —

(i) the court officer, and

(ii) each other party.

(2) The applicant must —

(a) explain how the criteria for variation or discharge of appointment are met; and

(b) ask for a hearing, if the applicant wants one, and explain why it is needed.

17.21. Representations in response to application or proposal

(1) This rule applies where a party wants to make representations about —

(a) an application or proposal for the appointment of an intermediary to facilitate a defendant's effective participation in the trial; or

(b) an application or proposal for the variation or discharge of such an appointment.

(2) Such a party must —

(a) serve the representations on —

(i) the court officer, and

(ii) each other party;

(b) do so not more than 14 days after, as applicable —

(i) service of the application, or

(ii) notice of the appointment, variation or discharge that the court proposes; and

(c) ask for a hearing, if that party wants one, and explain why it is needed.

(3) Representations against such an appointment, variation or discharge must explain why the criteria that apply are not met.

17.22. Intermediary's duty to the court

(1) This rule applies to any intermediary who accepts —

(a) approval by the court for the purposes of examination of a witness;

(b) approval by the court for the purposes of examination of a defendant;

(c) appointment by the court to facilitate a defendant's effective participation in the trial when the defendant gives evidence or at any other time.

(2) The intermediary must help the court to achieve the overriding objective —

(a) to the best of the intermediary's skill and understanding by —

(i) communicating to the witness or defendant (as the case may be) questions put to them;

(ii) communicating to the questioner and the court the replies; and

(iii) explaining such questions and answers so that they can be understood;

(b) by assessing continually the witness' or the defendant's (as the case may be) ability to participate effectively and intervening if necessary;

(c) where the intermediary is appointed to facilitate a defendant's effective participation, by explaining to the defendant, in terms the defendant can understand, what is said and done by the court and other participants; and

(d) by actively assisting the court in fulfilling its case management duties, in particular by —

(i) complying with directions made by the court, and

(ii) at once informing the court of any significant failure (by the intermediary or another) to take any step required by such a direction.

(3) This duty overrides any obligation to the witness or to the defendant (as the case may be), or to the person by whom the intermediary is paid.

17.23. Declaration by intermediary

(1) This rule applies where —

(a) a video recorded interview with a witness is conducted through an intermediary; or

(b) the court directs the examination of a witness or defendant through an intermediary.

(2) The intermediary must make a declaration —

(a) before such an interview begins; and

(b) before the examination begins (even if such an interview with the witness was conducted through the same intermediary).

(3) The declaration must be in these terms, or in any corresponding terms that the intermediary declares to be binding —

"I swear by Almighty God [or I solemnly, sincerely and truly declare and affirm] that I shall faithfully communicate questions and answers and make true explanation of all matters and things required of me according to the best of my skill and understanding.".

17.24. Content of intermediary's report

(1) An intermediary's report must, in every case —

(a) give details of the intermediary's qualifications, relevant experience and any accreditation;

(b) identify the commissioner of the report;

(c) identify those from whom the intermediary has obtained information material to the report;

(d) list the documents received or inspected by the intermediary which contained such information and give an indication of their content;

(e) give the date or dates on which the intermediary met the witness or defendant, as the case may be, for the purpose of preparing the report;

(f) describe the nature and duration of the intermediary's assessment, or assessments, of the witness or defendant;

(g) by reference to examples drawn from the intermediary's assessment of the witness or defendant explain why in this particular case intermediary assistance is necessary;

(h) include an evaluation of —

(i) the impact of any condition or conditions which, whether in isolation or together, may adversely affect the witness' or the defendant's ability to communicate, and

(ii) the extent, if any, to which that impact may be exacerbated by the trial;

(i) if the intermediary is not able to reach an evaluation without qualifying it, state the qualification;

(j) report the views of the witness or defendant, as the case may be, on receiving the assistance of an intermediary;

(k) include in a summary of the intermediary's conclusions any recommendation, with reasons, for —

(i) the approval or appointment of an intermediary,

(ii) the manner and duration of any questioning of the witness or defendant, as the case may be, and

(iii) arrangements for the way in which the intermediary, if approved or appointed, should participate; and

(l) contain a statement that the intermediary —

(i) understands an intermediary's duty to the court, and

(ii) will comply with that duty if approved or appointed.

(2) Where the intermediary is asked to evaluate a defendant's communication needs the report must also —

(a) include an evaluation of the extent to which any measures or arrangements beside the appointment of an intermediary will facilitate the defendant's effective participation in the trial; and

(b) in the summary of the intermediary's conclusions include any recommendation, with reasons, for —

(i) the duration and purpose of any appointment of an intermediary, and

(ii) other measures or arrangements to help the defendant to participate effectively in the trial.

17.25. Live link directions

(1) The court may exercise its power to give, vary or rescind a live link direction under Part 21 of the Criminal Procedure and Evidence Ordinance 2014 and the Live Link Proceedings Ordinance 2022 —

(a) at a hearing, in public or in private, or without a hearing; and

(b) on an application under rule 3.15 (Content of application for a live link direction) or on its own initiative.

(2) Whether it acts on an application or on its own initiative, the court must not give, vary or rescind a live link direction unless —

(a) the court is satisfied that it is in the interests of justice to do so; and

(b) each party —

(i) is present, or

(ii) has had an opportunity to make representations.

(3) In deciding whether to give a live link direction the court must consider all the circumstances of the case and in particular —

(a) the availability of the proposed participant by live link;

(b) any potential need for that person to attend in person instead of by live link;

(c) any views which that person may have expressed;

(d) the suitability of the facilities at the place where that person would take part by live link if the direction were given;

(e) that person's ability to take part effectively if the direction were given;

(f) if the proposed direction is for a person to give evidence by live link —

(i) the importance of that person's evidence to the case, and

(ii) any potential for the proposed direction to inhibit a party from effectively testing that evidence; and

(g) arrangements for members of the public to see and hear proceedings at which a person takes part by live link.

(4) In assessing a person's ability to take part effectively by live link, where that person is a defendant the court must have regard to, among other things —

(a) whether that defendant will be represented at the hearing for which the live link is proposed; and

(b) what other assistance will be available to that defendant at that hearing (for example, an intermediary).

(5) Where the court refuses an application to give, vary or rescind a live link direction the court must announce in public its reasons for doing so.

17.26. Content of application for a live link direction

(1) An applicant for a live link direction must —

(a) apply in writing as soon as reasonably practicable;

(b) serve the application on —

(i) the court officer, and

(ii) each other party; and

(c) ask for a hearing of the application, if the applicant wants one, and explain why it is needed.

(2) The application must —

(a) specify the legislation under which the application is made;

(b) specify the hearing or hearings in respect of which the applicant wants the direction to apply;

(c) identify each person to whom the applicant wants the direction to apply and specify—

(i) each one whom the applicant wants to give evidence by live link; and

(ii) each one whom the applicant wants to take part by live link without giving evidence;

(d) in respect of each such person, specify the type of live link proposed (either video or audio);

(e) unless the court otherwise directs, identify the place where each such person will take part if the direction is given;

(f) identify any material circumstances relating to —

(i) the availability of the proposed participant by live link;

(ii) any potential need for that participant to attend in person, not by live link;

(iii) any views which that participant may have expressed;

(iv) the suitability of the facilities at the place where that participant would take part by live link if the direction were given; and

(v) that participant's ability to take part effectively if the direction were given;

(g) if the proposed direction is for a person to give evidence by live link, identify any material circumstances relating to —

(i) the importance of that person's evidence to the case, and

(ii) any potential for the proposed direction to inhibit a party from effectively testing that evidence;

(h) explain why it is in the interests of justice for each proposed participant by live link to take part by those means; and

(i) if the applicant wants a witness to be accompanied by another person while giving evidence —

(i) name that other person, if possible, and

(ii) explain why it is appropriate for that witness to be accompanied, including the witness' own views.

17.27. Application to vary or rescind a live link direction

(1) A party who wants the court to vary or rescind a live link direction must —

(a) apply in writing, as soon as reasonably practicable after becoming aware of the grounds for doing so; and

(b) serve the application on —

(i) the court officer; and

(ii) each other party.

(2) The applicant must —

(a) explain what material circumstances have changed since the direction was given;

(b) explain why it is in the interests of justice to vary or rescind the direction; and

(c) ask for a hearing, if the applicant wants one, and explain why it is needed.

17.28. Live link application containing information withheld from another party

(1) This rule applies where —

(a) an applicant serves an application for a live link direction, or for its variation or rescission; and

(b) the application includes information that the applicant thinks ought not be revealed to another party.

(2) The applicant must —

(a) omit that information from the part of the application that is served on that other party;

(b) mark the other part to show that, unless the court otherwise directs, it is only for the court; and

(c) in that other part, explain why the applicant has withheld that information from that other party.

(3) Any hearing of an application to which this rule applies —

(a) must be in private, unless the court otherwise directs; and

(b) if the court so directs, may be, wholly or in part, in the absence of a party from whom information has been withheld.

(4) At any hearing of an application to which this rule applies —

(a) the general rule is that the court must consider, in the following sequence —

(i) representations first by the applicant and then by each other party, in all the parties' presence; and then

(ii) further representations by the applicant, in the absence of a party from whom information has been withheld; but

(b) the court may direct other arrangements for the hearing.

17.29. Representations in response to live link application

(1) This rule applies where a party wants to make representations about an application for a live link direction or for the variation or rescission of such a direction.

(2) Such a party must —

(a) serve the representations on —

(i) the court officer; and

(ii) each other party;

(b) do so not more than 14 days after service of the application; and

(c) ask for a hearing, if that party wants one, and explain why it is needed.

(3) Representations must explain why it is not in the interests of justice for the direction to be given, varied or rescinded, as the case may be.

PART 18 – DISCLOSURE

18.1. When this Part applies

This Part applies where Part 14 of the Criminal Procedure and Evidence Ordinance 2014 applies.

18.2. Prosecution disclosure

(1) This rule applies where the prosecutor —

(a) discloses prosecution material to the defendant; or

(b) serves on the defendant a written statement that there is no such material to disclose.

(2) The prosecutor must at the same time so inform the court officer.

18.3. Prosecutor's application for public interest ruling

(1) This rule applies where —

(a) without a court order, the prosecutor would have to disclose material; and

(b) the prosecutor wants the court to decide whether it would be in the public interest to disclose it.

(2) The prosecutor must —

(a) apply in writing for such a decision; and

(b) serve the application on —

(i) the court officer;

(ii) any person who the prosecutor thinks would be directly affected by disclosure of the material; and

(iii) the defendant, but only to the extent that serving it on the defendant would not disclose what the prosecutor thinks ought not be disclosed.

(3) The application must —

(a) describe the material, and explain why the prosecutor thinks that —

(i) it is material that the prosecutor would have to disclose;

(ii) it would not be in the public interest to disclose that material; and

(iii) no measure such as the prosecutor's admission of any fact, or disclosure by summary, extract or edited copy, adequately would protect both the public interest and the defendant's right to a fair trial;

(b) omit from any part of the application that is served on the defendant anything that would disclose what the prosecutor thinks ought not be disclosed (in which case, paragraph (4) of this rule applies); and

(c) explain why, if no part of the application is served on the defendant.

(4) Where the prosecutor serves only part of the application on the defendant, the prosecutor must —

(a) mark the other part, to show that it is only for the court; and

(b) in that other part, explain why the prosecutor has withheld it from the defendant.

(5) Unless already done, the court may direct the prosecutor to serve an application on —

(a) the defendant;

(b) any other person who the court considers would be directly affected by the disclosure of the material.

(6) The court must determine the application at a hearing which —

(a) must be in private, unless the court otherwise directs; and

(b) if the court so directs, may take place, wholly or in part, in the defendant's absence.

(7) At a hearing at which the defendant is present —

(a) the general rule is that the court must consider, in the following sequence —

(i) representations first by the prosecutor and any other person served with the application, and then by the defendant, in the presence of them all; and then

(ii) further representations by the prosecutor and any such other person in the defendant's absence; but

(b) the court may direct other arrangements for the hearing.

(8) The court may only determine the application if satisfied that it has been able to take adequate account of —

(a) such rights of confidentiality as apply to the material; and

(b) the defendant's right to a fair trial.

(9) Unless the court otherwise directs, the court officer —

(a) must not give notice to anyone other than the prosecutor —

(i) of the hearing of an application under this rule, unless the prosecutor served the application on that person; or

(ii) of the court's decision on the application;

(b) may —

(i) keep a written application or representations; or

(ii) arrange for the whole or any part to be kept by some other appropriate person, subject to any conditions that the court may impose.

