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Revision Date: 31 Dec 2009



# ST CHRISTOPHER AND NEVIS

## CHAPTER 1.01

### WEST INDIES ACT

[Including the Constitution, Supreme Court Order, etc.]

#### Revised Edition

showing the law as at 31 December 2009

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Act, No. 9 of 1986

This edition contains a consolidation of the following laws:

#### West Indies Act 1967 (UK)

Cap. 4 in force 16<sup>th</sup> February, 1967

#### Schedules

First Schedule – Legislative Powers of Associated States

Second Schedule – Procedure for Terminating Status of Association

Third Schedule – Modifications of British Nationality Acts

Fourth Schedule – Saint Christopher and Nevis Constitution Order

Fifth Schedule – Supreme Court Order

Amended by SROs 50, 51, 52, & 53 of 2008



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## **CHAPTER 1.01**

### **WEST INDIES ACT**

**[Including the Constitution, Supreme Court Order, etc.]**

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## CHAPTER 1.01

### WEST INDIES ACT

[Including the Constitution, Supreme Court Order, etc.]

**AN ACT to confer on certain West Indian territories a new status of association with the United Kingdom, and to enable that status to be terminated at any time; to make provision for other matters in connection with, or consequential upon, the creation or termination of that status or other constitutional changes which may occur in relation to any of those territories; to make further provision as to grants under the Overseas Aid Act 1966; and for purposes connected with the matters aforesaid.**

Whereas Constitutional Conferences relating to the colonies specified in section 1(2) of this Act were held in London and the Reports of those Conferences were presented to the Parliament of the United Kingdom in April and June 1966:

And whereas the legislature of each colony concerned has approved the proposals contained in those Reports in so far as they relate to that colony:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

#### 1. **Status of association with United Kingdom.**

(1) On the appointed day each of the territories to which this section applies shall assume, and (subject to the provisions of this Act) shall thereafter maintain, a status of association with the United Kingdom in accordance with the following provisions of this Act.

(2) The territories to which this section applies are those which, immediately before the appointed day, constitute respectively the Colonies of

- (a) Antigua;
- (b) Dominica;
- (c) Grenada;
- (d) Saint Christopher, Nevis and Anguilla;
- (e) Saint Lucia; and
- (f) Saint Vincent.

(3) A territory to which this section applies shall, on and after the appointed, day and so long as its status of association with the United Kingdom has not been terminated, be known as an associated state.

**2. Limitation of responsibility of Her Majesty's Government in the United Kingdom.**

(1) Subject to the next following subsection, on and after the appointed day Her Majesty's Government in the United Kingdom shall have no responsibility for the government of any associated state except in respect of

- (a) any matter which in the opinion of Her Majesty's Government in the United Kingdom is a matter relating to defence (whether of an associated state or of the United Kingdom or of any other territory for whose government Her Majesty's Government in the United Kingdom are wholly or partly responsible) or to external affairs;
- (b) any matter relating to nationality or citizenship; and
- (c) any matter relating to the Succession to the Throne or the Royal Style and Titles.

(2) The preceding subsection shall not affect any responsibility of Her Majesty's Government in the United Kingdom in relation to the exercise of

- (a) any power conferred on Her Majesty by this Act; or
- (b) any other power exercisable by Her Majesty under the law of any associated state.

**3. Enactment of legislation by Parliament of United Kingdom.**

(1) Except as provided by subsections (2) to (4) of this section, no Act of the Parliament of the United Kingdom passed on or after the appointed day shall extend, or be deemed to extend, to an associated state as part of its law, unless it is expressly declared in that Act that that state has requested and consented to its being enacted.

(2) Where any Act of the Parliament of the United Kingdom contains a provision expressly declaring

- (a) that that Act, or an enactment contained in it which is specified in that provision, extends to all associated states, or to such one or more associated states as may be so specified; and
- (b) that it is required so to extend in the interests of the responsibilities of Her Majesty's Government in the United Kingdom relating to defence and external affairs;

that Act, or that enactment, as the case may be, shall extend in accordance with that provision notwithstanding anything in the preceding subsection.

(3) Where any Act of the Parliament of the United Kingdom amends the law relating to nationality or citizenship, and contains a provision expressly declaring that the Act, or (where the Act relates also to other matters) an enactment contained in it which amends the law relating to nationality or citizenship and is specified in that provision, extends to all associated states, or to such one or more associated states as may be so specified, the Act, or that enactment, as the case may be, shall extend in accordance with that provision notwithstanding anything in subsection (1) of this section.

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(4) Subsection (1) of this section shall not apply to any Act of the Parliament of the United Kingdom, or to any enactment contained in such an Act, in so far as it relates to the Succession to the Throne or the Royal Style and Titles.

(5) Notwithstanding anything in the Interpretation Act 1889, c. 43, the expression “colony” in any Act of the Parliament of the United Kingdom passed on or after the appointed day shall not include an associated state.

**4. Legislative and executive powers of associated states.**

(1) On and after the appointed day the provisions of Schedule 1 to this Act shall have effect with respect to the legislative powers of an associated state.

(2) The executive authority of the Government of an associated state shall not include any power or duty which the legislature of that state could not lawfully confer or impose on that Government in accordance with Schedule 1 to this Act.

**5. Provision of new constitutions for associated states.**

(1) In relation to any territory to which section 1 of this Act applies, Her Majesty may by Order in Council (in this Act referred to as a “Constitution Order”) made before the appointed day provide for it a new constitution which (subject to the following provisions of this section) is to come into effect on that day.

(2) The constitution provided by a Constitution Order for a territory to which section 1 of this Act applies may include provision as to the extent to which, and the manner in which, the legislature of the territory may alter

- (a) that constitution, or any part of that constitution specified in that provision; or
- (b) any other law of a description so specified, in so far as that law has effect as part of the law of that territory.

(3) The constitution provided by a Constitution Order for any such territory may include provision for separate citizenship of that territory which is not to have effect until, on or after the termination of the status of association of that territory with the United Kingdom, it is brought into force in such manner as may be specified in the constitution.

(4) Where the constitution of an associated state provided by a Constitution Order has come into effect, Her Majesty may at any time, by Order in Council made at the request and with the consent of that state, alter that constitution or any part of that constitution, or alter any law which alters that constitution or any part of it.

(5) The last preceding subsection shall have effect without prejudice to any power exercisable by the legislature of an associated state as mentioned in subsection (2) of this section.

(6) The powers conferred by this section shall, in relation to any associated state, have effect in substitution for any other power whereby apart from this section (whether by virtue of section 5 of the West Indies Act 1962, c. 19 or otherwise) Her Majesty could provide a constitution for that state.

(7) In this section references to altering a constitution or any part of a constitution or to altering any other law include references

- (a) to revoking it, with or without re-enactment thereof or the making of different provision in lieu thereof;
- (b) to modifying it, whether by omitting or amending any of its provisions or inserting additional provisions in it or otherwise; and
- (c) to suspending its operation for any period, or terminating any such suspension.

**6. Establishment of common courts for associated states.**

(1) Her Majesty may by Order in Council made before the appointed day provide for the establishment of one or more courts which, on and after that day or such later day as may be specified in, or determined in accordance with, the Order, shall be courts constituted in common for the territories to which section 1 of this Act applies, and may by that Order provide that any such court shall, in relation to any of those territories, have such jurisdiction and powers as may be so specified or determined.

(2) An Order in Council under this section may include provision whereby, in relation to Montserrat or the Virgin Islands, any court established under the Order shall have such jurisdiction and powers, and there shall be imposed or conferred on judges and officers of any such court such duties and powers, as may be specified in, or determined in accordance with, the Order.

(3) An Order in Council under this section may include provision

- (a) for the establishment in common for the territories to which section 1 of this Act applies of a commission having such duties and powers in relation to any court established under the Order, and to judges and officers of any such court, and in relation to other persons and related matters, as may be specified in, or determined in accordance with, the Order;
- (b) as to the remuneration, allowances and pension rights of members, officers and servants of the commission and of judges, officers and other persons in relation to whom the commission has any duties or powers; and
- (c) as to the manner in which the expenses of the commission and of any such court (including the matters referred to in the last preceding paragraph) are to be defrayed.

**7. Power of Her Majesty to make laws for associated states.**

(1) Without prejudice to the provisions of section 5(4) of this Act, Her Majesty may by Order in Council made at the request and with the consent of any associated state make, as part of the law of that state, any provision which appears to Her Majesty to be necessary or expedient for the peace, order or good government of that state.



