



BRITISH ANTARCTIC TERRITORY

# THE CRIMINAL PROCEDURE ORDINANCE 2020

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**THE BRITISH ANTARCTIC TERRITORY**  
**THE CRIMINAL PROCEDURE ORDINANCE 2020**

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# BRITISH ANTARCTIC TERRITORY

Enacted by the Commissioner,  
Ben Merrick,  
XX XXXX 2020

## Ordinance No. 3 of 2020

### THE CRIMINAL PROCEDURE ORDINANCE 2020

*AN ORDINANCE to provide for criminal procedure in the courts of the Territory.*

#### PART 1

##### PRELIMINARIES

Citation and commencement.

1. This Ordinance may be cited as the Criminal Procedure Ordinance 2020 and shall come into force on **XXXX.**

Definitions.

2. In this Ordinance unless otherwise stated or the context otherwise requires –

“Administration” means the Administration of the Government of the Territory;

“Administrator” means the Administrator of the Government of the Territory and includes any person for the time being lawfully performing the functions of the office of Administrator;

“authorised police officer” means a police officer who has been authorised in accordance with section 3(1) of the Police Powers Ordinance 2020;

“Commissioner” means the Commissioner of the Territory and includes any person for the time being lawfully performing the functions of the office of Commissioner;

“indictable offence” shall have the meaning assigned to it by Schedule 1 of the Interpretation Act 1978, in the manner that schedule applies to the

Territory in accordance with section 5 of the Administration of Justice Ordinance 2020;

“legal practitioner” means a person who has been licenced to appear as counsel, or practise as a solicitor, pursuant to section 42 of the Administration of Justice Ordinance 2020;

“health care professional” means a person who has been engaged by the British Antarctic Survey to provide, as part or all of their duties, medical services in the Territory;

“offence triable either way” shall have the meaning assigned to it by Schedule 1 of the Interpretation Act 1978, in the manner that schedule applies to the Territory in accordance with section 5 of the Administration of Justice Ordinance 2020;

“place” includes any building or part of a building, any vehicle, vessel, aircraft or hovercraft and any other place whatsoever;

“place of lawful custody” means a place that has been designated as a place of lawful custody in accordance with section 10;

“police officer” means a member of the police force;

“police force” means the Royal Falkland Islands Police established under the Falkland Islands’ Police Ordinance 2000;

“Summary Court” means a court constituted by section 27 of the Administration of Justice Ordinance 2020;

“summary offence” shall have the meaning assigned to it by Schedule 1 of the Interpretation Act 1978, in the manner that schedule applies to the Territory in accordance with section 5 of the Administration of Justice Ordinance 2020, and

“the Territory” means the British Antarctic Territory as defined by section 2 of the British Antarctic Territory Order 1989.

Qualifying and  
Summary Court  
offences.

**3. (1)** An information alleging the commission of a qualifying offence may either be laid before –

(a) a court in the Falkland Islands, in accordance with section 5(3) of the Falkland Islands Courts (Overseas Jurisdiction) Order 1989, following the procedures set out in Part 2, or

(b) the Magistrate’s Court, following the procedures set out in Part 4.

(2) An information alleging the commission of a Summary Court offence may only be laid before the Summary Court, in accordance with the provisions contained within Part 3.

(3) For the purposes of this Ordinance –

(a) “qualifying offence” means –

(i) any indictable offence or offence triable either way;

(ii) any summary offence punishable with imprisonment, not being imprisonment in default of payment of a fine, and

(iii) any summary offence which is only punishable with payment of a fine, where the maximum fine that can be imposed for that offence exceeds the statutory maximum of the Summary Court.

(b) “Summary Court offence” means any summary offence which is not a qualifying offence.

## **PART 2**

### **QUALIFYING OFFENCES – EXPEDITED PROCEDURES**

Definitions for  
this Part.

**4.** (1) For the purposes of this Part, the word “suspect”, when used as a noun, means a person who has been arrested –

(a) by an authorised police officer in accordance with section 40 of the Police Powers Ordinance 2020, or

(b) by a person who is not an authorised police officer in accordance with section 41 of the Police Powers Ordinance 2020,

and neither of the criteria set out in subsection (2) apply.

(2) A person is not to be regarded as a suspect if –

(a) a magistrate has made a determination pursuant to section 6(3) or 9(3), or

(b) an authorised police officer has made a determination in accordance with section 49(2) of the Police Powers Ordinance 2020.

(3) For the purposes of this Part, the word “magistrate” shall be construed as referring to a magistrate sitting in chambers, in a Summary Court.

***Process following arrest by a person who is not an authorised police officer***

The determination after arrest by a person who is not an authorised police officer.

Process in making and applying the section 5 determination.

**5.** Where a suspect is taken before a magistrate pursuant to section 41(5) of the Police Powers Ordinance 2020 (following arrest by a person who is not an authorised police officer), the magistrate shall determine whether the person who conducted the arrest has reasonable grounds for suspicion that the suspect has committed a qualifying offence.