18.4. Hearing to inform the court of sensitive material

(1) This rule applies where the prosecutor has, or is aware of, material —

(a) the revelation of which to the public or to the defendant the prosecutor thinks would give rise to a real risk of serious prejudice to an important public interest;

(b) to which the prosecutor does not think the obligation to disclose prosecution material applies; but

(c) of the existence of which the prosecutor thinks it necessary to inform the court to avoid —

(i) potential unfairness to the defendant in the conduct of the trial,

(ii) potential prejudice to the fair management of the trial, or

(iii) potential prejudice to that public interest.

(2) Such a prosecutor must —

(a) ask for a hearing so to inform the court; and

(b) notify the defendant of that request only to such extent, if any, and at such time, if at all, as the court directs.

(3) At or before the hearing the prosecutor must —

(a) explain —

(i) why the hearing is necessary, and

(ii) why it is necessary for the hearing to take place in the defendant's absence;

(b) explain to what extent, if any, and when, if at all, the defendant should be informed—

(i) of the hearing, and

(ii) of the material of which the prosecutor wants to inform the court; and

(c) provide or describe the material to the court —

(i) only to the extent needed to achieve the purpose for which the hearing is convened, and

(ii) in such manner as the court directs.

(4) Unless the court otherwise directs —

(a) any such hearing —

(i) must be in private, and

(ii) must take place in the defendant's absence;

(b) the court officer must not give notice to anyone other than the prosecutor of—

(i) the court's decision on the request for a hearing,

(ii) the arrangements for any such hearing, and

(iii) any directions given at such a hearing; and

(c) the court officer may —

(i) keep any written representations or material received under this rule, or

(ii) arrange for the whole or any part to be kept by some other appropriate person,

subject to any conditions that the court may impose.

18.5. Defence disclosure

(1) This rule applies where —

(a) the defendant gives a defence statement;

(b) the defendant gives a defence witness notice.

(2) The defendant must serve such a statement or notice on —

(a) the court officer; and

(b) the prosecutor.

18.6. Defendant's application for prosecution disclosure

(1) This rule applies where the defendant —

(a) has served a defence statement; and

(b) wants the court to require the prosecutor to disclose material.

(2) The defendant must serve an application on —

(a) the court officer; and

(b) the prosecutor.

(3) The application must —

(a) describe the material that the defendant wants the prosecutor to disclose;

(b) explain why the defendant thinks there is reasonable cause to believe that —

(i) the prosecutor has that material; and

(ii) it is material that should be disclosed; and

(c) ask for a hearing, if the defendant wants one, and explain why it is needed.

(4) The court may determine an application under this rule —

(a) at a hearing, in public or in private; or

(b) if not contested, without a hearing.

(5) The court must not require the prosecutor to disclose material unless the prosecutor —

(a) is present; or

(b) has had at least 14 days in which to make representations.

18.7. Review of public interest ruling

(1) This rule applies where the court has ordered that it is not in the public interest to disclose material that the prosecutor otherwise would have to disclose, and —

(a) the defendant wants the court to review that decision; or

(b) the court reviews that decision on its own initiative.

(2) Where the defendant wants the court to review that decision, the defendant must —

(a) serve an application on —

(i) the court officer; and

(ii) the prosecutor; and

(b) in the application —

(i) describe the material that the defendant wants the prosecutor to disclose; and

(ii) explain why the defendant thinks it is no longer in the public interest for the prosecutor not to disclose it.

(3) The prosecutor must serve any such application on any person who the prosecutor thinks would be directly affected if that material were disclosed.

(4) The prosecutor, and any such person, must serve any representations on —

(a) the court officer; and

(b) the defendant, unless to do so would in effect reveal something that either thinks ought not be disclosed.

(5) The court may direct —

(a) the prosecutor to serve any such application on any person who the court considers would be directly affected if that material were disclosed;

(b) the prosecutor and any such person to serve any representations on the defendant.

(6) The court must review a decision to which this rule applies at a hearing which —

(a) must be in private, unless the court otherwise directs; and

(b) if the court so directs, may take place, wholly or in part, in the defendant's absence.

(7) At a hearing at which the defendant is present —

(a) the general rule is that the court must consider, in the following sequence —

(i) representations first by the defendant, and then by the prosecutor and any other person served with the application, in the presence of them all; and then

(ii) further representations by the prosecutor and any such other person in the defendant's absence; but

(b) the court may direct other arrangements for the hearing.

(8) The court may only conclude a review if satisfied that it has been able to take adequate account of —

(a) such rights of confidentiality as apply to the material; and

(b) the defendant's right to a fair trial.

18.8. Defendant's application to use disclosed material

(1) This rule applies where a defendant wants the court's permission to use disclosed prosecution material —

(a) otherwise than in connection with the case in which it was disclosed; or

(b) beyond the extent to which it was displayed or communicated publicly at a hearing.

(2) The defendant must serve an application on —

(a) the court officer; and

(b) the prosecutor.

(3) The application must —

(a) specify what the defendant wants to use or disclose; and

(b) explain why.

(4) The court may determine an application under this rule —

(a) at a hearing, in public or in private; or

(b) if not contested, without a hearing.

(5) The court must not permit the use of such material unless —

(a) the prosecutor has had at least 28 days in which to make representations; and

(b) the court is satisfied that it has been able to take adequate account of any rights of confidentiality that may apply to the material.

18.9. Court's power to vary requirements under this Part

The court may —

(a) shorten or extend (even after it has expired) a time limit under this Part;

(b) allow an application under this Part to be in a different form to one set out in this Part, or to be presented orally; and

(c) specify the period within which —

(i) any application under this Part must be made; or

(ii) any material must be disclosed.

Trial and Hearing Procedure

PART 19 - PROCEDURE IN THE SUMMARY COURT AND MAGISTRATE'S COURT

19.1. General rules

(1) This part applies to all hearings, including trials, in the Summary Court and the Magistrate's Court.

(2) Where this Part applies —

(a) the general rule is that hearings must be in public; but

(b) the court may exercise any power it has to —

(i) impose reporting or access restrictions;

(ii) withhold information from the public; or

(iii) order a hearing in private; and

(c) unless the court otherwise directs, when sitting as the Youth Court, only the following may attend a hearing —

(i) members and officers of the court;

(ii) parties to the case before the court, their legal practitioners, witnesses, and other persons directly concerned in that case;

(iii) genuine representatives of newspapers or news agencies; and

(iv) any other persons that the court authorises to be present.

19.2. Procedure at trial

(1) On summary trial of a charge the court must, if the defendant appears —

(a) ensure that the defendant is correctly identified by the charge;

(b) state to the defendant the substance of the charge; and

(c) confirm whether the defendant pleads guilty or not guilty.

(2) The court may determine an application —

(a) about —

(i) case management, or any other question of procedure; or

(ii) the introduction or admissibility of evidence, or any other question of law; and

(b) that has not been determined before the trial began;

at any time during the trial.

(3) Any such application is subject to any other rule that applies to it (for example, as to the time and form in which the application must be made).

(4) In the following sequence —

(a) the prosecutor may summarise the prosecution case, concisely identifying the relevant law, outlining the facts and indicating the matters likely to be in dispute;

(b) the prosecutor must introduce the evidence on which the prosecution case relies;

(c) at the conclusion of the prosecution case, on the defendant's application or on its own initiative, the court —

(i) may acquit on the ground that the prosecution evidence is insufficient for any reasonable court properly to convict; but

(ii) must not do so unless the prosecutor has had an opportunity to make representations;

(d) at the end of the prosecution case, unless it appears to the court that, taking account of all the circumstances, the defendant's physical or mental condition makes it undesirable for the defendant to give evidence in person, the court must ask whether the defendant intends to give evidence in person and, if the answer is 'no', then the court must satisfy itself that there has been explained to the defendant, in terms the defendant can understand (with help, if necessary) —

(i) the right to give evidence in person; and

(ii) that if the defendant does not give evidence in person, or refuses to answer a question while giving evidence, the court may draw such inferences as seem proper;

(e) if the defendant is introducing evidence other than his own evidence then the defendant may concisely summarise the defence case;

(f) in this order (or in a different order, if the court so directs) the defendant may —

(i) give evidence in person;

(ii) call another witness, or witnesses, to give evidence in person; and

(iii) introduce any other evidence;

(g) a party may introduce further evidence if it is then admissible (for example, because it is in rebuttal of evidence already introduced);

(h) the prosecutor may make final representations in support of the prosecution case;

(i) the defendant may make final representations in support of the defence case;

(j) if the trial is before justices of the peace —

(i) the Clerk of the Summary Court will advise the justices of the peace on the legal directions that apply to the case, including the provision of a written route to verdict for each charge;

(ii) the legal advice that the justices of the peace receive shall be given in open court and the parties shall have the opportunity to make representations, including representations on the written route to verdict;

(iii) the justices of the peace will then retire to consider their verdict or verdicts;

(iv) the Clerk of the Summary Court will assist the justices of the peace in accordance with rule 10.2;

(v) the justices of the peace will reach their verdict or verdicts by following the written route to verdict;

(iv) the justices of the peace will record the verdict and their reasons for the decision to convict or acquit in respect of each charge on the verdict decision form; and

(v) the justices of the peace will then announce the verdict or verdicts in open court by reading out loud the verdict decision form;

(k) if the trial is before the Senior Magistrate —

(i) the Senior Magistrate shall announce the directions of law that will apply to the case in open court, including directions on the use of any written route to verdict, and the parties shall have the opportunity to make representations;

(ii) the Senior Magistrate shall then retire to consider the verdict or verdicts;

(iv) the Senior Magistrate shall then announce the verdict or verdicts in open court and in respect of each charge the court must give reasons for its decision to convict or acquit.

(5) Where a party wants to introduce evidence or make representations after that party's opportunity to do so under paragraph (2), 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.

(6) At any stage the court may adjourn the hearing to a different time or date.

19.3. Unrepresented defendants

The Clerk of the Summary Court, or the court must explain, in terms the defendant can understand (with help, if necessary) —

(a) the procedure at trial;

(b) the right to give evidence; and

(c) the potential effect of not doing so at all, or of refusing to answer a question while doing so.

PART 20 – JURIES

20.1. Selecting the jury

(1) The court must select a jury to try the case from the panel, or part of the panel, of jurors summoned by the court to attend at that time and place.

(2) The court must select the jury by drawing at random each juror's name from among those so summoned and —

(a) announcing each name so drawn; or

(b) announcing an identifying number assigned by the court officer to that person, where the court is satisfied that that is necessary.

(3) The jury the court selects —

(a) must comprise no fewer than 12 jurors where the defendant is to be tried on an indictment that alleges murder or treason;

(b) must comprise no fewer than 7 jurors where the defendant is to be tried on an indictment that alleges any offence other than murder or treason; and

(c) may comprise of 2 additional jurors to begin with, where the court is satisfied that it is beneficial to have additional jurors to hear the beginning of the trial.

(4) Where the court selects a jury comprising more than 12 jurors in a trial on an indictment alleging murder or treason, or more than 7 jurors in a trial on an indictment alleging an offence other than murder or treason, the court must explain to them that —

(a) the purpose of selecting more than 12 jurors or 7 jurors to begin with is to fill any vacancy or vacancies caused by the discharge of any of the first 12 or first 7 before the prosecution evidence begins;

(b) any such vacancy or vacancies will be filled by the extra jurors in order of their selection from the panel;

(c) the court will discharge any extra juror or jurors remaining by no later than the beginning of the prosecution evidence; and

(d) any juror who is discharged for that reason then will be available to be selected for service on another jury, during the period for which that juror has been summoned.

(5) Each of the 12 or more jurors or 7 or more jurors the court selects —

(a) must take an oath or affirm; and

(b) becomes a full jury member until discharged.

(6) The oath or affirmation must be in these terms, or in any corresponding terms that the juror declares to be binding on him or her —

"I swear by Almighty God [or I do solemnly, sincerely and truly declare and affirm] that I will faithfully try the defendant and give a true verdict according to the evidence.".

20.2. Discharging jurors

(1) The court may exercise its power to discharge a juror at any time —

(a) after the juror completes the oath or affirmation; and

(b) before the court discharges the jury.

(2) No later than the beginning of the prosecution evidence, if the jury then comprises of additional jurors, the court must discharge any in excess of 12 jurors in a trial on an indictment alleging murder or treason, or any in excess of 7 jurors in a trial on an indictment alleging an offence other than murder or treason in reverse order of their selection from the panel.

(3) The court may exercise its power to discharge the jury at any time —

(a) after each juror has completed the oath or affirmation; and

(b) before the jury has delivered its verdict on each offence charged in the indictment.