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(2) Where it appears to Her Majesty that in the interests of the responsibilities of Her Majesty's Government in the United Kingdom relating to defence and external affairs a change should be made in the law of an associated state, Her Majesty may by Order in Council expressly stating that fact make, as part of the law of that state, such provision as appears to Her Majesty to be appropriate, including (if by reason of war or other emergency it appears to Her Majesty to be necessary and that fact is expressly stated in the Order) provision derogating from the provisions of the constitution of that state relating to fundamental rights and freedoms.

**8. Retirement benefits and compensation for persons in public service.**

(1) In respect of any territory to which section 1 of this Act applies, Her Majesty may by Order in Council made before the appointed day make provision for securing to or in respect of persons who

- (a) hold or have held office or employment in the public service of that territory; and
- (b) are participants in any pension provision applicable to that office or employment,

such benefits by way of modification of or addition to that pension provision, or otherwise by way of compensation out of the public funds of that territory, as appear to Her Majesty to be appropriate having regard to any arrangements made in that behalf between Her Majesty's Government in the United Kingdom and the Government of that territory.

(2) For the purposes of this section, a person who is or has been a judge of the Supreme Court of the Windward Islands and Leeward Islands shall, in his or her capacity as such a judge, be taken to hold or have held office in the public service of a territory if, for the purposes of any pension provision having effect in that territory, he or she is in that capacity taken to be or have been in the service of that territory

(3) There shall be paid out of moneys provided by Parliament any increase attributable to this section in the sums payable out of moneys so provided under the Overseas Development and Service Act 1965, c. 38.

(4) In this section, "pension provision" means any law, scheme or instrument whereby provision is made for the payment of pensions, and "participant", in relation to a pension provision, means a person to whom, or in respect of whom, a pension may become payable thereunder.

**9. Power to unite, divide or alter territories of associated states.**

(1) Subject to the provisions of this section, Her Majesty may by Order in Council

- (a) federate or otherwise unite two or more associated states with each other, or federate or otherwise unite one or more associated states with one or more other territories which are not associated states;
- (b) divide an associated state into two or more separate territories;

(c) transfer part of the territory of an associated state to another territory (whether an associated state or not) or incorporate part of another territory (whether an associated state or not) in an associated state.

(2) No Order in Council shall be made under this section

(a) so as to affect an associated state unless it is made at the request and with the consent of that state; or

(b) so as to affect any territory other than an associated state unless it is a territory in relation to which the Order, in so far as it affects that territory, could be made apart from this Act.

(3) An Order in Council under this section may provide a constitution for any territory resulting (whether by way of federation, union, division or otherwise) from the Order; and the provisions of section 5 of this Act shall have effect, subject to any necessary modifications, in relation to a constitution provided under this section as they have effect in relation to a constitution provided under that section.

(4) In respect of any territory resulting from an Order in Council under this section, the Order may provide that, subject to any transitional provisions contained in the Order, that territory shall be deemed to be included among the territories to which section 1 of this Act applies, and the provisions of this Act shall have effect accordingly.

#### **10. Provisions for terminating status of association.**

(1) The legislature of any associated state may at any time, by a law made in accordance with the provisions of the Second Schedule to this Act, terminate the status of association of that state with the United Kingdom as from such date as may be specified in that law.

(2) Her Majesty may at any time, by Order in Council made in respect of any associated state, terminate the status of association of that state with the United Kingdom as from such date as may be specified in the Order.

(3) Any law made by virtue of subsection (1) of this section, and any Order in Council made under the last preceding subsection, may provide that, on the date specified in that law or that Order, the associated state in question shall cease to form part of Her Majesty's dominions.

#### **11. Effect of termination.**

(1) Where the legislature of an associated state makes a law terminating the status of association of that state with the United Kingdom by virtue of subsection (1) of section 10 of this Act, or Her Majesty makes an Order in Council in respect of an associated state under subsection (2) of that section, the following provisions of this section shall have effect with respect to that state (in this section referred to as "the former associated state").

(2) On and after the date specified in that law or that Order (in this section referred to as "the specified date") Her Majesty's Government in the United Kingdom shall have no responsibility for the government of the former associated state.

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(3) No Act of the Parliament of the United Kingdom passed before the specified date shall be deemed to extend to the former associated state as part of its law except in so far as, immediately before that date, it extended to the associated state as part of its law; and no Act of the Parliament of the United Kingdom passed on or after the specified date shall extend, or be deemed to extend, to the former associated state as part of its law.

(4) Section 3(5) of this Act shall continue to have effect in relation to the former associated state as if it had not ceased to be an associated state.

(5) On and after the specified date the provisions of the First Schedule to this Act shall have effect in relation to the former associated state as if

- (a) any reference in that Schedule to an associated state were a reference to the former associated state;
- (b) in paragraph 1 of that Schedule the words “Subject to the following provisions of this Schedule” were omitted, and in sub-paragraph (b) of that paragraph, after the words “United Kingdom”, there were inserted the words “including this Act”; and
- (c) paragraph 4 of that Schedule were omitted.

## 12. **Modifications of British Nationality Acts.**

(1) In relation to an associated state the British Nationality Acts 1948 to 1965 shall have effect subject to the provisions of the Third Schedule to this Act.

(2) A citizen of the United Kingdom and Colonies may, if on the grounds of his or her connection with an associated state he or she so desires, be known as a citizen of the United Kingdom, Associated States and Colonies.

## 13. **Power to make changes in law in certain events.**

(1) The provisions of this section shall have effect where any of the following events occurs, that is to say,

- (a) the constitution of an associated state is altered after the appointed day;
- (b) an Order in Council under section 9 of this Act comes into operation;
- (c) the status of association of an associated state with the United Kingdom is terminated;
- (d) any provision as to separate citizenship contained in the constitution of a territory in accordance with the provisions of section 5(3) of this Act (or in accordance with those provisions as applied by section 9 of this Act) is brought into force;
- (e) after the status of association with the United Kingdom of a territory to which section 1 of this Act applies has been terminated, that territory ceases to form part of Her Majesty’s dominions.

(2) Where any of those events occurs, Her Majesty may make by Order in Council such amendments or modifications of any enactment of the Parliament of the United Kingdom for the time being in force, or of any instrument for the time being in force and having effect by virtue of such an enactment, as appear to Her Majesty to be necessary or expedient in consequence of that event.

(3) Without prejudice to the generality of the last preceding subsection, any modification of any enactment relating to nationality or citizenship which is made by an Order in Council under this section may consist of or include provision whereby, in such circumstances as may be specified in that Order, citizens of the United Kingdom and Colonies will cease to be such, citizens, or if (by virtue of section 15(2) of this Act) the provision is retrospective, shall be deemed to have ceased to be such citizens.

(4) Any reference in this section to the alteration of a constitution shall be construed in accordance with section 5(7) of this Act.

(5) For the purpose of making an Order in Council under this section, any reference in subsection (2) of this section to any enactment or instrument for the time being in force shall be construed as a reference to any enactment or instrument in force immediately before that Order is made, whether the enactment or instrument was passed or made before or after the passing of this Act.

#### **14. Power to preserve existing law.**

Where any such event as is specified in section 13(1) of this Act occurs in relation to a territory, Her Majesty may make by Order in Council such provision as Her Majesty considers appropriate for securing that all such law (whether being a rule of law or a provision of an Act of Parliament or of any other enactment or instrument whatsoever) as is described in the Order shall, subject to such exceptions, limitations or conditions (if any) as may be specified in the Order, have the same operation in relation to that territory, and persons and things belonging to or connected with that territory, as it would have apart from the Order if the event in question had not occurred.

#### **15. Supplementary provisions as to powers under sections 13 and 14.**

(1) An Order in Council under section 13 or section 14 of this Act may be made before, and in anticipation of, the event to which it relates, but shall not be so made as to come into operation before the date of that event.

(2) Where an Order in Council under either of those sections is made after the date of the event to which it relates, the Order may be made with retrospective effect as from that date or any later date.

(3) Subject to the next following subsection, any provision made by an Order in Council under section 13 of this Act with respect to an enactment of the Parliament of the United Kingdom, or with respect to an instrument having effect by virtue of such an enactment, and any provision made by an Order in Council under section 14 of this Act with respect to any law described in the Order, shall, except in so far as the Order otherwise provides, have effect as part of the law of every territory outside the United Kingdom to which the enactment or instrument in question extends, or, as the case may be, of every territory outside the United Kingdom whose law includes that law, as well as having effect as part of the law of the United Kingdom.