**6.** (1) Before making the determination in accordance with section 5, the magistrate –

(a) shall hear oral representations from the person who has conducted the arrest, and

(b) may hear oral representation from the suspect, but

the magistrate may only hear oral representations from the suspect if the suspect is given an oral warning by the magistrate to the effect that –

(i) the suspect need not say anything;

(ii) that anything the suspect may say could be recorded and may be given in evidence.

(2) If the magistrate determines that the person who conducted the arrest has reasonable grounds for suspicion that the suspect has committed a qualifying offence, the magistrate shall –

(a) cause communication to be made with the Chief Constable of the Falkland Islands Police Force, to request the attendance within the Territory of an authorised police officer, and

(b) ensure that the Administrator and the Attorney General are notified of that decision, and

(c) subject to sections 11, 12 and 13, either –

(i) remand the suspect in a place of lawful custody, or

(ii) release the suspect, with or without conditions,

pending the arrival of an authorised police officer.

(3) If the magistrate determines that the person who conducted the arrest does not have reasonable grounds for suspicion that the suspect has committed a qualifying offence, the magistrate shall –



(a) release the suspect, and

(b) ensure that the Administrator and the Attorney General are notified of that decision.

Handing over the suspect.

7. A suspect who has been remanded in a place of lawful custody in accordance with section 6(2)(c)(i) shall be handed over to the care and custody of an authorised police officer as soon as reasonably practicable.

***Process following arrest and production by an authorised police officer***

The determination after arrest by a person who is an authorised police officer.

8. Where a suspect is taken before a magistrate by an authorised police officer pursuant to section 49(3) of the Police Powers Ordinance 2020, the magistrate shall determine whether the authorised police officer has reasonable grounds for suspicion that the suspect has committed a qualifying offence.

Process in making and applying the section 8 determination.

9. (1) Before making the determination in accordance with section 8, the magistrate –

(a) shall hear oral representations from the authorised police officer, and

(b) may hear oral representation from the suspect,

but the magistrate may only hear oral representations from the suspect if the suspect is given an oral warning by the magistrate to the effect that –

(i) the suspect need not say anything,

(ii) that anything the suspect may say could be recorded and may be given in evidence.

(2) If the magistrate determines that the authorised police officer has reasonable grounds for suspicion that the suspect has committed a qualifying offence, the magistrate shall –

(a) order that the suspect shall be handed over to the care and custody of an authorised police officer for transfer from the Territory to the Falkland Islands for the investigation to continue, and

(b) ensure that the Administrator and the Attorney General are notified of that decision.

(3) If the magistrate determines that the authorised police officer –

(a) has reasonable grounds for suspicion that the suspect has committed a Summary Court offence only, or

(b) does not have reasonable grounds for suspicion that the suspect has committed either a qualifying, or Summary Court offence,

the magistrate shall –

(i) release the suspect, and

(ii) ensure that the Administrator and the Attorney General are notified of that decision.

(4) Any order made pursuant to subsection (2)(a) –

(a) need not be in a specified form, but shall be in writing, signed by the magistrate, and a copy thereof shall be handed to an authorised police officer before the suspect is transferred from the Territory;

(b) will not affect any of the court's powers which may be exercisable under the Immigration Ordinance 2020.

### *Place of lawful custody*

Designation of places of lawful custody and connected matters.

**10.** (1) For the purposes of this Ordinance and the Police Powers Ordinance 2020, a magistrate may by order in writing designate any place as being a place of lawful custody.

(2) In designating a place of lawful custody, a magistrate shall decide upon a location which, in all the circumstances, is most appropriate for ensuring that –

(a) the suspect's freedom of movement is suitably contained;

(b) the suspect is prevented from committing any criminal offences;

(c) the safety and wellbeing of the suspect is preserved, and

(d) the safety of any other person is maintained.

(3) The magistrate may, at any time and for any reason, amend an order designating a place of lawful custody.

(4) Where an authorised police officer arrives in the Territory, a magistrate who has made an order designating a place of lawful custody shall cause a copy of that order to be handed to the authorised police officer as soon as reasonably practicable.

(5) Where any suspect is held in a place of lawful custody, the magistrate shall ensure that the suspect –

- (a) is suitably monitored;
- (b) has sufficient food and drink;
- (c) has appropriate medication, as determined by a health care professional;
- (d) has access to suitable toiletry facilities;
- (e) may take suitable exercise, and
- (f) has the ability, subject to sections 14 and 15, to contact a legal adviser.

***Remand to a place of lawful custody, or imposition of conditions upon release***

Hearing oral representations.

**11.** Before making a decision in accordance with section 6(2)(c)(i) or (ii), as to whether a suspect will be remanded in a place of lawful custody, or be released with or without conditions, the magistrate shall hear oral representations from –

- (a) the person who conducted the arrest of the suspect;
- (b) the suspect, and
- (c) any other person who may be able to offer relevant information,

but the magistrate may only hear oral representations from the suspect if the suspect is given an oral warning by the magistrate to the effect that –

- (i) the suspect need not say anything,
- (ii) that anything the suspect may say could be recorded and may be given in evidence.

Remanding to a place of lawful custody.