(4) The court must exercise its power to discharge the jury when, in respect of each offence charged in the indictment, either —

(a) the jury has delivered its verdict on that offence; or

(b) the court has discharged the jury from reaching a verdict.

20.3. Objecting to jurors

(1) A party who objects to the panel of jurors (challenge to the array) must serve notice explaining the objection on the court officer and on the other party before the first juror's name or number is drawn.

(2) A party who objects to the selection of an individual juror (challenge for cause) must—

(a) tell the court of the objection —

(i) after the juror's name or number is announced; and

(ii) before the juror completes the oath or affirmation; and

(b) explain the objection.

(3) A prosecutor who exercises the prosecution right without giving reasons to prevent the court selecting an individual juror must announce the exercise of that right before the juror completes the oath of affirmation.

(4) The court must determine an objection under paragraph (1) or (2) —

(a) at a hearing, in public or in private; and

(b) in the absence of the jurors, unless the court otherwise directs.

PART 21 - PROCEDURE IN THE SUPREME COURT

21.1. When this part applies

(1) This part applies to all hearings, including trials, in the Supreme Court.

(2) Where this Part applies —

(a) the general rule is that hearings must be in public; but

(b) the court may exercise any power it has to —

(i) impose reporting or access restrictions;

(ii) withhold information from the public; or

(iii) order a hearing in private.

21.2. Procedure at trial

(1) On a trial on indictment the court officer must —

(a) identify —

(i) the indictment or indictments on which the prosecutor wants the defendant to be tried;

(ii) identify any indictment or count in an indictment on which the prosecutor does not want to proceed;

(b) ensure the defendant is correctly identified by each indictment on which the defendant is to be tried; and

(c) where there is a jury select and empanel a jury in accordance with Part 20; and —

(i) inform the jurors of each offence charged in the indictment to which the defendant pleads not guilty by reading out loud the statement of the offence and the particulars of the offence; and

(ii) inform the jurors that it is their duty, having heard all of the evidence, to decide whether the defendant is guilty or not guilty on each offence.

(2) The court may determine an application —

(a) about —

(i) case management, or any other question of procedure; or

(ii) the introduction or admissibility of evidence, or any other question of law; and

(b) that has not been determined before the trial began;

at any time during the trial, but unless the court otherwise directs, the application must be made in the absence of the jury (if there is one).

(3) Any such application is subject to any other rule that applies to it (for example, as to the time and form in which the application must be made).

(4) On a trial on indictment, whether trial by judge and jury or trial by judge alone, in the following sequence —

(a) the prosecutor may summarise the prosecution case, concisely outlining the facts and the matters likely to be in dispute;

(b) where there is a jury, to help the jurors to understand the case and resolve any issue in it the court may —

(i) invite the defendant concisely to identify what is in issue, if necessary in terms approved by the court; and may

(ii) direct that the jurors be given a copy of any defence statement, edited if necessary to exclude any reference to inappropriate matters or to matters evidence of which would not be admissible;

(c) the prosecutor must introduce the evidence on which the prosecution case relies;

(d) at the end of the prosecution evidence, on the defendant's application or on its own initiative, the court —

(i) may direct the jury (if there is one) to acquit on the ground that the prosecution evidence is insufficient for any reasonable court properly to convict; but

(ii) must not do so unless the prosecutor has had an opportunity to make representations;

(e) at the end of the prosecution evidence, unless it appears to the court that, taking account of all the circumstances, the defendant's physical or mental condition makes it undesirable for the defendant to give evidence in person, the court must ask whether the defendant intends to give evidence in person and, if the answer is 'no', then the court must satisfy itself that there has been explained to the defendant, in terms the defendant can understand (with help, if necessary) —

(i) the right to give evidence in person; and

(ii) that if the defendant does not give evidence in person, or refuses to answer a question while giving evidence, the court may draw such inferences as seem proper;

(f) if the defendant is introducing evidence other than his own evidence then the defendant may concisely summarise the defence case;

(g) in this order (or in a different order, if the court so directs) the defendant may —

(i) give evidence in person;

(ii) call another witness, or witnesses, to give evidence in person; and

(iii) introduce any other evidence;

(h) a party may introduce further evidence if it is then admissible (for example, because it is in rebuttal of evidence already introduced);

(i) the prosecutor may make final representations in support of the prosecution case;

(j) the defendant may make final representations in support of the defence case.

(5) Unless the jury (if there is one) has retired to consider its verdict, the court may allow a party to introduce evidence, or make representations, after that party's opportunity to do so under paragraph (2).

(6) Unless the jury has already reached a verdict on a count, the court may exercise its power to —

(a) discharge the jury from reaching a verdict on that count;

(b) direct the jury to acquit the defendant on that count; or

(c) invite the jury to convict the defendant, if the defendant pleads guilty to the offence charged by that count.

21.3. Directions to the jury

(1) The court must give the jury directions about the relevant law at any time at which to do so will assist jurors to evaluate the evidence.

(2) The court must give the parties the opportunity to make representations about the directions to be given to the jury.

(3) Before the jury retires to consider a verdict the court must —

(a) summarise for the jury, to such extent as is necessary, the evidence relevant to the issues they must decide;

(b) direct the jury as to matters of law;

(c) give those directions orally and, as a general rule, in writing as well;

(d) give the jury such questions, by way of a written route to verdict, which the court invites jurors to answer in coming to a verdict;

(e) give those questions orally and in writing as well;

(f) direct the jury to elect a foreperson to speak on the jury's behalf;

(g) provide the jury with any other assistance in writing;

(h) direct the jury to retire to consider its verdict.

(4) If necessary the court shall —

(a) recall the jury to answer jurors' questions;

(b) give the jury directions, or further directions, about considering and delivering its verdict or verdicts, including, if appropriate, directions about reaching a verdict by a majority.

21.4. Taking the verdict of the jury

(1) In a case in which the jury is required to return a single verdict the court must —

(a) recall the jury (unless already recalled) when it informs the court that it has reached its verdict; and

(b) direct the delivery of that verdict there and then.

(2) In a case in which the jury is required to return two or more verdicts the court must —

(a) recall the jury (unless already recalled) when it informs the court that it has reached a verdict or verdicts;

(b) ask the jury whether its members all agree on every verdict required;

(c) if the answer to that question is ‘yes’, direct the delivery of each of those verdicts there and then; and

(d) if the answer to that question is ‘no’ —

(i) direct the delivery there and then of any unanimous verdict that has been reached; or

(ii) postpone the taking of any such verdict while the jury considers each other verdict required.

(3) When the court recalls the jury to deliver its verdict the court must ask the foreperson chosen by the jury, in respect of each count —

(a) whether the jury has reached a verdict on which all the jurors agree;

(b) if so, whether that verdict is guilty or not guilty;

(c) and whether that verdict is the verdict of all the jurors;

(d) if not, where the jury has deliberated for at least 2 hours and if the court decides to invite a majority verdict, then —

(i) on an indictment that charges murder or treason whether at least 10 (of 11 or 12 jurors), agreed on a verdict; or

(ii) on an indictment that charges any other offence whether at least 6 (of 7) agreed on a verdict;

(iii) if so, is that verdict guilty or not guilty; and

(iv) if, and only if, such a verdict is guilty, how many jurors agreed to that verdict and how many disagreed.

(4) Where evidence has been given that the defendant was insane, so as not to be responsible for the act or omission charged as the offence, then under paragraph (3)(b) the court must ask whether the jury’s verdict is guilty, not guilty, or not guilty by reason of insanity.

21.5. Directions and verdict when trial by judge alone

Where a trial is by judge alone —

(a) the judge shall announce the directions of law that will apply to the case in open court, including, if any, directions on the use of a written route to verdict, and the parties shall have the opportunity to make representations;

(b) the judge shall then retire to consider the verdict or verdicts;

(c) the judge shall then announce the verdict or verdicts in open court and in respect of each charge the court must give reasons for its decision to convict or acquit.

21.6. Adjournments

At any stage the court may adjourn the hearing to a different time or date.

Evidence

PART 22 - FORMS OF EVIDENCE

22.1. 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 inside the courtroom, unless that witness is —

(i) a party, or

(ii) an expert witness; or

(iii) an investigating officer in charge of the case and the parties agree to that witness being present inside the courtroom;

(b) a witness who gives evidence in the courtroom must do so from the place provided for that purpose; and

(c) a witness' address —

(i) must not be given in public unless the address is relevant to an issue in the case;

(ii) may be given in writing to the court, parties and jury.

(3) Unless otherwise directed by the court before giving evidence a witness must take an oath or affirm.

(4) In the following sequence —

(a) the party who calls a witness may ask questions in examination-in-chief;

(b) if the witness gives evidence for the prosecution —

(i) the defendant, if there is only one, may ask questions in cross-examination; or

(ii) subject to the court's directions, each defendant, if there is more than one, may ask such questions, in the order their names appear in the indictment, or charge or as directed by the court;

(c) if the defendant gives evidence or the witness gives evidence for a defendant —

(i) subject to the court's directions, each other defendant, if there is more than one, may ask questions in cross-examination, in the order their names appear in the indictment, or charge, or as directed by the court; and

(ii) the prosecutor may ask such questions;

(d) the party who called the witness may ask questions in re-examination arising out of any cross-examination.

(5) If the court so permits, at any time while giving evidence a witness may refer to a record of that witness' recollection of events.

(6) The court may —

(a) ask a witness questions; and in particular

(b) where the defendant is not represented, ask a witness any question necessary in the defendant's interests.

22.2. Evidence of a witness in writing

(1) This rule applies where a party wants to introduce in evidence the written statement of a witness.

(2) If the court admits such evidence each relevant part of the statement must be read or summarised aloud, unless the court otherwise directs.

22.3. Evidence by admission

(1) This rule applies where —

(a) a party introduces in evidence a fact admitted by another party; or

(b) parties jointly admit a fact.

(2) Unless the court otherwise directs, a written record must be made of the admission and signed by the parties.

(3) The admission must be read aloud.

PART 23 - WRITTEN WITNESS STATEMENTS

23.1. Content of written witness statement

(1) A written witness statement must contain —

(a) at the beginning —

(i) the witness' name; and

(ii) the witness' age, if under 18;

(b) a declaration by the witness that —

(i) it is true to the best of the witness' knowledge and belief; and

(ii) the witness knows that if it is introduced in evidence, then it would be an offence wilfully to have stated in it anything that the witness knew to be false or did not believe to be true;

(c) if the witness cannot read the statement, a signed declaration by someone else that that person read it to the witness; and

(d) the witness' signature.

(2) Where the statement refers to a document or object as an exhibit it must identify it clearly.

23.2. Written witness statement in evidence

(1) A party who wants to introduce in evidence a written witness statement must, before the hearing at which that party wants to introduce it, serve a copy of the statement on —

(a) the court officer; and

(b) each other party.

(2) If that party relies on only part of the statement, that party must mark the copy in such a way as to make that clear.

(3) A prosecutor, at the time of completing a trial preparation form in accordance with rule 16.9, must identify on the trial preparation form the written witness statements the prosecution intends to rely upon.

(4) A defendant who objects to the introduction of a written statement in evidence instead of the witness giving evidence in person must give notice of the objection on the trial preparation form.

(5) A prosecutor must serve on a defendant a notice —

(a) of the right to object to the introduction of the statement in evidence instead of the witness giving evidence in person;

(b) that if the defendant does not object, the court —

(i) can nonetheless require the witness to give evidence in person; but

(ii) may decide not to do so.

(6) A party served with a written witness statement who objects to its introduction in evidence must —

(a) serve notice of the objection on —

(i) the party who served it; and

(ii) the court officer; and

(b) serve the notice of objection not more than 7 days after service of the statement unless the court extends that time limit, before or after the statement was served.

(7) The court may exercise its power to require the witness to give evidence in person —

(a) on application by any party; or

(b) on its own initiative.

(8) A party entitled to receive a copy of a statement may waive that entitlement by so informing—

(a) the party who would have served it; and

(b) the court.

PART 24 - EXPERT EVIDENCE

24.1. When this Part applies

(1) This Part applies where a party wants to introduce expert opinion evidence.

(2) A reference to an 'expert' in this Part is a reference to a person who is required to give or prepare expert evidence for the purpose of criminal proceedings, including evidence required to determine fitness to plead or for the purpose of sentencing.

(3) Where evidence that is introduced as evidence of fact within a witness' direct knowledge includes expert opinion the court may direct that the requirements of rules 24.2 (Expert's duty to the court) and 24.3 (Introduction of expert evidence) apply, to the extent and with such adaptations as the court directs.