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(4) Any provision made by an Order in Council as mentioned in the last preceding subsection

- (a) shall not have effect as part of the law of any associated state unless either the Order in Council is made at the request and with the consent of that state or the provision so made is one which (in accordance with the First Schedule to this Act) the legislature of that state has no power to make at the date on which the Order is made; and
- (b) shall not have effect as part of the law of any territory if it is a territory for whose government Her Majesty's Government in the United Kingdom have no responsibility at that date.

**16. Grants for benefit of associated states.**

(1) Subsection (4) of section 1 of the Overseas Aid Act 1966, c. 21 (which relates to grants under that Act to certain Governments) shall have effect as if the Governments specified in that subsection included the Governments of associated states.

(2) There shall be paid out of moneys provided by Parliament any increase attributable to this section in the sums payable out of moneys so provided under that Act.

(3) For the purposes of the making of grants under section 8 of the West Indies Act 1962, c. 19, a territory to which section 1 of this Act applies shall, on and after the appointed day, be treated as not being a colony within the meaning of that Act.

**17. Supplementary provisions as to Orders in Council.**

(1) Any Order in Council under this Act may contain such transitional or other incidental and supplementary provisions as may appear to Her Majesty to be necessary or expedient.

(2) No recommendation shall be made to Her Majesty to make an Order in Council under section 10(2) of this Act unless a draft of the Order has been laid before Parliament and approved by a resolution of each House of Parliament.

(3) Any Order in Council made under section 13 or section 14 of this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(4) Any power to make an Order in Council under section 6 or section 8 of this Act shall include power to revoke or vary the Order by a subsequent Order in Council, whether made before, on or after the appointed day:

Provided that on and after the appointed day the power to revoke or vary

- (a) an Order in Council under section 6 of this Act in so far as it has effect as part of the law of an associated state; or
- (b) an Order in Council under section 8 of this Act which for the time being has effect as part of the law of an associated state;

shall not be exercisable except at the request and with the consent of that state.

(5) Any power to make an Order in Council under subsection (1) or subsection (2) of section 7 of this Act shall include power to revoke or vary the Order by a subsequent Order in Council made under the same subsection.

(6) Any power to make an Order in Council conferred by section 13 or section 14 of this Act shall include power to revoke or vary any such Order by a subsequent Order in Council.

**18. Provisions as to evidence.**

(1) For the purposes of this Act, a certificate issued by or on behalf of the Secretary of State, certifying that a matter specified in the certificate is one which in the opinion of Her Majesty's Government in the United Kingdom is a matter relating to defence (whether of an associated state or of the United Kingdom or of any other territory for whose government Her Majesty's Government in the United Kingdom are wholly or partly responsible) or to external affairs, shall in any proceedings be conclusive evidence of the fact so certified.

(2) Any document purporting to be such a certificate, and to be issued for the purposes of this Act, shall in any proceedings be received in evidence and, unless the contrary is proved, be deemed to be such a certificate so issued.

(3) For the purposes of subsection (2) of section 7 of this Act, a fact expressly stated in an Order in Council as mentioned in that subsection shall in any proceedings be conclusive evidence of the fact so stated.

(4) For the purposes of this Act, a provision contained in an Order in Council whereby it is expressly declared that the Order is made at the request and with the consent of one or more associated states specified in the Order shall in any proceedings be conclusive evidence of the fact so declared.

**19. Interpretation.**

(1) In this Act, except in section 6, "the appointed day", in relation to any territory to which section 1 of this Act applies, means such day as Her Majesty may by Order in Council appoint; and different days may be so appointed in relation to different territories.

(2) In section 6 of this Act, "the appointed day" means the day appointed under the preceding subsection, or, if different days are so appointed in relation to different territories, means the earliest of those days.

(3) In this Act, "territory" includes any country; any reference to a territory shall be construed as including a reference to its dependencies (if any); and any reference to a Government shall be construed as including a reference to any department or agency of that Government.

(4) In this Act, "pension", in relation to a person, means any contributory or non-contributory pension, of any kind whatsoever, payable to or in respect of him or her, or a lump sum or gratuity so payable, whether by way of compensation or otherwise, or a return of contributions, with or without interest thereon or any other addition thereto, and any reference to pension rights shall be construed accordingly.

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(5) Any reference in this Act to the request and consent of an associated state is a reference to request and consent signified by a resolution of the legislature of that state, or, if that legislature has two Houses (by whatever name called), by a resolution of each House of that legislature.

(6) Except in so far as the context otherwise requires, any reference in this Act to an enactment shall be construed as a reference to that enactment as amended or extended by or under any other enactment.

**20. Provisions as to Northern Ireland.**

(1) In section 13(2) of this Act the reference to any enactment of the Parliament of the United Kingdom shall be construed as including a reference to any enactment of the Parliament of Northern Ireland.

(2) In relation to any Order in Council made under section 13 or section 14 of this Act which amends or modifies an enactment of the Parliament of Northern Ireland or an enactment relating to any matter in respect of which that Parliament has power to make laws, section 6 of the Government of Ireland Act 1920, c. 67 (conflict of laws) shall have effect as if the Order were a provision of an Act (other than that Act) passed by the Parliament of the United Kingdom before the date which is the appointed day for the purposes of that section.

**21. Short title.**

This Act may be cited as the West Indies Act, Cap. 1.01.

**FIRST SCHEDULE TO THE ACT**

(Sections 11(5) and 15(4)(a))

**LEGISLATIVE POWERS OF ASSOCIATED STATES**

1. Subject to the following provisions of this Schedule
  - (a) the Colonial Laws Validity Act 1865, c. 63 shall not apply to any law made on or after the appointed day by the legislature of an associated state; and
  - (b) no law and no provision of any law made on or after the appointed day by any such legislature shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any Act of the Parliament of the United Kingdom, or to any order, rule or regulation made under any such Act;and accordingly the powers of the legislature of an associated state shall include the power to repeal or amend any such Act, order, rule or regulation in so far as it has effect as part of the law of that state.
2. The legislature of an associated state shall have full power to make laws having extra-territorial operation.
3. Without prejudice to the generality of the preceding provisions of this Schedule,
  - (a) sections 735 and 736 of the Merchant Shipping Act 1894, c. 60 shall be construed as if references therein to the legislature of a British possession did not include references to the legislature of any associated state; and
  - (b) section 4 of the Colonial Courts of Admiralty Act 1890, c. 27 (which requires certain laws to be reserved for the signification of Her Majesty's pleasure or to contain a suspending clause) and so much of section 7 of that Act as requires the approval of Her Majesty in Council to any rules of court for regulating the practice and procedure of a Colonial Court of Admiralty shall cease to have effect in each of the associated states.
4.
  - (1) The following provisions of this paragraph shall have effect notwithstanding anything in the preceding provisions of this Schedule, but without prejudice to the exercise of any power conferred by section 10 of this Act.
  - (2) The legislature of an associated state shall not have power (whether in pursuance of any provision contained in a Constitution Order in accordance with section 5(2) of this Act or otherwise) to repeal or amend, or make any law repugnant to
    - (a) this Act;
    - (b) any Act, or enactment contained in an Act, of the Parliament of the United Kingdom in so far as it relates to nationality or citizenship;
    - (c) any Act, or enactment contained in an Act, of the Parliament of the United Kingdom in so far as it relates to the Succession to the Throne or the Royal Style and Titles;



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- (d) any Act, or enactment contained in an Act, of the Parliament of the United Kingdom which extends to that state in accordance with section 3(2) of this Act; or
  - (e) any Order in Council made by virtue of section 7(2) of this Act in so far as it has effect as part of the law of that state.
- (3) Without prejudice to the last preceding sub-paragraph, the legislature of an associated state shall not have power (whether in pursuance of any provision contained in a Constitution Order in accordance with section 5(2) of this Act or otherwise) to make any law whereby
- (a) the Government of that state would be authorised or required to conduct any external affairs, except in so far as, by arrangements made in accordance with the next following sub-paragraph, that Government may be authorised to conduct any external affairs on behalf of Her Majesty's Government in the United Kingdom; or
  - (b) the Government of that state would be authorised or required to restrict or otherwise interfere with the conduct by Her Majesty's Government in the United Kingdom of defence or of external affairs.
- (4) The arrangements referred to in sub-paragraph (3)(a) of this paragraph are any arrangements which may be made between Her Majesty's Government in the United Kingdom and the Government of an associated state authorising the latter Government on behalf of the former Government to conduct external affairs in respect of such matters or classes of matters, and subject to any such exceptions, limitations and conditions, as may be specified in the arrangements.
- (5) Sub-paragraphs (a) and (b) of paragraph 1 of this Schedule shall not have effect in relation to any law which, in accordance with the preceding provisions of this paragraph, the legislature of an associated state has no power to make.