**12.** (1) The magistrate may only remand a suspect to a place of lawful custody if –

- (a) the magistrate is satisfied, having regard to the considerations specified in subsection (2), that there are substantial grounds for believing that, if released (whether subject to conditions or not), the suspect would –

(i) fail to surrender to custody, or

(ii) commit an offence pending the arrival of an authorised police officer pursuant to section 6(2)(c)(ii), or

(iii) interfere with witnesses or otherwise obstruct the course of justice, or

(b) the magistrate is satisfied that the suspect should be kept in a place of lawful custody for his or her own protection, or

(c) the suspect is already in custody in pursuance of the sentence of any court, or

(d) the magistrate is satisfied that it has not been practicable, for want of time since the arrest of the suspect, to obtain sufficient information for the purpose of taking the decisions required by this subsection, or

(e) having been released, with or without conditions in accordance with section 6(2)(c)(ii), the suspect has been arrested for a further offence.

(2) In reaching his or her conclusions for the purposes of subsection (1)(a), the magistrate shall have regard to such of the following considerations as appear to him or her to be relevant, that is to say –

(a) the nature and seriousness of the offence and the probable method of dealing with the suspect for it;

(b) the character, antecedents and associations of the suspect;

(c) the suspect's record as respects the fulfilment of the suspect's obligations following a previous release pursuant to section 6(2)(c)(ii);

(d) the strength of the evidence of the suspect having committed the offence,

as well as to any other considerations that appear to be relevant.

Release with conditions.

**13.** (1) Where a magistrate releases a suspect pursuant to section 6(2)(c)(ii), the magistrate may impose any one or more conditions if it appears to the magistrate to be necessary to secure that the suspect –

(a) surrenders to the care and custody of an authorised police officer,

(b) does not commit an offence while released, or

(c) does not interfere with witnesses or otherwise obstruct the course of justice.

(2) Where a magistrate has released a suspect in accordance with section 6(2)(c)(ii), the magistrate may, on application by the suspect or on that person's behalf or by any other person, vary the conditions of release or impose conditions upon a release which has been granted unconditionally.

(3) Conditions may only be varied or newly imposed pursuant to subsection (2), if –

(a) those conditions could have been imposed in accordance with subsection (1), and

(b) the criteria set out in subsection (4) applies.

(4) A condition on release may be imposed under subsection (1) only if it appears to the magistrate necessary to impose it to secure any of the objectives specified in that subsection.

### *Legal advice*

Right to legal advice.

**14.** (1) Every suspect who has been –

(a) remanded to a place of lawful custody pursuant to section 6(2)(c)(i), or

(b) released with or without conditions pursuant to section 6(2)(c)(ii);

is entitled, if the person so requests, to consult a legal practitioner at any time.

(2) Consultation with a legal practitioner –

(a) is private; and

(b) may be conducted by telephone, or some other form of electronic communication device.

(3) Subject to subsection (4), a request under subsection (1), and the time of its making, must when it is made be recorded in the custody record.

(4) If a person makes such a request, the person must be permitted to consult a legal practitioner as soon as practicable, except to the extent that delay is permitted by this section.

(5) Delay in compliance with a request to consult a legal practitioner is only permitted –

- (a) in the case of a person where subsection (1)(a) applies, and
- (b) if a police officer of the rank of inspector or above, who may or may not be an authorised police officer, authorises it, and
- (c) if the police officer may authorise delay in accordance with subsection (6).

(6) A police officer may only authorise delay in complying with a request –

(a) if the officer has reasonable grounds for believing that complying with the request will —

(i) lead to interference with or physical injury to other persons;

(ii) lead to interference with or harm to evidence connected with a qualifying offence;

(iii) lead to the alerting of other persons suspected of having committed such an offence but not yet arrested for it;

(iv) hinder the recovery of any property obtained as a result of such an offence, or

(b) if the officer has reasonable grounds for believing that –

(i) the suspect has benefited from that person's criminal conduct; and

(ii) the recovery of the value of the property constituting the benefit will be hindered by the exercise of the rights in subsection (1).

(7) For the purposes of subsection (6), the question whether a suspect has benefited from that person's criminal conduct is to be decided in accordance with the Proceeds of Crime Act 2002, as it applies to the Territory.

(8) If delay in complying with a request is permitted by this section –

(a) the suspect must as soon as practicable be told the reason for it;

(b) the reason must be noted, for inclusion on the suspect's custody record as soon as possible after the suspect has been handed over to an authorised police officer pursuant to section 7;

(c) there must be no further delay once the reason for permitting delay ceases to subsist.

Provision of legal advice – supplementary.

**15.** (1) For the purposes of section 14(1) and section 60(1) of the Police Powers Ordinance 2020, the words “to consult” may involve the exchange of words or text, either in person or by transmissions of voice or data through a telecommunications system.

(2) If a legal practitioner wishes to travel to the Territory –

(a) usual immigration controls will apply;

(b) any fees or other charges to be incurred in such travel shall be paid in advance;

(c) any fees or other charges to be incurred for accommodation in the Territory shall be paid in advance; and

(d) the legal practitioner shall provide the Administration of the Territory in advance with proof of adequate personal insurance that covers medical evacuation and repatriation.

(3) Nothing in this section shall require the immigration authorities of the Territory to permit the entry of a legal practitioner into the Territory.