24.2. Expert's duty to the court

(1) An expert must help the court to achieve the overriding objective —

(a) by giving opinion which is —

(i) objective and unbiased; and

(ii) within the expert's area or areas of expertise; and

(b) by actively assisting the court in fulfilling its duty of case management, in particular by —

(i) complying with directions made by the court; and

(ii) at once informing the court of any significant failure (by the expert or another) to take any step required by such a direction.

(2) This duty overrides any obligation to the person from whom the expert receives instructions or by whom the expert is paid.

(3) This duty includes obligations —

(a) to define the expert's area or areas of expertise —

(i) in the expert's report; and

(ii) when giving evidence in person;

(b) when giving evidence in person, to draw the court's attention to any question to which the answer would be outside the expert's area or areas of expertise; and

(c) to inform all parties and the court if the expert's opinion changes from that contained in a report served as evidence or given in a statement; and

(d) to disclose to the party for whom the expert's evidence is commissioned —

(i) of which the expert is aware; and

(ii) of which that party, if aware of it, would be required to give notice under rule 24.3(3)(c).

24.3. Introduction of expert evidence

(1) A party who wants another party to admit as fact a summary of an expert's conclusions must serve that summary —

(a) on the court officer and on each party from whom the admission is sought; and

(b) as soon as practicable after the defendant whom it affects pleads not guilty.

(2) A party on whom such a summary is served must —

(a) serve a response stating —

(i) which, if any, of the expert's conclusions are admitted as fact; and

(ii) where a conclusion is not admitted, what are the disputed issues concerning that conclusion; and

(b) serve the response —

(i) on the court officer and on the party who served the summary; and

(ii) as soon as practicable, and in any event not more than 14 days after service of the summary.

(3) A party who wants to introduce expert evidence otherwise than as admitted fact must—

(a) serve a report by the expert which complies with rule 24.4 (Content of expert's report) on —

(i) the court officer; and

(ii) each other party;

(b) serve the report as soon as practicable, and in any event with any application in support of which that party relies on that evidence;

(c) serve with the report —

(i) notice of anything of which the party serving it is aware which might reasonably be thought capable of undermining the reliability of the expert's opinion, or detracting from the credibility or impartiality of the expert; and

(ii) an explanation of how facts stated in the report are admissible as evidence that is not explained by the report; and

(d) if another party so requires, give that party a copy of, or a reasonable opportunity to inspect —

(i) a record of any examination, measurement, test or experiment on which the expert's findings and opinion are based, or that were carried out in the course of reaching those findings and opinion; and

(ii) anything on which any such examination, measurement, test or experiment was carried out.

(4) Unless the parties otherwise agree or the court directs, a party may not —

(a) introduce expert evidence if that party has not complied with paragraph (3);

(b) introduce in evidence an expert report if the expert does not give evidence in person.

24.4. Content of expert's report

An expert's report must —

(a) give details of the expert's qualifications, relevant experience and accreditation;

(b) give details of any literature or other information which the expert has relied on in making the report;

(c) contain a statement setting out the substance of all facts given to the expert which are material to the opinions expressed in the report, or upon which those opinions are based;

(d) make clear which of the facts stated in the report are within the expert's own knowledge;

(e) where the expert has based an opinion or inference on a representation of fact or opinion made by another person for the purposes of criminal proceedings (for example, as to the outcome of an examination, measurement, test or experiment)—

(i) identify the person who made that representation to the expert;

(ii) give the qualifications, relevant experience and any accreditation of that person; and

(iii) certify that that person had personal knowledge of the matters stated in that representation;

(f) where there is a range of opinion on the matters dealt with in the report —

(i) summarise the range of opinion; and

(ii) give reasons for the expert's own opinion;

(g) if the expert is not able to give an opinion without qualification, state the qualification;

(h) include such information as the court may need to decide whether the expert's opinion is sufficiently reliable to be admissible as evidence;

(i) contain a summary of the conclusions reached;

(j) contain a statement that the expert understands an expert's duty to the court, and has complied and will continue to comply with that duty; and

(k) contain the same declaration of truth as a witness statement.

24.5. Expert to be informed of service of report

A party who serves on another party or on the court a report by an expert must, at once, inform that expert of that fact.

24.6. Pre-hearing discussion of expert evidence

(1) This rule applies where more than one party wants to introduce expert evidence.

(2) The court may direct the experts to —

(a) discuss the expert issues in the proceedings; and

(b) prepare a statement for the court of the matters on which they agree and disagree, giving their reasons.

(3) Except for that statement, the content of that discussion must not be referred to without the court's permission.

(4) A party may not introduce expert evidence without the court's permission if the expert has not complied with a direction under this rule.

24.7. Court's power to direct that evidence is to be given by a single joint expert

(1) Where more than one defendant wants to introduce expert evidence on an issue at trial, the court may direct that the evidence on that issue is to be given by one expert only.

(2) Where the co-defendants cannot agree who should be the expert, the court may —

(a) select the expert from a list prepared or identified by them; or

(b) direct that the expert be selected in another way.

24.8. Instructions to a single joint expert

(1) Where more than one defendant wants to introduce expert evidence on an issue at trial, the court may direct that the evidence on that issue is to be given by one expert only.

(2) Where the co-defendants cannot agree who should be the expert, the court may —

(a) select the expert from a list prepared or identified by them; or

(b) direct that the expert be selected in another way.

(3) Where the court gives a direction for a single joint expert to be used, each of the co-defendants may give instructions to the expert.

(4) A co-defendant who gives instructions to the expert must, at the same time, send a copy of the instructions to each other co-defendant.

(5) The court may give directions about —

(a) the payment of the expert's fees and expenses; and

(b) any examination, measurement, test or experiment which the expert wishes to carry out.

(6) The court may, before an expert is instructed, limit the amount that can be paid by way of fees and expenses to the expert.

(7) Unless the court otherwise directs, the instructing co-defendants are jointly and severally liable for the payment of the expert's fees and expenses.

24.9. Application to withhold information from another party

(1) This rule applies where —

(a) a party introduces expert evidence;

(b) the evidence omits information which it otherwise might include because the party introducing it thinks that that information ought not be revealed to another party; and

(c) the party introducing the evidence wants the court to decide whether it would be in the public interest to withhold that information.

(2) The party who wants to introduce the evidence must —

(a) apply for such a decision; and

(b) serve the application on —

(i) the court officer, and

(ii) the other party, but only to the extent that serving it would not reveal what the applicant thinks ought to be withheld.

(3) The application must —

(a) identify the information;

(b) explain why the applicant thinks that it would be in the public interest to withhold it; and

(c) omit from the part of the application that is served on the other party anything that would reveal what the applicant thinks ought to be withheld.

(4) Where the applicant serves only part of the application on the other party, the applicant must —

(a) mark the other part, to show that it is only for the court; and

(b) in that other part, explain why the applicant has withheld it from the other party.

(5) The court may —

(a) direct the applicant to serve on the other party any part of the application which has been withheld; and

(b) determine the application at a hearing or without a hearing.

(6) Any hearing of an application to which this rule applies —

(a) must be in private, unless the court otherwise directs; and

(b) if the court so directs, may be, wholly or in part, in the absence of the party from whom information has been withheld.

(7) At any hearing of an application to which this rule applies —

(a) the general rule is that the court must consider, in the following sequence —

(i) representations first by the applicant and then by the other party, in both parties' presence, and then

(ii) further representations by the applicant, in the absence of the party from whom information has been withheld; but

(b) the court may direct other arrangements for the hearing.

24.10. Court's power to vary requirements under this Part

(1) The court may extend (even after it has expired) a time limit under this Part.

(2) A party who wants an extension of time must —

(a) apply when serving the report, summary or notice for which it is required, and

(b) explain the delay.

PART 25 - HEARSAY EVIDENCE

25.1. Notice to introduce hearsay evidence

(1) This rule applies where a party wants to introduce hearsay evidence under Part 20 of the Criminal Procedure and Evidence Ordinance 2014.

(2) That party must —

(a) serve notice on —

(i) the court officer; and

(ii) each other party;

(b) in the notice —

(i) identify the evidence that is hearsay;

(ii) set out any facts on which that party relies to make the evidence admissible;

(iii) explain how that party will prove those facts if another party disputes them; and

(iv) explain why the evidence is admissible; and

(c) attach to the notice any statement or other document containing the evidence that has not already been served.

(3) A prosecutor who wants to introduce such evidence must serve the notice not more than 14 days after the defendant pleads not guilty.

(4) A defendant who wants to introduce such evidence must serve the notice as soon as reasonably practicable.

(5) A party entitled to receive a notice under this rule may waive that entitlement by so informing —

(a) the party who would have served it; and

(b) the court.

25.2. Opposing the introduction of hearsay evidence

(1) This rule applies where a party objects to the introduction of hearsay evidence.

(2) That party must —

(a) apply to the court to determine the objection;

(b) serve the application on —

(i) the court officer; and

(ii) each other party;

(c) serve the application as soon as reasonably practicable, and in any event not more than 14 days after —

(i) service of notice to introduce the evidence;

(ii) service of the evidence to which that party objects, if no notice has been served; or

(iii) the defendant pleads not guilty,

whichever of those events happens last; and

(d) in the application, explain —

(i) which, if any, facts set out in a notice that party disputes;

(ii) why the evidence is not admissible; and

(iii) any other objection to the evidence.

(3) The court —

(a) may determine an application —

(i) at a hearing, in public or in private; or

(ii) without a hearing;

(b) must not determine the application unless the party who served the notice —

(i) is present; or

(ii) has had a reasonable opportunity to respond;

(c) may discharge or vary a determination where it can do so; and

(d) may adjourn the application.

25.3. Reasons for decisions

The court must announce at a hearing in public (but in the absence of the jury, if there is one) the reasons for a decision to admit evidence as evidence of hearsay, or to refuse to do so.

25.4. Court's power to vary requirements under this Part

(1) The court may —

(a) shorten or extend (even after it has expired) a time limit under this Part;

(b) allow an application or notice to be in a different form to one set out in this Part, or to be made or given orally; or

(c) dispense with the requirement for notice to introduce hearsay evidence.

(2) A party who wants an extension of time must —

(a) apply when serving the application or notice for which it is needed; and

(b) explain the delay.

PART 26 - EVIDENCE OF BAD CHARACTER

26.1. When this Part applies

This Part applies where a party wants to introduce evidence of bad character, within the meaning of section 372 of the Criminal Procedure and Evidence Ordinance 2014.

26.2. Content of application or notice

(1) A party who wants to introduce evidence of bad character must —

(a) make an application where it is evidence of a non-defendant's bad character;

(b) give notice where it is evidence of a defendant's bad character.

(2) An application or notice must —

(a) set out the facts of the misconduct on which that party relies;

(b) explain how that party will prove those facts (whether by certificate of conviction, other official record, or other evidence), if another party disputes them; and

(c) explain why the evidence is admissible.

26.3. Application to introduce evidence of a non-defendant's bad character

(1) This rule applies where a party wants to introduce evidence of the bad character of a person other than the defendant.

(2) That party must serve an application to do so on —

(a) the court officer; and

(b) each other party.

(3) The applicant must serve the application —

(a) as soon as reasonably practicable; and in any event;

(b) not more than 14 days after the prosecutor discloses material on which the application is based (if the prosecutor is not the applicant).

(4) A party who objects to the introduction of the evidence must —

(a) serve notice on —

(i) the court officer; and

(ii) each other party,

not more than 14 days after service of the application; and

(b) in the notice explain, as applicable —

(i) which, if any, facts of the misconduct set out in the application that party disputes;

(ii) what, if any, facts of the misconduct that party admits instead;

(iii) why the evidence is not admissible; and

(iv) any other objection to the application.

(5) The court —

(a) may determine an application —

(i) at a hearing, in public or in private; or

(ii) without a hearing;

(b) must not determine the application unless each party other than the applicant —

(i) is present; or

(ii) has had at least 14 days in which to serve a notice of objection;

(c) may discharge or vary a determination where it can do so; and

(d) may adjourn the application.

26.4. Notice to introduce evidence of a defendant's bad character

(1) This rule applies where a party wants to introduce evidence of a defendant's bad character.

(2) A prosecutor or co-defendant who wants to introduce such evidence must serve notice on —

(a) the court officer; and

(b) each other party.

(3) A prosecutor must serve any such notice not more than 14 days after the defendant pleads not guilty.

(4) A co-defendant who wants to introduce such evidence must serve the notice as soon as reasonably practicable.