## SECOND SCHEDULE TO THE ACT

(Section 10)

### PROCEDURE FOR TERMINATING STATUS OF ASSOCIATION

1. (1) The provisions of this Schedule shall have effect in relation to any associated state (in this Schedule referred to as "the state") with respect to the making by the legislature of the state (in this Schedule referred to as "the legislature") of any such law as is mentioned in section 10(1) of this Act.

(2) In this Schedule, "the Bill" means the Bill introduced in the legislature for the making of that law; any reference to the second reading of the Bill in the legislature, or in a House of the legislature, is a reference to the stage of the Bill in the legislature, or in that House, as the case may be, which, whether called second reading or by any other name, is (disregarding any minor differences) analogous to the second reading of a Bill in the House of Commons of the Parliament of the United Kingdom; and any reference to the third reading of the Bill shall be construed in a corresponding way.

(3) In this Schedule, “referendum” means a referendum on which all persons who, at the time when the referendum is held, would be entitled to vote at an election of members of the legislature (or, if the legislature consists of two Houses, would be entitled to vote at an election of members of the lower House), but no other persons, will be entitled to vote.

2. Subject to the following provisions of this Schedule,

- (a) there must be an interval of not less than ninety days between the introduction of the Bill and the beginning of the proceedings in the legislature on second reading of the Bill;
- (b) on the third reading of the Bill in the legislature, the Bill must be supported by the votes of not less than two-thirds of all the elected members of the legislature;
- (c) if approved on third reading in the legislature, the Bill must be submitted to a referendum and must not be submitted to the Governor of the state for his or her assent unless not less than two-thirds of the votes validly cast on that referendum are cast in support of the Bill.

3. (1) If the legislature consists of two Houses (by whatever name called) the following provisions of this paragraph shall have effect instead of the provisions of paragraph 2 of this Schedule.

(2) There must be an interval of not less than ninety days between the introduction of the Bill in the lower House and the beginning of the proceedings on second reading of the Bill in that House.

(3) On the third reading of the Bill in that House, the Bill must be supported by the votes of not less than two-thirds of all the elected members of that House.

(4) If the Bill is passed by the upper House with amendments, any agreement of the lower House to those amendments must be supported by the votes of not less than two-thirds of all the elected members of the lower House.

(5) If the Bill is passed by both Houses in the same Session in accordance with the preceding sub-paragraphs, the Bill must be submitted to a referendum, and must not be submitted to the Governor of the state for his or her assent unless not less than two-thirds of the votes validly cast on that referendum are cast in support of the Bill.

(6) If in one Session the Bill is passed by the lower House in accordance with sub-paragraphs (2) and (3) of this paragraph, and either it is not passed by the upper House or it is passed by the upper House with amendments which are not agreed to by the lower House in accordance with sub-paragraph (4) of this paragraph, and in the next Session the Bill is again passed by the lower House in accordance with sub-paragraphs (2) and (3) of this paragraph, there must be an interval of not less than six months between the passage of the Bill by the lower House in the first of those Sessions and its passage by the lower House in the second of them.

(7) If, in the circumstances specified in the last preceding sub-paragraph, the Bill in the second of the two Sessions is sent to the upper House without amendment, but with suggestions for amending it, those suggested amendments must be supported by the votes of not less than two-thirds of all the elected members of the lower House.

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(8) If in the second of those Sessions the Bill either is not passed by the upper House, or is passed by the upper House with amendments which are neither amendments suggested by the lower House in accordance with the last preceding sub-paragraph nor amendments which are agreed to by the lower House in accordance with sub-paragraph (4) of this paragraph, the Bill must be submitted to a referendum, and must not be submitted to the Governor of the state for his or her assent unless not less than two-thirds of the votes validly cast on that referendum are cast in support of the Bill.

(9) Except in the circumstances specified in the last preceding sub-paragraph, the Bill must not be submitted to a referendum or submitted to the Governor of the state for his or her assent unless it has been passed by both Houses of the legislature in accordance with the preceding provisions of this paragraph.

4. (1) The provisions of this paragraph shall have effect where, before the introduction of the Bill, arrangements have been made between the Government of the state and the Government of a territory to which this paragraph applies whereby, immediately after the termination of the status of association of the state with the United Kingdom,

- (a) the state will enter into a federation or union or some other form of association with that territory (with or without other territories); and
- (b) the Government resulting from that federation, union or other form of association, or the Government of that territory, will be responsible for the defence and external affairs of the state;

and the Bill refers to those arrangements and makes provision for giving effect to them on the part of the state.

- (2) This paragraph applies to any territory which
  - (a) lies between the equator and the 20th parallel of north latitude and between longitude 50 degrees west and longitude 90 degrees west; and
  - (b) at the time when the arrangements in question are made is a territory within the Commonwealth for whose government Her Majesty's Government in the United Kingdom have no responsibility.

(3) In the circumstances specified in sub-paragraph (1) of this paragraph, the Bill may be submitted to the Governor for his or her assent without a referendum and accordingly paragraph 2(c) or (as the case may be) sub-paragraphs (5) and (8) of paragraph 3 of this Schedule shall not apply.

### **THIRD SCHEDULE TO THE ACT**

(Section 12(1))

#### **MODIFICATIONS OF BRITISH NATIONALITY ACTS**

- 1. (1) In the following provisions of the British Nationality Acts 1948 to 1965, that is to say
  - (a) sections 10(2), 22 and 29(3) of the British Nationality Act 1948, c. 56 (including sections 22 and 29(3) of that Act as applied respectively

by sections 3(3) and 5(2) of the British Nationality Act 1965, c. 34) and paragraph 4(a) of Schedule 2 to the said Act of 1948; and

- (b) section 3(1)(c) of the British Nationality Act 1958, c. 10;

the references to a colony shall not include any associated state.

2. (1) So much of section 8(1) of the British Nationality Act 1948 as provides for any functions of the Secretary of State to be exercised by the Governor of a colony or substitutes references to the Governor for references to the Secretary of State shall not have effect in relation to any associated state.

(2) In the preceding sub-paragraph the reference to section 8(1) of the British Nationality Act 1948 includes a reference to the said section 8(1) as applied by any of the following provisions, that is to say, section 1(6) of the British Nationality Act 1964, c. 22, section 1(4) of the British Nationality (No. 2) Act 1964, c. 54 and section 1(5) of the British Nationality Act 1965.

3. So much of section 3(2) of the British Nationality Act 1958, c. 10 as substitutes a reference to the Governor for references to the Secretary of State shall not have effect in relation to any associated state.

4. (1) In relation to any associated state the Secretary of State may direct that (subject to paragraph 5 of this Schedule) such functions to which this paragraph applies as are specified in the direction, instead of being exercisable by him or her, shall be exercisable by a person specified in the direction or by the person for the time being holding an office so specified.

(2) A direction under this paragraph may be given either so as to have effect generally in relation to the exercise of the functions specified in it or so as to have effect only in relation to the exercise of those functions in respect of one or more matters or classes of matters so specified.

(3) This paragraph applies to the functions of the Secretary of State under the following provisions of the British Nationality Acts 1948 to 1965 as modified by paragraphs 1 to 3 of this Schedule, that is to say,

- (a) sections 6, 7, 10(1), 20 and 29(3) of the British Nationality Act 1948, c. 56 (including section 29(3) of that Act as applied by section 5(2) of the British Nationality Act 1965, c. 34);
- (b) paragraphs 2 and 3 of Schedule 2 to the British Nationality Act 1948;
- (c) section 3 of the British Nationality Act 1958;
- (d) section 1 of the British Nationality Act 1964, c. 22;
- (e) section 1 of the British Nationality (No. 2) Act 1964, c. 54; and
- (f) sections 1 and 3 of the British Nationality Act 1965.

5. A person by whom any functions are exercisable by virtue of a direction under the last preceding paragraph shall not have power, except with the approval of the Secretary of State, to grant a certificate of naturalisation or to make an order depriving any person of citizenship or of the status of British subject.

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6. Section 26 of the British Nationality Act 1948 (including that section as applied by section 5(2) of the British Nationality Act 1965) shall have effect in relation to the exercise by any person of any functions by virtue of a direction under paragraph 4 of this Schedule.

7. Section 29(4) of the British Nationality Act 1948 (including the said section 29(4) as applied by section 5(2) of the British Nationality Act 1965) shall not apply to any rules made in the exercise of a power conferred on any person by virtue of such a direction.