(4) Nothing in this section shall require the Commissioner, the Administration of the Territory, or the police force to provide funds for or towards any fees or other charges incurred by the legal practitioner, but the Commissioner may, in the interests of justice, and in the Commissioner’s entire discretion, allow for part or all of any such fees or other charges to be paid from the Government Fund.

### **PART 3**

#### **SUMMARY COURT OFFENCES**

##### ***Institution of proceedings***

Definitions for this Part.

**16.** (1) For the purposes of sections 17, 18 and 19, the word “offence” means a Summary Court offence only.

(2) For the purposes of this Part –

(a) “court” means the Summary Court;

(b) “accused person” means a person who is the subject of an information laid pursuant to section 18;

(c) “magistrate” means a magistrate sitting in a Summary Court, and

(d) “summary proceedings” means proceedings before a Summary Court.

No technicalities in commencement of proceedings.

**17.** Where an information is to be laid alleging that a person has committed an offence, it shall not be necessary, in any information or summons, to specify in technical terms, or by reference to the provisions of a written law creating the offence, which particular offence he or she is alleged to have committed so long as the material facts of the alleged offence are clearly indicated and it is clearly alleged that, by reason of those facts, he or she has contravened the law of the Territory.

Method of commencing proceedings.

**18.** Proceedings against a person may be commenced by the laying of an information before a court that the person has, or is suspected of having, committed an offence, followed by the issuing by the court of a summons requiring that person to appear, at a time and place specified therein, before that court, or before another court so specified, to answer to the information.

Issuance of a summons.

**19.** A court before which an information has been laid may, in accordance with section 18, issue a summons to the accused person irrespective of whether the offence alleged in the information was committed within the area, if any, specified in the instrument by which the magistrate holding the court was appointed and irrespective of whether the accused person resides or is in that area.

Failure to answer to a summons.

**20.** An accused person who fails without reasonable excuse to appear at a time and place specified in a summons commits an offence punishable by a fine not exceeding £10,000.

Procedure where court considers that a qualifying offence may have been committed.

**21.** (1) If, at any stage of the proceedings, it appears to the court that the accused person may have committed a qualifying offence, the court shall –

(a) adjourn the proceedings;

(b) cause communication to be made with the Chief Constable of the Falkland Islands Police Force, to request the attendance within the Territory of an authorised police officer, and

(c) ensure that the Administrator and the Attorney General are notified of that decision.

(2) Where proceedings are adjourned pursuant to subsection (1), the court shall produce a record containing –

(a) all relevant documentation generated by the proceedings, and

(b) a summary of the reasons for considering that the accused person has committed a qualifying offence.



(3) The record produced by the court shall be passed to the authorised police officer upon his or her arrival in the Territory.

(4) Proceedings which are adjourned pursuant to subsection (1)(a) may not be recommenced without the consent of the Attorney General.

### *Summary trial of information*

Procedure in trial: general provisions.

**22.** (1) The proceedings shall take place in open court except as expressly authorised by any law for the time being in force in the Territory or except where it appears to the court as respects the whole or any part of the proceedings that the ends of justice would not be served by the proceedings (or that part of them) taking place in open court.

(2) If the accused person appears –

(a) the court shall read out the substance of the information to the accused person, and

(b) the accused person may thereafter plead either guilty or not guilty.

(3) Where the accused person does not plead guilty, or does not appear and the court decides, in accordance with section 26, to proceed in the absence of the accused person, the following procedure (so far as applicable) shall be observed –

(a) the prosecutor shall call the evidence for the prosecution, and before doing so may address the court;

(b) at the conclusion of the evidence for the prosecution, the defence may address the court, whether or not it afterwards calls evidence;

(c) whether or not the defence has addressed the court, it may then call evidence;

(d) at the conclusion of the evidence, if any, for the defence, the prosecutor may call evidence to rebut that evidence;

(e) at the conclusion of the evidence for the defence and the evidence, if any, in rebuttal, the defence may address the court if it has not already done so;

(f) either the prosecutor or the defence may, with the leave of the court, address the court a second time, but where the court grants leave to one it shall not refuse leave to the other;

(g) where both the prosecutor and the defence address the court twice, the prosecutor shall address the court for the second time before the defence does so;

(h) the court shall then either convict the accused person or dismiss the information.

(4) Where the accused person pleads guilty, the court may convict him or her without hearing evidence but it may hear evidence if it so wishes.

(5) The magistrate holding the court shall take, or cause to be taken, a note of the evidence of each witness examined by the court (which note may be in the form of questions and answers or in the form of a narrative or partly in the one form and partly in the other) and that note shall be signed by the magistrate and form part of the record of the proceedings.

Adjournment of trial: general provisions.

**23.** (1) The court may at any time, whether before or after beginning to try an information and whether or not for the purposes of section 26, adjourn the trial and, when it does so, it may, if it thinks fit, remand the accused on bail with conditions in accordance with section 24.

(2) If the court adjourns the trial, it shall, when doing so, either fix the time and place at which the trial is to be resumed or leave the time and place to be determined later by the court; but the trial shall not be resumed at the time and place so determined unless the court is satisfied that both the prosecutor and the defence have had adequate notice thereof.