(5) A party who objects to the introduction of the evidence identified by such a notice must —

(a) apply to the court to determine the objection;

(b) serve the application on —

(i) the court officer; and

(ii) each other party,

not more than 14 days after service of the notice; and

(c) in the application explain, as applicable —

(i) which, if any, facts of the misconduct set out in the notice that party disputes;

(ii) what, if any, facts of the misconduct that party admits instead;

(iii) why the evidence is not admissible;

(iv) why it would be unfair to admit the evidence; and

(v) any other objection to the notice.

(6) The court —

(a) may determine an application —

(i) at a hearing, in public or in private; or

(ii) without a hearing;

(b) must not determine the application unless the party who served the notice —

(i) is present; or

(ii) has had a reasonable opportunity to respond;

(c) may discharge or vary a determination where it can do so; and

(d) may adjourn the application.

(7) A party entitled to receive such a notice may waive that entitlement by so informing —

(a) the party who would have served it; and

(b) the court.

(8) A defendant who wants to introduce evidence of his or her own bad character must —

(a) give notice, in writing or orally —

(i) as soon as reasonably practicable, and in any event;

(ii) before the evidence is introduced, either by the defendant or in reply to a question asked by the defendant of another party's witness in order to obtain that evidence; and

(b) at the same time give notice (in writing, or orally) of any direction about the defendant's character that the defendant wants the court to give.

26.5. Reasons for decisions

The court must announce at a hearing in public (but in the absence of the jury, if there is one) the reasons for a decision to admit evidence as evidence of bad character, or to refuse to do so.

26.6. Court's power to vary requirements under this Part

(1) The court may —

(a) shorten or extend (even after it has expired) a time limit under this Part;

(b) allow an application or notice to be in a different form as set out in this Part, or to be made or given orally;

(c) dispense with a requirement for notice to introduce evidence of a defendant's bad character.

(2) A party who wants an extension of time must —

(a) apply when serving the application or notice for which it is needed; and

(b) explain the delay.

PART 27 - EVIDENCE OF A COMPLAINANT'S PREVIOUS SEXUAL BEHAVIOUR

27.1. When this Part applies

This Part applies where —

(a) section 455 of the Criminal Procedure and Evidence Ordinance 2014 prohibits the introduction of evidence or cross-examination about any sexual behaviour of the complainant of a sexual offence; and

(b) despite that prohibition, a defendant wants to introduce such evidence or to cross-examine a witness about such behaviour.

27.2 Exercise of court's powers

The court —

(a) must determine an application under rule 27.4 (Application for permission to introduce evidence or cross-examine) —

(i) at a hearing in private; and

(ii) in the absence of the complainant;

(b) must not determine the application unless —

(i) each party other than the applicant is present, or has had at least 14 days in which to make representations; and

(ii) the court is satisfied that guidance on the treatment of complainants has been adequately followed.

(c) may adjourn the application; and

(d) may discharge or vary a determination where it can do so.

27.3 Decisions and reasons

(1) A prosecutor who wants to introduce the evidence of a complainant in respect of whom the court allows the introduction of evidence or cross-examination about any sexual behaviour must —

(a) inform the complainant of the court's decision as soon as reasonably practicable; and

(b) explain to the complainant any arrangements that as a result will be made for him or her to give evidence.

(2) The court must —

(a) promptly determine an application; and

(b) allow the prosecutor sufficient time to comply with the requirements of —

(i) paragraph (1); and

(ii) any guidance on the treatment of complainants.

(3) The court must announce at a hearing in public —

(a) the reasons for a decision to allow or refuse an application under rule 27.4; and

(b) if it allows such an application, the extent to which evidence may be introduced or questions asked.

27.4 Application for permission to introduce evidence or cross-examine

(1) A defendant who wants to introduce evidence or cross-examine a witness about any sexual behaviour of the complainant must —

(a) serve an application for permission to do so on —

(i) the court officer; and

(ii) each other party;

(b) serve the application —

(i) as soon as reasonably practicable after becoming aware of the grounds for doing so, and in any event;

(ii) not more than 14 days after the prosecutor discloses material on which the application is based.

(2) The application must —

(a) identify the issue to which the defendant says the complainant's sexual behaviour is relevant;

(b) give particulars of —

(i) any evidence that the defendant wants to introduce; and

(ii) any questions that the defendant wants to ask;

(c) identify the exception to the prohibition in section 455 of the Criminal Procedure and Evidence Ordinance 2014 on which the defendant relies; and

(d) give the name and date of birth of any witness whose evidence about the complainant's sexual behaviour the defendant wants to introduce.

27.5 Application containing information withheld from another party

(1) This rule applies where —

(a) an applicant serves an application under rule 27.4 (Application for permission to introduce evidence or cross-examine); and

(b) the application includes information that the applicant thinks ought not be revealed to another party.

(2) The applicant must —

(a) omit that information from the part of the application that is served on that other party;

(b) mark the other part to show that, unless the court otherwise directs, it is only for the court; and

(c) in that other part, explain why the applicant has withheld that information from that other party.

(3) If the court so directs, the hearing of an application to which this rule applies may be, wholly or in part, in the absence of a party from whom information has been withheld.

(4) At the hearing of an application to which this rule applies —

(a) the general rule is that the court must consider, in the following sequence —

(i) representations first by the applicant and then by each other party, in all the parties' presence; and then

(ii) further representations by the applicant, in the absence of a party from whom information has been withheld; but

(b) the court may direct other arrangements for the hearing.

27.6 Representations in response

(1) This rule applies where a party wants to make representations about —

(a) an application under rule 27.4 (Application for permission to introduce evidence or cross-examine); or

(b) a proposed variation or discharge of a decision allowing such an application.

(2) Such a party must —

(a) serve the representations on —

(i) the court officer; and

(ii) each other party; and

(b) do so not more than 14 days after, as applicable —

(i) service of the application; or

(ii) notice of the proposal to vary or discharge.

(3) Where representations include information that the person making them thinks ought not be revealed to another party, that person must —

(a) omit that information from the representations served on that other party;

(b) mark the information to show that, unless the court otherwise directs, it is only for the court; and

(c) with that information include an explanation of why it has been withheld from that other party.

(4) Representations against an application under rule 27.4 must explain the grounds of objection.

(5) Representations against the variation or discharge of a decision must explain why it should not be varied or discharged.

27.7. Special measures, etc. for a witness

(1) This rule applies where the court allows an application under rule 27.4 (Application for permission to introduce evidence or cross-examine).

(2) Despite the time limit in rule 17.1 (Making an application for a direction or order) —

(a) a party may apply not more than 14 days after the court's decision for a special measures direction or for the variation of an existing special measures direction; and

(b) the court may shorten the time for opposing that application.

(3) Where the court allows the cross-examination of a witness, the court must give directions for the appropriate treatment and questioning of that witness in accordance with rule 3.9(6) and (7) (setting ground rules for the conduct of questioning).

27.8 Court's power to vary requirements under this Part

The court may shorten or extend (even after it has expired) a time limit under this Part.

PART 28 - RESTRICTION ON CROSS-EXAMINATION BY A DEFENDANT

28.1. When this Part applies

This Part applies where —

(a) a defendant may not cross-examine in person a witness because of section 449 or section 450 of the Criminal Procedure and Evidence Ordinance 2014;

(b) the court can prohibit a defendant from cross-examining in person a witness under section 451 of that Ordinance.

28.2. Appointment of advocate to cross-examine witness

(1) This rule applies where a defendant may not cross-examine in person a witness in consequence of —

(a) the prohibition imposed by section 449 or section 450 of the Criminal Procedure and Evidence Ordinance 2014; or

(b) a prohibition imposed by the court under section 451 of that Ordinance.

(2) The court must, as soon as practicable, explain in terms the defendant can understand (with help, if necessary) —

(a) the prohibition and its effect;

(b) that the defendant is entitled to arrange for a lawyer with a right of audience in the court to cross-examine the witness on his or her behalf;

(c) that the defendant must notify the court officer of the identity of any such lawyer, with details of how to contact that person, by no later than a date set by the court;

(d) that if the defendant does not want to make such arrangements, or if the defendant gives no such notice by that date, then —

(i) the court must decide whether it is necessary in the interests of justice to appoint such a lawyer to cross-examine the witness in the defendant's interests; and

(ii) if the court decides that that is necessary, the court will appoint a lawyer chosen by the court who will not be responsible to the defendant.

(3) Having given those explanations, the court must —

(a) ask whether the defendant wants to arrange for a lawyer to cross-examine the witness, and set a date by when the defendant must notify the court officer of the identity of that lawyer if the answer to that question is 'yes';

(b) if the answer to that question is 'no', or if by the date set the defendant has given no such notice —

(i) decide whether it is necessary in the interests of justice for the witness to be cross-examined by an advocate appointed to represent the defendant's interests; and

(ii) if the court decides that that is necessary, give directions for the appointment of such an advocate.

(4) The court may give the explanations and ask the questions required by this rule —

(a) at a hearing, in public or in private; or

(b) without a hearing, by written notice to the defendant.

(5) The court may extend (even after it has expired) the time limit that it sets under paragraph (3)(a) —

(a) on application by the defendant; or

(b) on its own initiative.

(6) Paragraphs (7), (8), (9) and (10) apply where the court appoints an advocate.

(7) The directions that the court gives under paragraph (3)(b)(ii) must provide for the supply to the advocate of a copy of —

(a) early details of the prosecution case;

(b) initial disclosure;

(c) expert evidence;

(d) hearsay evidence;

(e) evidence of bad character;

(f) evidence of a complainant's previous sexual behaviour;

(g) any disclosable unused material;

(h) any defence case statement;

(i) any defence witness notice;

(j) any defence application for further disclosure;

(k) any completed case management questionnaire;

(l) all case management directions given by the court.

(8) Where the defendant has given a defence statement —

(a) the advocate, as well as the defendant, is permitted to apply for an order for prosecution disclosure if the advocate has reasonable cause to believe that there is prosecution material concerning the witness which is required to be disclosed to the defendant and has not been disclosed;

(b) Part 18 (Disclosure) applies to an application by the advocate as it does to an application by the defendant.

(9) Before receiving evidence the court must establish, with the active assistance of the parties and of the advocate, and in the absence of any jury —

(a) what issues will be the subject of the advocate's cross-examination; and

(b) whether the court's permission is required for any proposed question, for example where Part 26 (bad character) or Part 22 (previous sexual history) applies.

(10) The appointment terminates at the conclusion of the cross-examination of the witness.

28.3. Application to prohibit cross-examination: Exercise of court's powers

(1) The court may decide whether to impose or discharge a prohibition against cross-examination —

(a) at a hearing, in public or in private;

(b) in a party's absence, if that party —

(i) applied for the prohibition or discharge; or

(ii) has had at least 14 days in which to make representations.

(2) The court must announce, at a hearing in public before the witness gives evidence, the reasons for a decision —

(a) to impose or discharge such a prohibition; or

(b) to refuse to do so.

28.4. Application to prohibit cross-examination

(1) This rule applies where the prosecutor wants the court to prohibit the cross-examination of a witness by a defendant in person.

(2) The prosecutor must —

(a) apply in writing, as soon as reasonably practicable after becoming aware of the grounds for doing so; and

(b) serve the application on —

(i) the court officer;

(ii) the defendant who is the subject of the application; and

(iii) any other defendant, unless the court otherwise directs.

(3) The application must —

(a) report any views that the witness has expressed about whether he or she is content to be cross-examined by the defendant in person;

(b) identify —

(i) the nature of the questions likely to be asked, having regard to the issues in the case;

(ii) any relevant behaviour of the defendant at any stage of the case, generally and in relation to the witness;

(iii) any relationship, of any nature, between the witness and the defendant;

(iv) any other defendant in the case who is subject to such a prohibition in respect of the witness; and

(v) any special measures direction made in respect of the witness, or for which an application has been made;

(c) explain why the quality of evidence given by the witness on cross-examination —

(i) is likely to be diminished if no such prohibition is imposed; and

(ii) would be likely to be improved if it were imposed; and

(d) explain why it would not be contrary to the interests of justice to impose the prohibition.

28.5. Application to discharge prohibition imposed by the court

(1) A party who wants the court to discharge a prohibition against cross-examination which the court imposed must —

(a) apply in writing, as soon as reasonably practicable after becoming aware of the grounds for doing so; and

(b) serve the application on —

(i) the court officer; and

(ii) each other party.

(2) The applicant must —

(a) explain what material circumstances have changed since the prohibition was imposed; and

(b) ask for a hearing, if the applicant wants one, and explain why it is needed.