#### **FOURTH SCHEDULE TO THE ACT**

(Section 5(1))

##### **SAINT CHRISTOPHER AND NEVIS CONSTITUTION ORDER, 1983**

S.I. No. 881 of 1983

At the Court at Buckingham Palace, the 22<sup>nd</sup> day of June, 1983

Present,

The Queen's Most Excellent Majesty in Council

Whereas the status of association of Saint Christopher and Nevis with the United Kingdom will terminate on 19<sup>th</sup> September 1983 and it is necessary to establish a new constitution for Saint Christopher and Nevis upon its attainment of fully responsible status within the Commonwealth:

And whereas the associated state of Saint Christopher and Nevis has, by a resolution passed in the House of Assembly there of on 16<sup>th</sup> March 1983, requested and consented to the making of this Order for that purpose:

Now, therefore, Her Majesty, by virtue and in exercise of the powers vested in Her in that behalf by section 5(4) of the West Indies Act 1967 (a), is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

1. **Citation and commencement.**

This Order may be cited as the Saint Christopher and Nevis Constitution Order, 1983.

2. **Establishment of Constitution.**

The Constitution of Saint Christopher and Nevis set out in Schedule 1 to this Order shall come into effect in Saint Christopher and Nevis on 19<sup>th</sup> September 1983 subject to the transitional provisions set out in Schedule 2 to this Order.

3. **Preparatory measures.**

(1) Delimitation of the boundaries of the electoral districts in the island of Nevis and the election members of the Nevis Island Assembly to represent those electoral districts may take place at any time after the commencement of this Order although the Constitution referred to in section 2 (in this section referred to as the new constitution) has not yet come into effect but no persons so elected as members of the Assembly shall take their seats in the Assembly until the new constitution comes into effect under that section.

(2) Until the new constitution comes into effect the Governor and any other officer or authority of the associated state of Saint Christopher and Nevis may perform any function conferred by the new constitution upon the Governor-General or, as the case may be, the corresponding officer or authority to such extent as may be necessary or expedient for the purpose of giving effect to subsection (1) in conformity with the terms of the new constitution and the transitional provisions set out in schedule 2 to this Order and in particular (without prejudice to the generality of the foregoing provisions) the Governor may for that purpose by order make any such provision for any matter relating to the registration of voters and the holding of elections as could be made by Parliament under the new constitution.

(3) Any procedures began in pursuance of subsection (1) may be continued after the new constitution comes into effect in accordance with its provisions and those of schedule 2 to this Order.

## **SCHEDULE 1 TO THE CONSTITUTION ORDER**

(Section 2)

### **THE CONSTITUTION OF SAINT CHRISTOPHER AND NEVIS**

#### **Arrangement of sections**

#### **CHAPTER I – THE FEDERATION AND THE CONSTITUTION**

1. The Federation and its territory
2. Constitution is supreme law

#### **CHAPTER II – PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS**

3. Fundamental rights and freedoms
4. Protection of right to life
5. Protection of right to personal liberty
6. Protection from slavery and forced labour
7. Protection from inhuman treatment
8. Protection from deprivation of property
9. Protection from arbitrary search or entry
10. Provisions to secure protection of law
11. Protection of freedom of conscience
12. Protection of freedom of expression
13. Protection of freedom of assembly and association
14. Protection of freedom of movement
15. Protection from discrimination on grounds of race etc.
16. Emergency measures derogating from section 5 or 15
17. Protection of persons detained in derogation from section 5
18. Enforcement of protective provisions
19. Declaration of emergency

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20. Interpretation and savings

CHAPTER III – THE GOVERNOR-GENERAL

21. Establishment of office  
22. Acting Governor-General  
23. Deputy to Governor-General  
24. Oaths

CHAPTER IV – PARLIAMENT

PART 1 – COMPOSITION OF PARLIAMENT

25. Establishment  
26. National Assembly  
27. Qualifications for Representatives and Senators  
28. Disqualifications for Representatives and Senators  
29. Election of Representatives  
30. Appointment of Senators  
31. Tenure of office of Representatives and Senators  
32. Speaker and Deputy Speaker  
33. Electoral Commission  
34. Supervisor of Elections  
35. Clerk of National Assembly and his staff  
36. Determination of questions of membership

PART 2 – LEGISLATION AND PROCEDURE OF PARLIAMENT

37. Power to make laws  
38. Alteration of Constitution and Supreme Court Order  
39. Oath  
40. Presiding  
41. Voting  
42. Mode of exercise of legislative power  
43. Restrictions with regard to certain financial measures  
44. Regulation of procedure in National Assembly  
45. Freedom of speech

PART 3 – SUMMONING, PROROGATION AND DISSOLUTION

46. Sessions  
47. Prorogation and dissolution  
48. Holding of elections

PART 4 – DELIMITATION OF CONSTITUENCIES

49. Constituency Boundaries Commission  
50. Review of constituency boundaries

CHAPTER V – THE EXECUTIVE

51. Executive authority
52. Ministers
53. Cabinet
54. Allocation of portfolios
55. Absence or illness of Prime Minister
56. Exercise of Governor-General's functions
57. Governor-General to be kept informed
58. Leader of the Opposition
59. Parliamentary Secretaries
60. Oaths
61. Permanent Secretaries
62. Secretary to Cabinet
63. Constitution of offices etc.
64. Attorney-General
65. Control of public prosecutions
66. Prerogative of mercy
67. Committee on Prerogative of Mercy
68. Functions of Committee

**CHAPTER VI – FINANCE**

69. Consolidated Fund
70. Withdrawals from Consolidated Fund or other public funds
71. Authorisation of expenditure from Consolidated Fund by the appropriation law
72. Authorisation of expenditure in advance of appropriation
73. Warrants for unforeseen expenditure
74. Remuneration of certain officers
75. Public debt
76. Audit of public accounts etc.

**CHAPTER VII – THE PUBLIC SERVICE****PART 1 – THE PUBLIC SERVICE COMMISSION**

77. Public Service Commission
78. Appointment etc. of public officers

**PART 2 – APPOINTMENT ETC. TO PARTICULAR OFFICES**

79. Appointment etc. of permanent secretaries and certain other officers
80. Attorney-General when a public officer
81. Director of Public Prosecutions
82. Director of Audit
83. Appointment etc. of magistrates, registrars and legal officers

**PART 3 – THE POLICE**



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- 84. Police Service Commission
- 85. Appointment etc. of police officers

PART 4 – THE PUBLIC SERVICE BOARD OF APPEAL

- 86. Public Service Board of Appeal
- 87. Appeals to Public Service Board of Appeal

PART 5 – PENSIONS

- 88. Pensions laws and protection of pensions rights
- 89. Power to withhold pensions etc.

CHAPTER VIII – CITIZENSHIP

- 90. Persons who become citizens at independence
- 91. Persons who become citizens after independence
- 92. Registration
- 93. Dual citizenship
- 94. Acquisition, renunciation, certification and deprivation
- 95. Interpretation

CHAPTER IX – JUDICIAL PROVISIONS

- 96. Original jurisdiction of High Court in constitutional questions
- 97. Reference of constitutional questions to High Court
- 98. Appeals to Court of Appeal
- 99. Appeals to Her Majesty in Council

CHAPTER X – THE ISLAND OF NEVIS

- 100. Nevis Island Legislature
- 101. Nevis Island Assembly
- 102. Nevis Island Administration
- 103. Power to make laws
- 104. Provisions applied with modifications
- 105. Exercise of Governor-General's functions
- 106. Responsibilities of Administration
- 107. Public safety and public order
- 108. Finance
- 109. Staff
- 110. Revenue allocation
- 111. Grants and loans
- 112. Disputes between Administration and Government
- 113. Separation of Nevis from Saint Christopher
- 114. Interpretation

CHAPTER XI – MISCELLANEOUS

- 115. Secession of Nevis

- 116. Functions of Governor-General
- 117. Resignations
- 118. Re-appointment and concurrent appointments
- 119. Interpretation
- 120. Text of modified provisions

**SCHEDULE 1****PROVISIONS REFERRED TO IN SECTION 38(3)****SCHEDULE 2****RULES FOR DELIMITATION OF CONSTITUENCIES****SCHEDULE 3****ALTERATIONS IF NEVIS SECEDES****SCHEDULE 4****FORMS OF OATH****SCHEDULE 5****LEGISLATIVE POWERS****SCHEDULE 6****TEXT OF PROVISIONS APPLIED WITH MODIFICATIONS****THE CONSTITUTION OF SAINT CHRISTOPHER AND NEVIS****WHEREAS** the People of Saint Christopher and Nevis

- (a) declare that the nation is established on the belief in Almighty God and the inherent dignity of each individual;
- (b) assert that they are entitled to the protection of fundamental rights and freedoms;
- (c) believe in the concept of true democracy with free and fair elections;
- (d) desire the creation of a climate of economic wellbeing in the context of respect for law and order; and
- (e) are committed to achieve their national objectives with a unity of purpose:

**NOW, THEREFORE,** the following provisions shall have effect as the Constitution of Saint Christopher and Nevis:

**CHAPTER I – THE FEDERATION AND THE CONSTITUTION****1. The Federation and its territory.**

(1) The island of Saint Christopher (which is otherwise known as Saint Kitts) and the island of Nevis shall be a sovereign democratic federal state which may be styled Saint Christopher and Nevis or Saint Kitts and Nevis or the Federation of Saint Christopher and Nevis or the Federation of Saint Kitts and Nevis.