(3) The court may, for the purpose of enabling enquiries to be made or for determining the most suitable sentence or method of dealing with the case, exercise its power to adjourn after convicting the accused person; but, if it does so, the adjournment shall be for not more than four weeks at a time.

Remand on bail with conditions.

**24.** (1) Where a magistrate adjourns a trial in accordance with section 23, the magistrate may remand the accused person on bail with any one or more conditions if it appears to the magistrate to be necessary to secure that the accused person –

(a) does not commit an offence while released, or

(b) does not interfere with witnesses or otherwise obstruct the course of justice.

(2) Where the magistrate has remanded an accused person on bail with conditions, the magistrate may, on application by the accused person, or on that person's behalf or by any other person, vary the conditions of bail or impose conditions upon a remand on bail which has been granted unconditionally.

(3) Conditions may only be varied or newly imposed pursuant to subsection (2), if –

(a) those conditions could have been imposed in accordance with subsection (1), and

(b) the criteria set out in subsection (4) applies.

(4) A condition on remand may be imposed under subsection (1) only if it appears to the magistrate necessary to impose it to secure any of the objectives specified in that subsection.

Court's powers on convicting an accused person.

**25.** (1) A court may, on convicting a person of any offence, pass such sentence or make such order in respect of that person as may be provided in that behalf by any law for the time being in force in the Territory, save that any fine or other pecuniary penalty which it imposes on that person in respect of any one offence, shall not exceed the statutory maximum, in such sum as was applicable at the time when the offence was committed.

(2) In subsection (1), "the statutory maximum" means in the case of a fine or other pecuniary penalty, £10,000 or such other sum, whether larger or smaller, as the Commissioner may for the time being specify by order, which shall be published in the *Gazette*.

(3) A court may, having regard to the circumstances, including the nature of the offence and the character of the offender, make an order discharging the offender absolutely or alternatively discharging the offender subject to the condition that the offender commits no offence during such period (a "period of conditional discharge"), not exceeding 2 years from the date of the order, as may be specified therein.

(4) When a person is proved to have committed an offence during a period of conditional discharge ordered by a Summary Court, any Summary Court may deal with that person for the original offence in any way in which the person could have been dealt with for that offence by the court which made the order.

Absence of one or both parties.

**26.** (1) Subject to subsection (4), where, at the time and place appointed for the trial or adjourned trial of an information, the prosecutor appears but the accused person does not, the court may –

(a) proceed in the accused person's absence, or

(b) adjourn or further adjourn the trial.

(2) Subject to subsection (4), where, at the time and place appointed for the trial or adjourned trial of an information, the accused person appears, but the prosecutor does not appear, the court may –

(a) dismiss the information; or

(b) if evidence has been received on a previous occasion, proceed in the prosecutor's absence; or

(c) adjourn or further adjourn the trial.

(3) Subject to subsection (4), where, at the time and place appointed for the trial or adjourned trial of an information, neither the prosecutor nor the accused person appears, the court may –

(a) dismiss the information; or

(b) if evidence has been received on a previous occasion, proceed in the absence of both parties; or

(c) adjourn or further adjourn the trial.

(4) Where a summons has been issued, the court shall not begin to try an information in the accused person's absence unless either –

(a) it is proved to the court's satisfaction that the summons was served on the accused person at a time which appears to the court to have left a reasonable interval before that person was required to appear; or

(b) the accused person has appeared on a previous occasion to answer to the information.

### *General*

Fixing amount of fine.

**27.** In fixing the amount of a fine, the court shall take into consideration among other things the means of the person on whom the fine is imposed so far as they appear or are known to the court.

Power to dispense with immediate payment of fines, etc.

**28.** (1) A court which has, by a conviction, adjudged a sum to be paid (that is to say, a fine or a sum by way of compensation under section 31 or a sum by way of costs under section 32) may, instead of requiring immediate payment, allow time for payment or order payment by instalments.

(2) Where a court has allowed time for payment, it may, on application by or on behalf of the person liable to make the payment, allow further time or allow payment by instalments.

(3) Where a court has ordered payment by instalments and default is made in the payment of any one instalment, proceedings may be taken as if the default had been made in the payment of all the instalments then unpaid.

Enforcement of payment of fines, etc.

**29.** (1) Subject to the following provisions of this section, where default is made in the payment of a sum adjudged to be paid by a conviction, the court may issue a warrant of distress (that is to say, an order authorising an officer

of the court, so far as is necessary to levy the unpaid sum together with any costs and charges of the distress, to seize the defaulter's money and to seize, detain and sell the defaulter's goods).

(2) Where a court has the power to issue a warrant of distress under subsection (1), it may, if it thinks fit, postpone the issue of the warrant of distress until such time and on such conditions, if any, as it thinks just.

(3) Where a court considers it necessary to secure the attendance of an offender before it for the purposes of this section, it may issue a summons requiring the offender to appear before it at the time and place appointed in the summons.

Power to remit fines.

**30.** Where a court has imposed a fine, it may, on enquiry into the means of the offender, remit any part or the whole of the fine if it thinks it just to do so having regard to any change in the offender's circumstances since conviction.