28.6. Application containing information withheld from another party

(1) This rule applies where —

(a) an applicant serves an application for the court to impose a prohibition against cross-examination, or for the discharge of such a prohibition; and

(b) the application includes information that the applicant thinks ought not be revealed to another party.

(2) The applicant must —

(a) omit that information from the part of the application that is served on that other party;

(b) mark the other part to show that, unless the court otherwise directs, it is only for the court; and

(c) in that other part, explain why the applicant has withheld that information from that other party.

(3) Any hearing of an application to which this rule applies —

(a) must be in private, unless the court otherwise directs; and

(b) if the court so directs, may be, wholly or in part, in the absence of a party from whom information has been withheld.

(4) At any hearing of an application to which this rule applies —

(a) the general rule is that the court must consider, in the following sequence —

(i) representations first by the applicant and then by each other party, in all the parties' presence; and then

(ii) further representations by the applicant, in the absence of a party from whom information has been withheld; but

(b) the court may direct other arrangements for the hearing.

28.7. Representations in response

(1) This rule applies where a party wants to make representations about —

(a) an application for a prohibition against cross-examination;

(b) an application for the discharge of such a prohibition; or

(c) a prohibition or discharge that the court proposes on its own initiative.

(2) Such a party must —

(a) serve the representations on —

(i) the court officer; and

(ii) each other party;

(b) do so not more than 14 days after, as applicable —

(i) service of the application; or

(ii) notice of the prohibition or discharge that the court proposes; and

(c) ask for a hearing, if that party wants one, and explain why it is needed.

(3) Representations against a prohibition must explain in what respect the conditions for imposing it are not met.

(4) Representations against the discharge of a prohibition must explain why it should not be discharged.

(5) Where representations include information that the person making them thinks ought not be revealed to another party, that person must —

(a) omit that information from the representations served on that other party;

(b) mark the information to show that, unless the court otherwise directs, it is only for the court; and

(c) with that information include an explanation of why it has been withheld from that other party.

28.8. Court's power to vary requirements

(1) The court may —

(a) shorten or extend (even after it has expired) a time limit under this Part;

(b) allow an application or representations required by any of those rules to be made in a different form to one set out in this Part.

(2) A person who wants an extension of time must —

(a) apply when serving the application or representations for which it is needed; and

(b) explain the delay.

Sentence

PART 29 - SENTENCING PROCEDURES

29.1. Procedure on sentence

(1) This Part applies where the court is required to sentence a defendant.

(2) The court may exercise its power —

(a) if the defendant is an individual —

(i) to require a pre-sentence report,

(ii) to commission a medical report,

(iii) to require a statement of the defendant's assets and other financial circumstances;

(b) if the defendant is a corporation, to require such information as the court directs about the defendant's corporate structure and financial resources;

(c) to adjourn sentence pending —

(i) receipt of any such report, statement or information,

(ii) the verdict in a related case.

(3) At a sentencing hearing, the prosecutor must —

(a) summarise the prosecution case, if the sentencing court has not heard evidence or requires such a summary;

(b) identify in writing any offence that the prosecutor proposes should be taken into consideration in sentencing;

(c) provide information relevant to sentence, including —

(i) any previous conviction of the defendant, and the circumstances where relevant,

(ii) any statement of the effect of the offence on the victim, the victim's family or others;

(d) identify any other matter relevant to sentence, including —

(i) the legislation applicable,

(ii) any sentencing guidelines, or guideline cases,

(iii) aggravating and mitigating features affecting the defendant's culpability and the harm which the offence caused, was intended to cause or might foreseeably have caused, and

(iv) the effect of such of the information listed in paragraph (2) as the court may need to take into account; and

(e) if the court so directs, where no single indictment or information contains every count or charge on which the defendant is to be sentenced provide a substituted indictment or information for sentencing purposes that contains every such count and indicates —

(i) the indictment from which each such count derives,

(ii) the defendant's plea to each such count,

(iii) if a guilty plea, the date on which that plea was entered, and

(iv) otherwise, the date on which the defendant was convicted on that count.

(4) Where the defendant pleads guilty, the court may give directions for determining the facts on the basis of which sentence must be passed if —

(a) the defendant wants to be sentenced on a basis agreed with the prosecutor; or

(b) in the absence of such agreement, the defendant wants to be sentenced on the basis of different facts to those disclosed by the prosecution case.

(5) Where the court has power to order the endorsement of the defendant's driving record, or power to order the defendant to be disqualified from driving —

(a) if other legislation so permits, a defendant who wants the court not to exercise that power must introduce the evidence or information on which the defendant relies;

(b) the prosecutor may introduce evidence; and

(c) the parties may make representations about that evidence or information.

(6) Before passing sentence —

(a) the court must give the defendant an opportunity to make representations and introduce evidence relevant to sentence;

(b) where the defendant is under 18, the court may give the defendant's parents, guardian or other supporting adult, if present, such an opportunity as well; and

(c) if the court requires more information, it may exercise its power to adjourn the hearing.

(7) 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 at the earliest opportunity;

(b) when passing sentence —

(i) explain the reasons,

(ii) explain to the defendant its effect, the consequences of failing to comply with any order or pay any fine, and any power that the court has to vary or review the sentence, unless the defendant is absent or the defendant's ill-health or disorderly conduct makes such an explanation impracticable, and

(iii) give any such explanation in terms the defendant, if present, can understand (with help, if necessary); and

(c) deal with confiscation, costs, compensation, forfeiture, destruction and any behaviour order.

(8) The general rule contained in paragraph (7)(a) is subject to the court's power to defer passing sentence.

29.2. Reasons for not following usual sentencing requirements

(1) This rule applies where the court decides —

(a) not to follow a relevant sentencing guideline;

(b) not to make, where it could —

(i) a restitution order;

(ii) a compensation order;

(iii) a deprivation order;

(c) not to order, where it could —

(i) that a suspended sentence of imprisonment is to take effect;

(ii) the endorsement of the defendant's driving record; or

(iii) the defendant's disqualification from driving, for the usual minimum period or at all;

(d) to pass a lesser sentence than it otherwise would have passed because the defendant has assisted, or has agreed to assist, an investigator or prosecutor in relation to an offence.

(2) The court must explain why it has so decided, when it explains the sentence that it has passed.

(3) Where paragraph (1)(d) applies, the court must arrange for such an explanation to be given to the defendant and to the prosecutor in writing, if the court thinks that it would not be in the public interest to explain in public.

29.3. Notice of requirements of suspended sentence and community, etc. orders

(1) This rule applies where the court —

(a) makes a suspended sentence order; or

(b) imposes a requirement under —

(i) a community order;

(ii) a youth rehabilitation order; or

(iii) a suspended sentence order.

(2) The court officer must notify —

(a) the defendant of —

(i) the length of the sentence suspended by a suspended sentence order; and

(ii) the period of the suspension;

(b) the defendant and, where the defendant is under 16, an appropriate adult, of —

(i) any requirement or requirements imposed; and

(ii) the identity of any responsible officer or supervisor, and the means by which that person may be contacted;

(c) any responsible officer or supervisor of —

(i) the defendant's name, address and telephone number (if available);

(ii) the offence or offences of which the defendant was convicted; and

(iii) the requirement or requirements imposed; and

(d) the person affected, where the court imposes a requirement —

(i) for the protection of that person from the defendant; or

(ii) requiring the defendant to reside with that person.

29.4. Notification requirements

(1) This rule applies where, on a conviction, sentence or order, legislation requires the defendant —

(a) to notify information to the police; or

(b) to be included in a list.

(2) The court must tell the defendant that such requirements apply, and under what legislation.

29.5. Variation of sentence

(1) This rule applies where a court can vary or rescind a sentence or order by virtue of section 286 (Power of the court to re-open cases to rectify mistakes, etc.) or section 488 (Alteration of Supreme Court sentence) of the Criminal Procedure and Evidence Ordinance 2014.

(2) The court may exercise its power —

(a) on application by a party, or on its own initiative;

(b) at a hearing, in public or in private, or without a hearing.

(3) When exercising its power under paragraph (2) the court must announce, at a hearing in public —

(a) a decision to vary or rescind a sentence or order, or to refuse to do so; and

(b) the reasons for that decision.

(4) A party who wants the court to exercise a power to vary sentence must —

(a) apply in writing as soon as reasonably practicable after —

(i) the sentence or order that that party wants the court to vary or rescind; or

(ii) where paragraph (1)(b) applies, the other defendant's acquittal or sentencing;

(b) serve the application on —

(i) the court officer; and

(ii) each other party; and

(c) in the application —

(i) explain why the sentence should be varied or rescinded;

(ii) specify the variation that the applicant proposes; and

(iii) if the application is late, explain why.

(5) The court must not exercise its power in the defendant's absence unless —

(a) the court makes a variation —

(i) which is proposed by the defendant; or

(ii) the effect of which is that the defendant is no more severely dealt with under the sentence as varied than before; or

(b) the defendant has had an opportunity to make representations at a hearing (whether or not the defendant in fact attends).

(6) The court may extend (even after it has expired) the time limit under paragraph (4), unless the court's power to vary or rescind the sentence cannot be exercised.

(7) For the purposes of the announcement required by paragraph (3), the court need not comprise of the same member or members as the court by which the decision to be announced was made.

29.6. Application to vary or discharge a compensation order

(1) This rule applies where on application by the defendant a court can vary or discharge a compensation order.

(2) A defendant who wants the court to exercise that power must —

(a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;

(b) serve the application on the court officer;

(c) in the application, specify the order that the defendant wants the court to vary or discharge and explain (as applicable) —

(i) what civil court finding shows that the injury, loss or damage was less than it had appeared to be when the order was made;

(ii) in what circumstances the person for whose benefit the order was made has recovered the property for the loss of which it was made;

(iii) in what circumstances the defendant's means have been reduced substantially and unexpectedly, and why they seem unlikely to increase for a considerable period.

(3) The court officer must serve a copy of the application on the person for whose benefit the order was made.

(4) The court must not vary or discharge the order unless the defendant, and the person for whose benefit it was made, each has had an opportunity to make representations at a hearing (whether or not either in fact attends).

29.7. Application to remove, revoke or suspend a disqualification or restriction

(1) This rule applies where, on application by the defendant, the court can remove, revoke or suspend a disqualification or restriction included in a sentence (except a disqualification from driving).

(2) A defendant who wants the court to exercise such a power must —

(a) apply in writing, no earlier than the date on which the court can exercise the power;

(b) serve the application on the court officer; and

(c) in the application —

(i) specify the disqualification or restriction; and

(ii) explain why the defendant wants the court to remove, revoke or suspend it.

(3) The court officer must serve a copy of the application on the Chief Police Officer.

29.8. Requests for medical reports, etc.

(1) This rule applies where for sentencing purposes the court requires —

(a) a medical examination of the defendant and a report; or

(b) information about the arrangements that could be made for the defendant where the court is considering —

(i) a hospital order; or

(ii) a guardianship order.

(2) The court must —

(a) identify each issue in respect of which the court requires expert medical opinion and the legislation applicable;

(b) specify the nature of the expertise likely to be required for giving such opinion;

(c) identify each party or participant by whom a commission for such opinion must be prepared, who may be —

(i) a party (or party's representative) acting on that party's own behalf;

(ii) a party (or party's representative) acting on behalf of the court; or

(iii) the court officer acting on behalf of the court;

(d) where there are available to the court arrangements with the Department of Health and Social Services under which an assessment of a defendant's mental health may be prepared, give such directions as are needed under those arrangements for obtaining the expert report or reports required;

(e) where no such arrangements are available to the court, or they will not be used, give directions for the commissioning of an expert report or expert reports, including —

(i) such directions as can be made about supplying the expert or experts with the defendant's medical records;

(ii) directions about the other information, about the defendant and about the offence or offences alleged to have been committed by the defendant, which is to be supplied to each expert; and

(iii) directions about the arrangements that will apply for the payment of each expert;

(f) set a timetable providing for —

(i) the date by which a commission is to be delivered to each expert;

(ii) the date by which any failure to accept a commission is to be reported to the court;

(iii) the date or dates by which progress in the preparation of a report or reports is to be reviewed by the court officer; and

(iv) the date by which each report commissioned is to be received by the court; and

(g) identify the person (each person, if more than one) to whom a copy of a report is to be supplied, and by whom.

(3) A commission addressed to an expert must —

(a) identify each issue in respect of which the court requires expert medical opinion and the legislation applicable;

(b) include —

(i) the information required by the court to be supplied to the expert;

(ii) details of the timetable set by the court; and

(iii) details of the arrangements that will apply for the payment of the expert;

(c) identify the person (each person, if more than one) to whom a copy of the expert's report is to be supplied; and

(d) request confirmation that the expert from whom the opinion is sought —

(i) accepts the commission; and

(ii) will adhere to the timetable.