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(2) The territory of Saint Christopher and Nevis shall comprise all areas that were comprised in the associated state of Saint Christopher and Nevis immediately before 19th September 1983, together with such other areas as may be declared by Parliament to form part of the territory of Saint Christopher and Nevis.

**2. Constitution is supreme law.**

This Constitution is the supreme law of Saint Christopher and Nevis and, subject to the provisions of this Constitution, if any other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void.

*CHAPTER II – PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS*

**3. Fundamental rights and freedoms.**

Whereas every person in Saint Christopher and Nevis is entitled to the fundamental rights and freedoms, that is to say, the right, whatever his or her race, place of origin, birth, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely,

- (a) life, liberty, security of the person, equality before the law and the protection of the law;
- (b) freedom of conscience, of expression and of assembly and association; and
- (c) protection for his or her personal privacy, the privacy of his or her home and other property and from deprivation of property without compensation,

the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of those rights and freedoms by any person does not impair the rights and freedoms of others or the public interest.

**4. Protection of right to life.**

(1) A person shall not be deprived of his or her life intentionally save in execution of the sentence of a court in respect of a criminal offence of treason or murder under any law of which he or she has been convicted.

(2) A person shall not be regarded as having been deprived of his or her life in contravention of subsection (1) if he or she dies as the result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably justifiable

- (a) for the defence of any person from violence or for the defence of property;
- (b) in order to effect a lawful arrest, or to prevent the escape, of a person lawfully detained;

- (c) for the purpose of suppressing a riot, insurrection or mutiny; or
- (d) in order to prevent the commission by that person of a criminal offence,

or if he or she dies as the result of a lawful act of war.

#### **5. Protection of right to personal liberty.**

(1) A person shall not be deprived of his or her personal liberty save as may be authorised by law in any of the following cases, that is to say,

- (a) in consequence of his or her unfitness to plead to a criminal charge;
- (b) in execution of the sentence or order of a court, whether established for Saint Christopher and Nevis or some other country, in respect of a criminal offence of which he or she has been convicted;
- (c) in execution of the order of the High Court or the Court of Appeal punishing him or her for contempt of that court or of another court or tribunal;
- (d) in execution of the order of a court made to secure the fulfilment of any obligation imposed on him or her by law;
- (e) for the purpose of bringing him or her before a court in execution of the order of a court;
- (f) upon reasonable suspicion of his or her having committed, or being about to commit, a criminal offence under any law;
- (g) under the order of a court or with the consent of his or her parent or guardian, for his or her education or welfare during any period ending not later than the date when he or she attains the age of eighteen years;
- (h) for the purpose of preventing the spread of an infectious or contagious disease;
- (i) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his or her care or treatment or the protection of the community;
- (j) for the purpose of preventing the unlawful entry of that person into Saint Christopher and Nevis or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Saint Christopher and Nevis or for the purpose of restricting that person while he or she is being conveyed through Saint Christopher and Nevis in the course of his or her extradition or removal as a convicted prisoner from one country to another; or
- (k) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Saint Christopher and Nevis, or prohibiting him or her from being within such an area, or to such extent as may be reasonably justifiable for the

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taking of proceedings against that person with a view to the making of any such order or relating to such an order after it has been made, or to such extent as may be reasonably justifiable for restraining that person during any visit that he or she is permitted to make to any part of Saint Christopher and Nevis in which, in consequence of any such order, his or her presence would otherwise be unlawful.

(2) Any person who is arrested or detained shall with reasonable promptitude and in any case not later than forty-eight hours after such arrest or detention be informed in a language that he or she understands of the reasons for his or her arrest or detention and be afforded reasonable facilities for private communication and consultation with a legal practitioner of his or her own choice and, in the case of a person under the age of eighteen years, with his or her parents or guardian.

(3) Any person who is arrested or detained

- (a) for the purpose of bringing him or her before a court in execution of the order of a court; or
- (b) upon reasonable suspicion of his or her having committed, or being about to commit, a criminal offence under any law

and who is not released, shall be brought before a court without undue delay and in any case not later than seventy-two hours after his or her arrest or detention.

(4) Where any person is brought before a court in execution of the order of a court in any proceedings or upon suspicion of his or her having committed or being about to commit a criminal offence, he or she shall not be thereafter further held in custody in connection with those proceedings or that offence save upon the order of a court.

(5) If any person arrested or detained as mentioned in subsection (3)(b) is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him or her, he or she shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he or she appears at a later date for trial or for proceedings preliminary to trial, and such conditions may include bail so long as it is not excessive.

(6) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person or from any other person or authority on whose behalf that other person was acting:

Provided that a judge, a magistrate or a justice of the peace or an officer of a court or a police officer acting in pursuance of the order of a judge, a magistrate or a justice of the peace shall not be under any personal liability to pay compensation under this subsection in consequence of an act performed by him or her in good faith in the discharge of the functions of his or her office and any liability to pay any such compensation in consequence of any such act shall be a liability of the Crown.

(7) For the purposes of subsection (1)(b) a person charged before a court with a criminal offence in respect of whom a special verdict has been returned that he or she was guilty of the act or omission charged but was insane when he or she did the act or made the omission or that he or she is not guilty by reason of insanity shall be regarded as a person who has been convicted of a criminal offence and the detention of that person in

consequence of such a verdict shall be regarded as detention in execution of the order of a court.

**6. Protection from slavery and forced labour.**

- (1) A person shall not be held in slavery or servitude.
- (2) No person shall be required to perform forced labour.
- (3) For the purposes of this section, the expression “forced labour” does not include
  - (a) any labour required in consequence of the sentence or order of a court;
  - (b) labour required of any person while he or she is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he or she is detained;
  - (c) any labour required of a member of a disciplined force in pursuance of his or her duties as such or, in the case of a person who has conscientious objections to service as a member of a defence force, any labour that that person is required by law to perform in place of such service; or
  - (d) any labour required during any period of public emergency or in the event of any accident or natural calamity that threatens the life and well-being of the community, to the extent that the requiring of such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period or as a result of that accident or natural calamity, for the purpose of dealing with that situation.

**7. Protection from inhuman treatment.**

A person shall not be subjected to torture or to inhuman degrading punishment or other like treatment.

**8. Protection from deprivation of property.**

(1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except for a public purpose and by or under the provisions of a law that prescribes the principles on which and the manner in which compensation therefor is to be determined and given.

(2) Every person having an interest in or right over property that is compulsorily taken possession of or whose interest in or right over any property is compulsorily acquired shall have a right of direct access to the High Court for—

- (a) the determination of his or her interest or right, the legality of the taking of possession or acquisition of the property, interest or right

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and the amount of any compensation to which he or she is entitled;  
and

- (b) the purpose of enforcing his or her right to prompt payment of that compensation:

Provided that, if the legislature so provides in relation to any matter referred to in paragraph (a), the right of access shall be by way of appeal (exercisable as of right at the instance of the person having the interest in or right over the property) from a tribunal or authority, other than the High Court, having jurisdiction under any law to determine that matter.

(3) The Chief Justice may make rules with respect to the practice and procedure of the High Court or, subject to such provision as may have been made in that behalf by the legislature, with respect to the practice and procedure of any other tribunal or authority in relation to the jurisdiction conferred on the High Court by subsection (2) or exercisable by the other tribunal or authority for the purposes of that subsection (including rules with respect to the time within which applications or appeals to the High Court or applications to the other tribunal or authority may be brought).