Compensation orders.

**31.** (1) Where a court convicts an offender of an offence, it may, on application by the prosecutor or by or on behalf of the offender or on its own initiative, and instead of or in addition to dealing with the offender in any other way, make an order (a "compensation order") requiring the offender to pay compensation for any personal injury, loss or damage resulting from that offence.

(2) Compensation under subsection (1) shall be of such amount as the court considers appropriate, having regard to any evidence and to any representations that are made by or on behalf of the offender or the prosecutor but the total amount of compensation ordered to be paid by any one offender on any one occasion (whether in respect of one or more offences of which that person is convicted on that occasion) shall not exceed the statutory maximum fine.

(3) No compensation order shall be made in respect of loss suffered by the dependants of a person in consequence of that person's death.

(4) In determining whether to make a compensation order against any person, and in determining the amount to be paid by any person under such an order, the court shall have regard to that person's means so far as they appear or are known to the court.

(5) Where the court considers –

(a) that it would be appropriate both to impose a fine and to make a compensation order; but

(b) that the offender has insufficient means to pay both an appropriate fine and appropriate compensation,

the court shall give preference to compensation and adjust the amount of fine to be imposed, if any, accordingly.

Costs.

**32. (1) Where –**

- (a) an information laid before a court is not proceeded with; or
- (b) a court trying an information summarily dismisses the information,

the court may order a payment to be made to the accused person in respect of that person's costs.

(2) Where an order is made under subsection (1), it shall require the payment to be made by the prosecutor or, if the court considers it appropriate (and in any event where the prosecution has been conducted by the Attorney General, in person or through another person acting under the Attorney General's authority, or by another person acting in exercise of the functions of the Attorney General), by the Government of the Territory.

(3) An order under subsection (1) shall, subject to subsection (4), be for the payment of such amount as the court considers reasonably sufficient to compensate the accused person for any expenses properly incurred by the accused person in the proceedings (or, in the case referred to in subsection (1)(a), in or about that person's defence).

(4) Where a court makes an order under subsection (1) but is of the opinion that there are circumstances which make it inappropriate that the accused person should recover the full amount mentioned in subsection (3), it shall order the payment of such amount only as it considers would be just and reasonable.

(5) Where a person is convicted of an offence by a court, the court may make such order as to the payment of costs by the offender to the prosecutor or, as may be appropriate, to the Government of the Territory as it considers just and reasonable.

Time limits.

**33.** Except as otherwise expressly provided by any law for the time being in force in the Territory, a court shall not try an information in summary proceedings unless the information was laid within six months from the time when the alleged offence was committed.

Contempt of court.

**34. Any person who –**

- (a) wilfully insults the magistrate holding a court, any witness before the court, any officer of the court or any legal practitioner having business in the court, during such a person's sitting or attendance in court or in going to or returning from the court; or

(b) wilfully interrupts the proceedings of the court or otherwise misbehaves in court,

commits an offence punishable with a fine not exceeding £10,000.

Procuring the attendance of witnesses.

**35.** (1) Where a magistrate is satisfied that any person in the Territory is likely to be able to give material evidence, or produce any document or thing likely to be material evidence, in proceedings before a court and that that person will not voluntarily attend as a witness or will not voluntarily produce the document or thing, the magistrate shall issue a summons directed to that person requiring him or her to attend before the court at the time and place appointed in the summons to give evidence or to produce the document or thing.

(2) Any person who fails without reasonable excuse to appear at a time and place specified in a summons issued in accordance with subsection (1) commits an offence punishable by a fine not exceeding £10,000.

(3) Any person who appears at a time and place specified in a summons issued in accordance with subsection (1), but refuses without just excuse to be sworn or give evidence, or to produce any document or thing, commits an offence punishable by a fine not exceeding £10,000.

Evidence on oath.

**36.** Subject to any law for the time being in force in the Territory authorising the reception of unsworn evidence, evidence given before a court shall be given on oath.

Legal or other representation.

**37.** (1) This section is subject to the provisions contained within sections 38 and 39.

(2) The prosecutor or the accused person in any proceedings may each be legally represented before the court and, subject to subsection (3), shall, if so represented, be deemed not to be absent.

(3) The appearance of the prosecutor or the accused person by an advocate or a solicitor shall not satisfy any provision of any law for the time being in force in the Territory expressly requiring that person's presence.

(4) Where a prosecutor or an accused person is present at the proceedings but is not legally represented, the court may allow that person's case to be conducted on his or her behalf by any other suitable and proper person of his or her choice.

Right to legal advice.

**38.** (1) Every accused person is entitled, if the person so requests, to consult a legal practitioner at any time.

(2) Consultation with a legal practitioner —

(a) is private; and

(b) may be conducted by telephone, or some other form of electronic communication device.

(3) If a person makes such a request, the person must be permitted to consult a legal practitioner as soon as practicable.

Provision of legal advice – supplementary.

**39.** (1) For the purposes of section 38, the words “to consult” may involve the exchange of words or text, either in person or by transmissions of voice or data through a telecommunications system.