29.9. Information to be supplied on the making of a supervision order

(1) This rule applies where the court makes a supervision order pursuant to section 768 of the Criminal Procedure and Evidence Ordinance 2014.

(2) The court officer must, as soon as practicable, serve on (as applicable) the supervised person; the supervising officer and the person in charge of any institution where the defendant will reside —

(a) a record of the court's order;

(b) such information as the court has received that appears likely to assist in treating or otherwise dealing with the defendant, including information about —

(i) the defendant's mental condition;

(ii) the defendant's other circumstances; and

(iii) the circumstances of the offence.

29.10. Application to review sentence because of assistance given or withheld

(1) This rule applies where the Court can reduce or increase a sentence on application by a prosecutor in a case in which —

(a) since being sentenced, the defendant has assisted, or has agreed to assist, an investigator or prosecutor in relation to an offence; or

(b) since receiving a reduced sentence for agreeing to give such assistance, the defendant has failed to do so.

(2) A prosecutor who wants the court to exercise that power must —

(a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;

(b) serve the application on —

(i) the court officer; and

(ii) the defendant; and

(c) in the application —

(i) explain why the sentence should be reduced, or increased, as appropriate; and

(ii) identify any other matter relevant to the court's decision, including any sentencing guideline or guideline case.

(3) The general rule is that the application must be determined by the judge who passed the sentence, unless that judge is unavailable.

(4) The court must not determine the application in the defendant's absence unless the defendant has had an opportunity to make representations at a hearing (whether or not the defendant in fact attends).

PART 30 – BEHAVIOUR ORDERS

30.1. When this Part applies

(1) This Part applies where a court can make, vary, renew, discharge or revoke an order —

(a) as well as, or instead of, passing a sentence, or in any other circumstances in which other legislation allows the court to make such an order; and

(b) the order requires someone to do, or not do, something.

(2) A reference to a 'behaviour order' in this Part is a reference to any such order and includes, but is not limited to —

(a) child abduction warning orders;

(b) domestic abuse protection orders;

(c) female genital mutilation protection orders;

(d) forced marriage protection orders;

(e) parental directions orders;

(f) restitution orders;

(g) restraining orders;

(h) sexual harm prevention orders;

(i) sexual risk orders; and

(j) stalking protection orders.

30.2. Behaviour orders: general rules

(1) The court must not make a behaviour order unless the person to whom it is directed has had an opportunity —

(a) to consider —

(i) what order is proposed and why, and

(ii) the material in support; and

(b) to make representations at a hearing (whether or not that person in fact attends).

(2) That restriction does not apply to making an interim behaviour order, where available, but unless legislation otherwise provides such an order has no effect unless the person to whom it is directed —

(a) is present when it is made; or

(b) is handed a document recording the order.

30.3. Application for behaviour order and notice of terms of proposed order

(1) This rule applies where a party wants the court to make a behaviour order.

(2) Such a party must serve an application notice on —

(a) the court officer;

(b) any person required by legislation;

(c) the person against whom the party wants the court to make the order; and

(d) any other person whom the court directs;

as soon as practicable after the grounds for seeking such an order arise.

(3) A notice under paragraph (2) must —

(a) summarise the relevant facts;

(b) identify the material on which the party relies in support;

(c) attach a copy of any material that the party has not already served;

(d) state whether it is intended to call the maker of any statement to give oral evidence or whether it is intended to read the statement as hearsay evidence;

(e) specify the exact terms of the order that the party wants the court to make; and

(f) provide a draft of that order.

(4) A person served with a notice under paragraph (2) must —

(a) serve a reply in writing on —

(i) the court officer;

(ii) any person required by legislation;

(iii) the party who served the application notice; and

(iv) any person the court so directs.

as soon as practicable; and

(b) in the reply —

(i) state whether the application for a behaviour order is opposed and if so the grounds of opposition;

(ii) identify any material relied on in opposition and attach a copy of any such material that has not already been served;

(iii) state whether the court's permission is sought to cross-examine a person who made a statement which the applicant party wants to introduce as hearsay; and

(iv) identify the issues of credibility, reliability or consistency upon which permission is sought to cross-examine.

30.4. Evidence and measures to assist witnesses

(1) Unless legislation otherwise provides —

(a) a court shall make a behaviour order where it is satisfied that the grounds for making the order are established on the balance of probabilities;

(b) section 371 to 385 (Evidence of Bad Character) and Part 20 (Hearsay and Documentary Evidence) of the Criminal Procedure and Evidence Ordinance 2014 do not apply.

(2) The court may give a special measures direction under Part 22 (Vulnerable Witnesses) of the Criminal Procedure and Evidence Ordinance 2014 where it is in the interests of justice to give such a direction.

(3) Where the court can make a behaviour order on its own initiative, a party who wants the court to take account of material not already introduced in the proceedings must —

(a) serve notice on —

(i) the court officer, and

(ii) every other party,

as soon as practicable after the court informs the parties that the court is considering making an order on its own initiative; and

(b) in the notice, identify that material; and

(c) attach copies of the material.

30.5. Application to vary, renew, discharge or revoke behaviour order

(1) The court may vary, renew, discharge or revoke a behaviour order if —

(a) the legislation under which it is made allows the court to do so; and

(b) an application is made by one of the following —

(i) the prosecutor or party who applied for the order;

(ii) the person to whom the order is directed; or

(iii) any other person protected or affected by the order.

(2) A person applying under this rule must —

(a) apply in writing as soon as practicable after becoming aware of the grounds for doing so, explaining —

(i) what material circumstances have changed, if any, since the order was made;

(ii) why the order should be varied, renewed, discharged or revoked, by reference to the legislation under which it was made;

(iii) identify the material on which the party relies in support;

(iv) attach a copy of any material that the party has not already served;

(v) state whether it is intended to call the maker of any statement to give oral evidence or whether it is intended to read the statement as hearsay evidence;

(vi) specify the exact terms of the order that the party wants the court to make; and

(vii) provide a draft of that order.

(b) in every case, serve the application on —

(i) the court officer;

(ii) any person required by legislation;

(iii) the prosecutor or party who applied for the order (unless the prosecutor or party is the person applying under this rule);

(iv) the person to whom the order was directed; and

(v) any other person the court so directs.

(3) A person served with an application under paragraph (2) must —

(a) serve a reply in writing on —

(i) the court officer;

(ii) any person required by legislation;

(iii) the party who served the application notice; and

(iv) any person the court so directs;

no later than 14 days after the date of service of the application; and

(b) in the reply —

(i) state whether the application for a behaviour order is opposed and if so the grounds of opposition;

(ii) identify any material relied on in opposition and attach a copy of any such material that has not already been served;

(iii) state whether the court's permission is sought to cross-examine a person who made a statement which the applicant party wants to introduce as hearsay; and

(iv) identify the issues of credibility, reliability or consistency upon which permission is sought to cross-examine.

(4) The court may decide an application under this rule —

(a) at a hearing, in public or in private; or

(b) without a hearing, if the legislation under which the order was made so allows.

(5) But the court must not —

(a) dismiss an application under this rule unless the applicant has had an opportunity to make representations at a hearing (whether or not the applicant in fact attends); or

(b) allow an application under this rule unless everyone required to be served, by this rule or by the court, has had at least 14 days in which to make representations, including representations about whether there should be a hearing if none is otherwise required.

30.6. Court's power to vary requirements under this Part

Unless legislation other than the legislation under which the order was made otherwise provides, the court may —

(a) shorten a time limit or extend it (even after it has expired);

(b) allow a notice or application to be given in a different form, or presented orally; and

(c) dispense with a requirement for service (even after service was required).

Appeals

PART 31 - APPEALS TO THE SUPREME COURT

31.1. General principles and case management in appeal proceedings

(1) The general rule is that appeal proceedings are heard in public unless the court otherwise directs.

(2) Where the court makes a decision in private, it must announce its decision at a hearing in public excluding such information as is necessary to comply with a reporting or access restriction.

(3) The court and the parties have the same duties and powers as under Part 3 (Case management).

(4) The Registrar —

(a) must fulfil the duty of active case management in relation to this Part; and

(b) in fulfilling that duty may exercise any of the powers of case management under Part 3.

(5) The court or the Registrar may —

(a) shorten a time limit or extend it (even after it has expired) unless that is inconsistent with legislation other than the legislation under which the order was made;

(b) allow a party to vary any notice that that party has served;

(c) direct that a notice or application be served on any person; and

(d) allow a notice or application to be in a different form, or presented orally.

(6) A person who wants an extension of time within which to serve a notice or make an application must —

(a) apply for that extension of time when serving that notice or making that application; and

(b) give the reasons for the application for an extension of time.

(7) Where the Registrar does a thing in pursuance of this Part any party to the proceedings may apply, in writing, to the court for a review of the Registrar's action.

(8) The court may determine an application for a review of the action of the Registrar with, or without, a hearing having invited representations from the parties.

31.2. Appeals against conviction and sentence

(1) This rule applies to appeals from the Summary Court and Magistrate's Court under section 656 of the Criminal Procedure and Evidence Ordinance 2014 (Right of appeal to Supreme Court in criminal proceedings) by a defendant —

(a) against conviction;

(b) against sentence; or

(c) against conviction and sentence.

(2) The appellant must serve an appeal notice on the Registrar not more than 21 days after the day on which the court sentences or otherwise deals with the appellant.

(3) An appeal notice must —

(a) specify —

(i) the conviction;

(ii) the sentence; or

(iii) the conviction and sentence the appellant wants to appeal;

(b) identify each ground of appeal on which the appellant relies;

(c) identify the transcripts and evidence that the appellant thinks the court will need, if the appellant wants to appeal against a conviction;

(d) identify the relevant sentencing powers, if sentence is in issue;

(e) attach the pre-sentence report, if any, used at the time of sentence and state whether the appellant seeks the updating of the report;

(f) include or attach any application for the following, with reasons —

(i) an extension of time within which to serve the appeal notice;

(ii) bail pending appeal;

(iii) the introduction of new evidence, including hearsay evidence and evidence of bad character;

(iv) an order requiring a witness to attend court;

(v) a direction for the giving of evidence by the appellant; or

(vi) the suspension of any disqualification imposed, or order made, in the case, where the court can order such a suspension pending appeal;

(g) identify any other document or thing that the appellant thinks the court will need to decide the appeal;

(i) specify a time estimate for the hearing of the case; and

(j) provide any issues of availability for listing for hearing of the appeal.

(4) The grounds of appeal must —

(a) include in no more than the first two pages a summary of the grounds that makes what then follows easy to understand;

(b) in each ground of appeal identify the event or decision to which that ground relates;

(c) in each ground of appeal summarise the facts relevant to that ground, but only to the extent necessary to make clear what is in issue;

(d) concisely outline each argument in support of each ground;

(e) number each ground consecutively, if there is more than one;

(f) identify any relevant authority and —

(i) state the proposition of law that the authority demonstrates, and

(ii) identify the parts of the authority that support that proposition.

(5) The Registrar must serve an appeal notice on —

(a) the prosecutor; and

(b) any other party the court so directs.

(6) A party served with an appeal notice may serve a respondent's notice, and must do so if—

(a) that party wants to make representations to the court; or

(b) the court or the Registrar so directs.

(7) Such a party must serve the respondent's notice on —

(a) the appellant;

(b) the Registrar; and

(c) any other party on whom the Registrar served the appeal notice.

(8) Such a party must serve the respondent's notice not more than 14 days after the Registrar serves —

(a) the appeal notice, or

(b) a direction to do so.

(9) The respondent's notice must —

(a) give the date on which the respondent was served with the appeal notice;

(b) identify each ground of opposition on which the respondent relies, numbering them consecutively (if there is more than one), concisely outlining each argument in support and identifying the ground of appeal to which each relates;

(c) identify the relevant sentencing powers, if sentence is in issue;

(d) summarise any relevant facts not already summarised in the appeal notice;

(e) identify any relevant authorities;

(f) include or attach any application for the following, with reasons —

(i) an extension of time within which to serve the respondent's notice;

(ii) opposing bail pending appeal;

(iii) opposing the introduction of new evidence by the appellant;

(iv) the introduction of new evidence, including hearsay evidence and evidence of bad character;

(v) an order requiring a witness to attend court;

(vi) a direction for special measures for a witness; and

(vii) opposing the suspension of any disqualification imposed, or order made, in the case, where the court can order such a suspension pending appeal.