(4) A person who is entitled to compensation by virtue of subsection (1) shall not be prevented from remitting, within a reasonable time after he or she has received any amount of that compensation in the form of a sum of money or, as the case may be, has received any such amount in some other form and has converted any of that amount into a sum of money, the whole of that sum of money (subject to any tax that applies generally to persons remitting moneys but free from any other deduction, charge or tax made or levied in respect of its remission) to any country of his or her choice outside Saint Christopher and Nevis.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (4) to the extent that the law in question authorises

- (a) the attachment, by order of a court, of any amount of compensation to which a person is entitled in satisfaction of the judgment of a court or pending the determination of civil proceedings to which he or she is a party;
- (b) the imposition of reasonable restrictions on the manner in which any sum of money is to be remitted; or
- (c) the imposition of reasonable restrictions upon the remission of any sum of money in order to prevent or regulate the transfer to a country outside Saint Christopher and Nevis of capital raised in Saint Christopher and Nevis or in some other country or derived from the natural resources of Saint Christopher and Nevis.

(6) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1)

- (a) to the extent that the law in question makes provision for the taking of possession of or acquisition of any property, interest or right
  - (i) in satisfaction of any tax, rate or due;

- (ii) by way of penalty for breach of any law or forfeiture in consequence of breach of any law;
- (iii) as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;
- (iv) in the execution of judgments or orders of a court in proceedings for the determination of civil rights or obligations;
- (v) in circumstances where it is reasonably necessary so to do because the property is in a dangerous state or likely to be injurious to the health of human beings, animals or plants;
- (vi) in consequence of any law with respect to the limitation of actions; or
- (vii) for so long only as may be necessary for those purposes, for the purposes of any examination, investigation, trial or inquiry or, in the case of land, for the purposes of the carrying out thereon of work of soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement (being work relating to such development or improvement that the owner or occupier of the land has been required, and has without reasonable excuse refused or failed, to carry out),

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society; or

- (b) to the extent that the law in question makes provision for the taking of possession of or acquisition of any of the following property (including an interest in or right over property), that is to say,
  - (i) enemy property;
  - (ii) property of a deceased person, a person of unsound mind or a person who has not attained the age of eighteen years, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein;
  - (iii) property of a person adjudged bankrupt or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the bankrupt or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property; or
  - (iv) property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust.

(7) Nothing contained in or done under the authority of any law enacted by Parliament shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision for the compulsory acquisition of any interest in or right over property, where that property, interest or right is held by a body



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corporate established by law for public purposes in which no moneys have been invested other than moneys provided by Parliament.

(8) Nothing contained in or done under the authority of any law enacted by the Nevis Island Legislature shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision for the compulsory taking of possession of any property, or the compulsory acquisition of any interest in or right over property, where that property, interest or right is held by a body corporate established by law for public purposes in which no moneys have been invested other than moneys provided by that Legislature.

**9. Protection from arbitrary search or entry.**

(1) Except with his or her own consent, a person shall not be subject to the search of his or her person or his or her property or the entry by others on his or her premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision

- (a) that is reasonably required in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development and utilisation of mineral resources or the development or utilisation of any property for a purpose beneficial to the community;
- (b) that is reasonably required for the purpose of protecting the rights or freedoms of other persons;
- (c) that authorises an officer or agent of the Government, the Nevis Island Administration, a local government authority or a body corporate established by law for public purposes to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to that Government, Administration, authority or body corporate, as the case may be; or
- (d) that authorises, for the purpose of enforcing the judgment or order of a court in any civil proceedings, the search of any person or property by order of a court or entry upon any premises by such an order,

and except so far as that provision or, as the case may be, anything done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

**10. Provisions to secure protection of law.**

(1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence

- (a) shall be presumed to be innocent until he or she is proved or has pleaded guilty;
- (b) shall be informed as soon as reasonably practicable, in a language that he or she understands and in detail, of the nature of the offence charged;
- (c) shall be given adequate time and facilities for the preparation of his or her defence;
- (d) shall be permitted to defend himself or herself before the court in person or, at his or her own expense, by a legal practitioner of his or her own choice;
- (e) shall be afforded facilities to examine in person or by his or her legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his or her behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and
- (f) shall be permitted to have without payment the assistance of an interpreter if he or she cannot understand the language used at the trial,

and except with his or her own consent the trial shall not take place in his or her absence unless he or she so conducts himself or herself as to render the continuance of the proceedings in his or her presence impracticable and the court has ordered him or her to be removed and the trial to proceed in his or her absence:

Provided that the trial may take place in his or her absence in any case in which it is so provided by a law under which he or she is entitled to adequate notice of the charge and the date, time and place of the trial and to a reasonable opportunity of appearing before the court.

(3) When a person is tried for any criminal offence, the accused person or any person authorised by him or her in that behalf shall, if he or she so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) A person shall not be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(5) A person who shows that he or she has been tried by a competent court for a criminal offence and either convicted or acquitted shall not again be tried for that offence or for any other criminal offence of which he or she could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

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(6) A person shall not be tried for a criminal offence if he or she shows that he has been pardoned for that offence.

(7) A person who is tried for a criminal offence shall not be compelled to give evidence at the trial.

(8) Any court or other authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other authority, the case shall be given a fair hearing within a reasonable time.

(9) Where the existence or extent of any civil right or obligation has been determined in proceedings in any court or before any other authority any party to those proceedings shall, if he or she so requires and subject to payment of such reasonable fee as may be prescribed by law, be entitled to obtain within a reasonable time after the judgment or other determination a copy of any record of the proceedings made by or on behalf of the court or other authority.

(10) Except with the agreement of all the parties thereto, all proceedings of every court and all proceedings for the determination of the existence or extent of any civil right or obligation before any other authority, including the announcement of the decision of the court or other authority, shall be held in public.

(11) Nothing in subsection (10) shall prevent the court or other adjudicating authority from excluding from the proceedings persons other than the parties thereto and the legal practitioners representing them to such extent as the court or other authority

- (a) may by law be empowered to do and may consider necessary or expedient in circumstances where publicity would impair the interests of justice or in interlocutory proceedings or in the interests of public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings; or
- (b) may by law be empowered or required to do in the interests of defence, public safety or public order.

(12) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of

- (a) subsection (2)(a) to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;
- (b) subsection (2)(e) to the extent that the law in question imposes reasonable conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds; or
- (c) subsection (5) to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any court so

trying such a member and convicting him or her shall in sentencing him or her to any punishment take into account any punishment awarded him or her under that disciplinary law.

(13) In the case of any person who is held in lawful detention subsection (1), paragraphs (d) and (e) of subsection (2) and subsection (3) shall not apply in relation to his or her trial for a criminal offence under the law regulating the discipline of persons held in such detention.

(14) In this section “criminal offence” means a criminal offence under a law.

## **11. Protection of freedom of conscience.**

(1) Except with his or her own consent, a person shall not be hindered in the enjoyment of his or her freedom of conscience, including freedom of thought and of religion, freedom to change his or her religion or belief and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his or her religion or belief in worship, teaching, practice and observance.

(2) Except with his or her own consent (or, if he or she is a person under the age of eighteen years, the consent of a person who is his or her parent or guardian) a person attending any place of education, detained in any prison or corrective institution or serving in a defence force shall not be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion that is not his or her own.

(3) Every religious community shall be entitled, at its own expense, to establish and maintain places of education and to manage any place of education that it wholly maintains and such a community shall not be prevented from providing religious instruction for persons of that community in the course of any education that it wholly maintains or in the course of any education that it otherwise provides.

(4) A person shall not be compelled to take any oath that is contrary to his or her religion or belief or to take any oath in a manner that is contrary to his or her religion or belief.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision that is reasonably required

- (a) in the interests of defence, public safety, public order, public morality or public health;
- (b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion without the unsolicited intervention of members of any other religion; or
- (c) for the purpose of regulating educational institutions in the interests of the persons who receive or may receive instruction in them;

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

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(6) References in this section to a religion shall be construed as including references to a religious denomination, and cognate expressions shall be construed accordingly.

**12. Protection of freedom of expression.**

(1) Except with his or her own consent, a person shall not be hindered in the enjoyment of his or her freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication is to the public generally or to any person or class of persons) and freedom from interference with his or her correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision

- (a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health;
- (b) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts or regulating telephony, telegraphy, posts, wireless broadcasting or television; or
- (c) that imposes restrictions upon public officers that are reasonably required for the proper performance of their functions,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

**13. Protection of freedom of assembly and association.**

(1) Except with his or her own consent, a person shall not be hindered in the enjoyment of his or her freedom of assembly and association, that is to say, his or her right to assembly freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his or her interests or to form or belong to political parties or other political associations.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision

- (a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health;
- (b) that is reasonably required for the purpose of protecting the rights or freedoms of other persons; or
- (c) that imposes restrictions upon public officers that are reasonably required for the proper performance of their functions,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

#### **14. Protection of freedom of movement.**

(1) A person shall not be deprived of his or her freedom of movement, that is to say, the right to move freely throughout Saint Christopher and Nevis, the right to reside in any part of Saint Christopher and Nevis, the right to enter Saint Christopher and Nevis, the right to leave Saint Christopher and Nevis and immunity from expulsion from Saint Christopher and Nevis.