(2) If a legal practitioner wishes to travel to the Territory –

(a) usual immigration controls will apply;

(b) any fees or other charges to be incurred in such travel shall be paid in advance;

(c) any fees or other charges to be incurred for accommodation in the Territory shall be paid in advance; and

(d) the legal practitioner shall provide the Administration of the Territory in advance with proof of adequate personal insurance that covers medical evacuation and repatriation.

(3) Nothing in this section shall require the immigration authorities of the Territory to permit the entry of a legal practitioner into the Territory.

(4) Nothing in this section shall require the Commissioner, the Administration of the Territory, or the police force to provide funds for or towards any fees or other charges incurred by the legal practitioner, but the Commissioner may, in the interests of justice, and in the Commissioner’s entire discretion, allow for part or all of any such fees or other charges to be paid from the Government Fund.

Bodies corporate or un-incorporate.

**40.** (1) In this section, “corporation” includes a body of persons un-incorporate.

(2) (a) In this section, “representative” means a person duly appointed by a corporation to represent it for the purpose of doing anything which the representative of a corporation is authorised by this section to do, but a person so appointed shall not, by virtue only of being so appointed, be qualified to act on behalf of the corporation before a court for any other purpose.

(b) No particular formality is required for the appointment of a representative for the purposes of this section, and a statement in writing purporting to be signed by any person (by whatever title designated) having, or being one of the persons having, the management of the affairs of the corporation to the effect that the person named in the statement has been appointed as the representative of the corporation for the purposes of this section



shall be admissible without further proof as *prima facie* evidence that that person has been so appointed.

(3) A representative may on behalf of a corporation –

(a) make a statement before the court in answer to the charge where the court is enquiring into an information in committal proceedings; and

(b) enter a plea of guilty or not guilty on the trial of an information in summary proceedings.

(4) Where a representative appears, any requirement of this Ordinance that anything shall be done in the presence of the accused person, or shall be read or said to that person, shall be construed as a requirement that that thing shall be done in the presence of the representative or read or said to the representative; and where a representative does not appear, any such requirement shall not apply.

Record of proceedings.

**41.** (1) Subject to the provisions of this Ordinance or of any other law for the time being in force in the Territory requiring particular matters to be recorded more fully or in a particular way, a court before which proceedings take place shall record, in summary form, the material features of the proceedings, including –

(a) the charges against the accused person;

(b) the statements of the accused person, if any, in response to those charges;

(c) the evidence given on either side;

(d) the arguments and representations addressed to the court by either side on any issue relevant to the charges or to the conduct of the case before the court;

(e) the court's decision on any such issue and its reasons therefor;

(f) the court's determination regarding the disposal of the case in relation to each charge against the accused person (including any sentence or order or decision consequent upon that determination) and its reasons therefor and any representations addressed to the court by either side in relation thereto.

(2) The record of the proceedings in each case before a court shall be retained in safe custody by the magistrate holding the court (or as the magistrate may direct) for six months after the conclusion of the case (or such longer or shorter period as the Judge of the Supreme Court may order, either generally or in any particular case) unless the magistrate (or the person having

custody of the record under the magistrate's direction) is earlier required to transmit the record to –

(a) the Supreme Court or the Magistrate's Court for the purposes of any proceedings therein by way of appeal, or otherwise, or

(b) an authorised police officer pursuant to section 21(3).

Defects in process, and non-compliance with technicalities.

**42.** (1) Without prejudice to section 17, every information, summons or other instrument or document laid, issued or made for the purposes of, or in connection with, any proceedings before a court shall be sufficient if it describes the specific offence with which the accused person is charged, or of which that person is convicted, in ordinary language, avoiding as far as possible the use of technical terms and without necessarily stating all the elements of the offence, and gives such particulars as may be necessary for providing reasonably sufficient information about the nature of the charge:

Provided that, subject to section 17, if the offence charged is one created by a written law, the description of the offence shall contain a reference to the provision of that law creating the offence.

(2) No objection shall be allowed to any information, or to any summons to procure the presence of any person before a court, or to any other instrument or document laid, issued or made under this Ordinance, for any defect in it in form or for any variance between it and the evidence adduced on behalf of the prosecutor at the hearing of an information, but if it appears to the court that any such variance has misled the accused person, the court shall, on the accused person's application, adjourn the hearing.

(3) Without prejudice to subsection (2), in the application and operation of the provisions of this Ordinance, regard shall be had to the substance of the matter before the court and to the requirements of fairness and justice; and any court (whether the Summary Court before which proceedings are taken or the Supreme Court or the Magistrate's Court in the exercise of its appellate, supervisory or revisory jurisdiction in respect of the proceedings before the Summary Court or any other court entertaining an appeal from the Supreme Court in its exercise of any such jurisdiction) may disregard any objection to anything done by or before a court in the course of proceedings under this Ordinance or for the purposes of any such proceedings to the extent that –

(a) the objection depends on some technical defect in that thing or in the manner in which it was done; and

(b) the court is satisfied that that defect has not misled or improperly influenced the Summary Court in its consideration of the material issues in the case and that the person raising the objection has not been materially prejudiced thereby.

Procedure:  
general  
provisions.