(g) identify any other document or thing that the respondent thinks the court will need to decide the appeal;

(h) specify a time estimate for the hearing of the case; and

(i) provide any issues of availability for listing for hearing of the appeal.

(10) A party who wants the court to grant permission to introduce new evidence, call evidence or to order a witness to attend to be questioned must —

(a) identify the proposed evidence or witness;

(b) explain —

(i) what issue the evidence goes towards;

(ii) why the evidence is capable of belief;

(iii) if applicable, why that evidence may provide a ground for allowing the appeal;

(iv) on what basis that evidence would have been admissible in the proceedings which are the subject of the appeal; and

(v) why that evidence was not introduced in those proceedings; and

(c) where the court can exercise a power to grant special measures, provide any information that the court may need to assess —

(i) the measure or measures likely to maximise so far as practicable the quality of the witness' evidence, and

(ii) the witness' own views.

(11) Where the court orders a witness to attend to be questioned the witness must attend the appeal unless the court otherwise directs.

(12) Where the court orders a witness to attend to be questioned before an examiner on the court's behalf, the court must identify the examiner and may give directions about —

(a) the time and place, or times and places, at which that questioning must be carried out;

(b) the manner in which that questioning must be carried out, in particular as to —

(i) the service of any report, statement or questionnaire in preparation for the questioning;

(ii) the sequence in which the parties may ask questions; and

(iii) if more than one witness is to be questioned, the sequence in which those witnesses may be questioned; and

(c) the manner in which, and when, a record of the questioning must be submitted to the court.

(13) Where the court orders the questioning of a witness before an examiner, the court may delegate to that examiner the giving of directions under paragraph (12)(a), (b) and (c).

31.3. Prosecution appeal in respect of adverse rulings and sentence

(1) This rule applies where a prosecutor wants to appeal under section 671 (Prosecution appeal from the Magistrate's Court in respect of rulings and sentence) of the Criminal Procedure and Evidence Ordinance 2014.

(2) A reference to an 'appellant' in this rule is a reference to such a prosecutor.

(3) An appellant must inform the Magistrate's Court of the intention to appeal an adverse ruling in accordance with section 671 of the Ordinance.

(4) An appellant must serve an appeal notice on —

(a) the Registrar;

(b) every other party in relation to an appeal in respect of a ruling; and

(c) every defendant directly affected in relation to an appeal in respect of sentence.

(5) The appeal notice must —

(a) specify each ruling or sentence against which the appellant wants to appeal;

(b) identify each ground of appeal on which the appellant relies, numbering them consecutively (if there is more than one) and concisely outlining each argument in support;

(c) summarise the relevant facts;

(d) identify any relevant authorities; and

(e) attach the material the appellant thinks the court will need to decide the appeal;

(f) specify a time estimate for the hearing of the case; and

(g) provide any issues of availability for listing for hearing of the appeal.

(6) A defendant on whom an appellant serves an appeal notice may serve a respondent's notice, and must do so if —

(a) the defendant wants to make representations to the court; or

(b) the court so directs.

(7) Such a defendant must serve the respondent's notice on —

(a) the Registrar;

(b) the appellant; and

(c) any other defendant on whom the appellant served the appeal notice.

(8) Such a defendant must serve the respondent's notice not later than 14 days after the appellant serves the appeal notice.

(9) The respondent's notice must —

(a) give the date on which the respondent was served with the appeal notice;

(b) identify each ground of opposition on which the respondent relies, numbering them consecutively (if there is more than one), concisely outlining each argument in support and identifying the ground of appeal to which each relates;

(c) summarise any relevant facts not already summarised in the appeal notice;

(d) identify any relevant authorities;

(e) identify any other document or thing that the respondent thinks the court will need to decide the appeal;

(f) specify a time estimate for the hearing of the case; and

(g) provide any issues of availability for listing for hearing of the appeal.

31.4. Prosecution appeal in respect of public interest ruling

(1) This rule applies to prosecution appeals against a public interest ruling.

(2) A reference to an 'appellant' in this rule is a reference to such a prosecutor.

(3) The appellant must not serve on any defendant an appeal notice if the appellant thinks that to do so in effect would reveal something that the appellant thinks ought not be disclosed.

(4) The appellant must not include in an appeal notice —

(a) the material that was the subject of the ruling; or

(b) any indication of what sort of material it is;

if the appellant thinks that to do so in effect would reveal something that the appellant thinks ought not be disclosed.

(5) The appellant must serve on the Registrar with the appeal notice an annex —

(a) marked to show that its contents are only for the court and the Registrar;

(b) containing whatever the appellant has omitted from the appeal notice, with reasons; and

(c) if relevant, explaining why the appellant has not served the appeal notice.

31.5. Appeals against preliminary rulings

(1) This Part applies where a party wants to appeal under section 250 (Appeals against rulings) of the Criminal Procedure and Evidence Ordinance 2014.

(2) An appellant who wants to appeal under this rule must seek leave to appeal and —

(a) apply orally, with reasons, immediately after the ruling against which the appellant wants to appeal; or

(b) apply in writing and serve the application on —

(i) the appropriate court officer; and

(ii) every other party;

not more than 2 business days after that ruling.

(3) An appellant must serve an appeal notice on —

(a) the appropriate court officer; and

(b) every other party.

(4) The appellant must serve the appeal notice not more than 7 days after the —

(a) ruling against which the appellant wants to appeal; or

(b) the day on which leave to appeal is granted or refused.

(5) The appeal notice must —

(a) state whether leave to appeal has been granted;

(b) include an application for leave to appeal where leave has been refused in the court below;

(c) specify each ruling against which the appellant wants to appeal;

(d) identify each ground of appeal on which the appellant relies, numbering them consecutively (if there is more than one) and concisely outlining each argument in support;

(e) summarise the relevant facts;

(f) identify any relevant authorities; and

(g) attach the material that the appellant thinks the court will need to decide the appeal.

(6) A party on whom an appellant serves an appeal notice may serve a respondent's notice, and must do so if —

(a) that party wants to make representations to the court; or

(b) the court so directs.

(7) Such a party must serve the respondent's notice on —

(a) the appropriate court officer;

(b) the appellant; and

(c) every other party.

(8) Such a party must serve the respondent's notice not more than 7 days after —

(a) the appellant serves the appeal notice; or

(b) a direction to do so.

(9) The respondent's notice must —

(a) give the date on which the respondent was served with the appeal notice;

(b) identify each ground of opposition on which the respondent relies, numbering them consecutively (if there is more than one), concisely outlining each argument in support and identifying the ground of appeal to which each relates;

(c) summarise any relevant facts not already summarised in the appeal notice;

(d) identify any relevant authorities; and

(e) attach the material that the appellant thinks the court will need to decide the appeal.

(10) A court may determine an application for leave without a hearing having first invited representations from the parties.

(11) A court may determine an application for leave at the same time it considers a substantive appeal.

31.6. Appeal by case stated

(1) This rule applies where a person wants to appeal to the Supreme Court by case stated under section 672 of the Criminal Procedure and Evidence Ordinance 2014.

(2) A party who wants the court to state a case for the opinion of the Supreme Court must—

(a) apply in writing, not more than 21 days after the decision against which the applicant wants to appeal; and

(b) serve the application on —

(i) the court officer; and

(ii) each other party.

(3) The application must —

(a) specify the decision in issue;

(b) specify the proposed question or questions of law or jurisdiction on which the opinion of the Supreme Court will be asked;

(c) indicate the proposed grounds of appeal; and

(d) include or attach any application for the following, with reasons —

(i) an extension of time within which to apply to state a case;

(ii) bail pending appeal; or

(iii) the suspension of any disqualification imposed in the case, where the court can order such a suspension pending appeal.

(4) A party who wants to make representations about the application must —

(a) serve the representations on —

(i) the court officer; and

(ii) each other party; and

(b) do so not more than 14 days after service of the application.

(5) The court may determine the application without a hearing.

(6) If the court decides not to state a case, the court officer must serve on each party —

(a) notice of that decision; and

(b) the court's written reasons for that decision.

(7) Where the court decides to state a case for the opinion of the Supreme Court the court officer must serve on each party notice of —

(a) the decision to state a case; and

(b) any recognisance ordered by the court.

(8) Unless the court otherwise directs, not more than 21 days after the court's decision to state a case the court officer must serve a draft case on each party.

(9) The draft case must —

(a) specify the decision in issue;

(b) specify the question(s) of law or jurisdiction on which the opinion of the Supreme Court will be asked;

(c) include a succinct summary of —

(i) the nature and history of the proceedings;

(ii) the court's relevant findings of fact; and

(iii) the relevant contentions of the parties; and

(d) if a question is whether there was sufficient evidence on which the court reasonably could reach a finding of fact —

(i) specify that finding; and

(ii) include a summary of the evidence on which the court reached that finding.

(10) Except to the extent that paragraph (9)(d) requires, the draft case must not include an account of the evidence received by the court.

(11) A party who wants to make representations about the content of the draft case, or to propose a revised draft, must —

(a) serve the representations, or revised draft, on —

(i) the court officer; and

(ii) each other party; and

(b) do so not more than 21 days after service of the draft case.

(12) The court must state the case not more than 21 days after the time for service of representations under paragraph (10) has expired.

(13) A case stated for the opinion of the Supreme Court must comply with this rule.

(14) Where an application to state a case is made to the Summary Court the Clerk of the Summary Court must —

(a) give the court legal advice; and

(b) if the court so requires, assist it by —

(i) preparing and amending the draft case; and

(ii) completing the case stated.

(15) A court may shorten or extend (even after it has expired) a time limit under this rule.

(16) A person who wants an extension of time must —

(a) apply when serving the application, representations or draft case for which it is needed; and

(b) explain the delay.

31.7. Procedure at appeal hearing

(1) An appeal under this Part will be heard in the following sequence, unless the court otherwise directs —

(a) the appellant will be entitled to make representations and introduce any evidence for which permission has been granted; and

(b) the respondent will be entitled to make representations in reply and introduce any evidence for which permission has been granted; and

(c) the appellant will have a right to reply to any new matter raised by the respondent.

(2) Without the leave of the court the parties will not be allowed to address the court on any matter not set out in the appeal notice or the respondent's notice.

31.8. Applications relating to bail, disqualification or orders pending appeal

(1) This rule applies to all appeal proceedings under this Part where a party —

(a) wants to make an application to the court about bail pending appeal or retrial; or

(b) wants to apply to the court in relation to a disqualification or order pending appeal or retrial.

(2) That party must serve an application on —

(a) the Registrar, unless the application is with the appeal notice; and

(b) the other parties.

(3) The court must not decide such an application without giving the other parties an opportunity to make representations, including, in the case of a bail application, representations about any condition or surety proposed in the application.

(4) The court may grant a person bail pending appeal or retrial —

(a) subject to any condition that must be met before that person is released; and

(b) may direct how such a condition is to be met.

(5) Where —

(a) the court grants a party bail pending appeal or retrial; and

(b) the bail is subject to a condition that that party provides a surety to guarantee that they will surrender to custody as required; but

(c) that party does not surrender to custody as required;

the Registrar must serve notice on —

(d) the surety; and

(e) the prosecutor;

of the hearing at which the court may order the forfeiture of the recognisance given by that surety.

(6) The court must not forfeit a surety's recognisance —

(a) less than 7 days after the Registrar serves notice under paragraph (5); and

(b) without giving the surety an opportunity to make representations at a hearing.

31.9. Loss of time order

(1) In accordance with section 564 of the Criminal Procedure and Evidence Ordinance 2014 the court may order that any part of a custodial sentence served pending appeal will not be reckoned as part of the term of any sentence to which the appellant is for the time being subject.

(2) The court will not make a loss of time order unless the appellant has been given an opportunity to make representations at a hearing.

31.10. Abandonment

(1) An appeal under this Part may be abandoned at any time before the appeal hearing if the appellant gives notice in writing to the Registrar.

(2) Upon receiving such a notice the Registrar shall notify any other party to the appeal and the appeal will be treated as if it had been heard and dismissed.

(3) If, as a result of abandonment, a party seeks an order for costs they must make an application to the court in writing no later than 14 days after the date of the notice of abandonment sent by the Registrar and shall serve any other party to the appeal with a copy of the application.

Made 28 November 2025

JAMES THOMAS LEWIS K.C.,
Chief Justice.

Published by the Attorney General's Chambers, Stanley, Falkland Islands

To access **Falkland Islands Laws** online visit: www.legislation.gov.fk
To access **Falkland Islands Gazettes** online visit: www.fig.gov.fk or www.nationalarchives.gov.fk