**43.** (1) Subject to the provisions of this Ordinance, the practice and procedure of every court shall be as prescribed by rules of court made under section 44 and, subject to such rules or if there are no rules governing the matter, as may be directed with respect to particular proceedings by the court before which the proceedings are being pursued or are sought to be pursued; and either the prosecutor (or the person who seeks to be the prosecutor) or the defence in those proceedings may at any time apply to the court for such directions.

(2) Subject to the provisions of this Ordinance and to any applicable rules of court, in formulating any directions which it may give under subsection (1) and generally in the conduct of its business, any court shall be guided, so far as local circumstances permit and so far as is appropriate to the circumstances of any particular proceedings, by the practice and procedure of a Magistrates' Court in England, and in pursuing any proceedings before a court the prosecutor and the defence shall likewise (but subject always to the provisions of this Ordinance, any applicable rules of court and any directions given under this section) be so guided.

Rules of court.

**44.** (1) The Judge of the Supreme Court may, subject to the provisions of this Ordinance, make rules of court regulating and prescribing the practice and procedure of courts in criminal proceedings and regulating and prescribing any matters incidental or relating to that practice and procedure.

(2) Without prejudice to the generality of subsection (1), rules of court made under that subsection may be made for any of the purposes, *mutatis mutandis*, for which, under section 15(2) of the Administration of Justice Ordinance 2020, rules of court may be made for the Supreme Court.

Residual  
application of  
English law to  
ancillary powers  
of Summary  
Courts and  
related powers  
of other courts,  
etc.

**45.** Save, in respect of any matter, to the extent to which other provision for that matter is made by or under this Ordinance or by or under the Administration of Justice Ordinance 2020 or any other Ordinance and save where the contrary intention otherwise appears from any provision of or made under this or any other Ordinance –

(a) a Summary Court shall have, for the purposes of and in connection with the exercise of its jurisdiction in any proceedings, the like powers as, under the law for the time being in force in England, a Magistrates' Court in England has for the purposes of and in connection with the exercise of its jurisdiction in comparable proceedings;

(b) the powers which a Summary Court has under this Ordinance (including the powers which it has in accordance with paragraph (a)) shall be exercisable by it, as nearly as local circumstances permit, in the same manner and subject to the same conditions and limitations, if any, as the corresponding or comparable powers of a Magistrates' Court in England are exercisable by that court; and

(c) other courts and authorities of the Territory shall have the like powers and jurisdiction in relation to the exercise by a Summary

Court of the powers which it has under this Ordinance (including the powers which it has in accordance with paragraph (a)) as comparable courts and authorities in England have, under the law for the time being in force in England, in relation to the exercise of the corresponding or comparable powers of a Magistrates' Court in England.

## PART 4

### QUALIFYING OFFENCES – STANDARD PROCEDURES

- Location of Magistrate's Court. **46.** Sections 47 and 48 apply where the Magistrate's Court is physically located in the Territory.
- Practice and procedure. **47.** The practice and procedure of the Magistrate's Court shall be as determined by the Administration of Justice Ordinance 2020.
- Variations to the Police Powers Ordinance 2020. **48.** Where this Part applies, the following variations are made to the Police Powers Ordinance 2020 –
- (a) Section 49(3) shall be amended to read –  
  
“If the authorised police officer determines that there is sufficient evidence, the suspect must be charged with the qualifying offence and taken before the Senior Magistrate.”;
  - (b) Section 50 shall not apply, and
  - (c) Section 53 shall not apply.
- Legal or other representation. **49.** Sections 37, 38 and 39 shall apply in relation to this Part, in the same way that those sections apply to Part 3.
- Transfer of cases to the Supreme Court. **50.** (1) Where, under any law, a person who is charged with an offence is sent, transferred or otherwise committed by the Magistrate's Court to the Supreme Court for trial or sentence –
- (a) that person shall be deemed to be committed by the Magistrate's Court for trial by the Supreme Court, and
  - (b) the action of sending, transferring or otherwise committing a person who is charged with an offence to appear before the Supreme Court shall be deemed to be a committal for trial.
- (2) The Magistrate's Court may, at the time of committal or subsequently, order that the trial shall take place, in accordance with the provisions of the Falkland Islands Courts (Overseas Jurisdiction) Order 1989 before the Supreme Court of the Falkland Islands.

(3) If the Magistrate's Court makes an order pursuant to subsection (2), the court shall remand the accused person in custody or on bail, pending trial.

Removal from  
the Territory.

**51.** (1) If the Senior Magistrate commits a person ("the accused") for trial at the Supreme Court pursuant to section 50, the Senior Magistrate shall –

(a) order that the accused be handed over to the care and custody of an authorised police officer for transfer from the Territory to the Falkland Islands, and

(b) ensure that the Administrator and the Attorney General are notified of that decision.

(2) Any order made pursuant to subsection (1)(a) –

(a) need not be in a specified form, but shall be in writing, signed by the Senior Magistrate, and a copy thereof shall be handed to an authorised police officer before the accused is transferred from the Territory;

(b) will not affect any of the court's powers which may be exercisable under the Immigration Ordinance 2020.

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