(2) Any restriction on a person's freedom of movement that is involved in his or her lawful detention shall not be held to be inconsistent with or in contravention of subsection (1).

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) to the extent that the law in question makes provision

- (a) for the imposition of restrictions on the movement or residence within Saint Christopher and Nevis of any person or on any person's right to leave Saint Christopher and Nevis that are reasonably required in the interests of defence, public safety or public order;
- (b) for the imposition of restrictions on the movement or residence within Saint Christopher and Nevis or on the right to leave Saint Christopher and Nevis of persons generally or any class of persons in the interests of defence, public safety, public order, public morality or public health and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society;
- (c) for the imposition of restrictions, by order of a court, on the movement or residence within Saint Christopher and Nevis of any person or on any person's right to leave Saint Christopher and Nevis either in consequence of his or her having been found guilty of a criminal offence under any law or for the purpose of ensuring that he or she appears before a court at a later date for trial of such a criminal offence or for proceedings preliminary to trial or for proceedings relating to his or her extradition or lawful removal from Saint Christopher and Nevis;
- (d) for the imposition of restrictions on the freedom of movement of any person who is not a citizen;
- (e) for the imposition of restrictions on the acquisition or use by any person of land or other property in Saint Christopher and Nevis;
- (f) for the imposition of restrictions upon the movement or residence within Saint Christopher or on the right to leave Saint Christopher and Nevis of any public officer that are reasonably required for the proper performance of his or her functions;

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- (g) for the removal of a person from Saint Christopher and Nevis to be tried or punished in some other country for a criminal offence under the law of that other country or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence under a law of which he or she has been convicted; or
- (h) for the imposition of restrictions on the right of any person to leave Saint Christopher and Nevis that are reasonably required in order to secure the fulfilment of any obligations imposed on that person by law;

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(4) If any person whose freedom of movement has been restricted by virtue of such a provision as is referred to in subsection (3)(a) so requests at any time during the period of that restriction not earlier than twenty-one days after the order imposing the restriction was made or, as the case may be, three months after he or she last made such a request, his or her case shall be reviewed by an independent and impartial tribunal presided over by a person appointed by the Chief Justice from among persons who hold the office of magistrate or who are legal practitioners.

(5) On any review by a tribunal in pursuance of subsection (4) of the case of any person whose freedom of movement has been restricted, the tribunal may make recommendations concerning the necessity or expediency of the continuation of that restriction to the authority by whom it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

#### 15. **Protection from discrimination on grounds of race etc.**

(1) Subject to subsections (4), (5) and (7), no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to subsections (6), (7), (8) and (9), a person shall not be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this section the expression “discriminatory” means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, birth out of wedlock, political opinions or affiliations, colour, sex or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages that are not accorded to persons of another such description.

- (4) Subsection (1) shall not apply to any law so far as that law makes provision
  - (a) for the appropriation of public revenues or other public funds;
  - (b) with respect to persons who are not citizens;
  - (c) for the application, in the case of persons of any such description as is mentioned in subsection (3) (or of persons connected with such

persons) of the law with respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters that is the personal law of persons of that description; or

- (d) whereby persons of any such description as is mentioned in subsection (3) may be subjected to any disability or restriction or may be accorded any privilege or advantage that, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) to the extent that it makes provision with respect to standards or qualifications (not being standards or qualifications specifically relating to race, place of origin, birth out of wedlock, political opinions or affiliations, colour, creed or sex) to be required of any person who is appointed to or to act in any office under the Crown, any office in the service of a local government authority or any office in a body corporate established by law for public purposes.

(6) Subsection (2) shall not apply to anything that is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (4) or (5).

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) or (2) to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) may be subjected to any restriction on the rights and freedoms guaranteed by sections 9, 11, 12, 13 and 14, being such a restriction as is authorised by section 9(2), 11(5), 12(2) or 13(2) or, as the case may be, paragraph (a), (b), or (h) of section 14(3).

(8) Nothing in subsection (2) shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under any law.

(9) Nothing in subsection (2) shall apply in relation to the exercise of any function vested in any person or authority by any of the provisions of this Constitution except sections 78(1), 79(2), 80(1), 81(1), 82(1), 83 and 85 (which relate to the appointment etc. of public officers).

**16. Emergency measures derogating from section 5 or 15.**

Nothing contained in or done under the authority of a law enacted by Parliament shall be held to be inconsistent with or in contravention of section 5 or 15 to the extent that the law authorises the taking during any period of public emergency of measures that are reasonably justifiable for dealing with the situation that exists in Saint Christopher and Nevis or in part of Saint Christopher and Nevis during that period.

**17. Protection of persons detained in derogation from section 5.**

(1) When a person is detained under emergency measures derogating from section 5 by virtue of section 16 the following provisions shall apply, that is to say



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- (a) he or she shall, with reasonable promptitude and in any case not more than seven days after the commencement of his or her detention, be informed in a language that he or she understands and in detail of the grounds upon which he or she is detained and furnished with a written statement in English specifying those grounds in detail;
- (b) not more than fourteen days after the commencement of his or her detention, a notification shall be published in the *Gazette* stating that he or she has been detained and giving particulars of the provision of law under which his or her detention is authorised;
- (c) not more than one month after the commencement of his or her detention and thereafter during his or her detention at intervals of not more than three months, his or her case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice from among persons who hold the office of magistrate or who are legal practitioners;
- (d) he or she shall be afforded reasonable facilities for private communication and consultation with a legal practitioner of his or her own choice who shall be permitted to make representations to the tribunal appointed for the review of the case of the detained person; and
- (e) at the hearing of his or her case by the tribunal appointed for the review of his or her case he or she shall be permitted to appear in person or to be represented by a legal practitioner of his or her own choice.

(2) On any review by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his or her detention to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

(3) Nothing contained in subsection (1)(d) or (1)(e) shall be construed as entitling a person to legal representation at public expense.

#### 18. **Enforcement of protective provisions.**

(1) If any person alleges that any of the provisions of sections 3 to 17 (inclusive) has been, is being or is likely to be contravened in relation to him or her (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter that is lawfully available, that person (or that other person) may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction

- (a) to hear and determine any application made by any person in pursuance of subsection (1); and

- (b) to determine any question arising in the case of any person that is referred to it in pursuance of subsection (3)

and may make such declarations and orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 3 to 17 (inclusive):

Provided that the High Court may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

(3) If in any proceedings in any court (other than the Court of Appeal or the High Court or a court-martial) any question arises as to the contravention of any of the provisions of sections 3 to 17 (inclusive); the person presiding in that court may and, if any party to the proceedings so requests, shall refer the question to the High Court unless, in his or her opinion, the raising of the question is merely frivolous or vexatious.

(4) Where any question is referred to the High Court in pursuance of subsection (3), the High Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision or, if that decision is the subject of an appeal to the Court of Appeal or to Her Majesty in Council, in accordance with the decision of the Court of Appeal or, as the case may be, of Her Majesty in Council.

(5) The High Court shall have such powers in addition to those conferred by this section as may be conferred upon it by the legislature for the purpose of enabling it more effectively to exercise the jurisdiction conferred upon it by this section.

(6) The Chief Justice may make rules with respect to the practice and procedure of the High Court in relation to the jurisdiction and powers conferred on it by or under this section (including rules with respect to the time within which applications may be brought and references shall be made to the High Court).

## **19. Declaration of emergency.**

(1) The Governor-General may by proclamation declare that for the purposes of this Chapter a state of emergency exists either in Saint Christopher and Nevis or in part of Saint Christopher and Nevis.

(2) A proclamation under subsection (1) shall not be effective unless it includes a declaration that the Governor-General is satisfied that a public emergency has arisen

- (a) because of the possibility that Her Majesty may shortly be at war;
- (b) because of the occurrence of any accident or natural calamity; or
- (c) because action has been taken by any person, or there is an imminent threat of action by any person, of such a nature and on so extensive a scale as to be likely to endanger the public safety or to deprive the community or any substantial portion of the community of supplies or services essential to life.

- (3) Every declaration of emergency shall lapse

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- (a) in the case of a declaration made when the National Assembly is sitting, at the expiration of a period of seven days beginning with the date of publication of the declaration; and
- (b) in any other case, at the expiration of a period of twenty-one days beginning with the date of publication of the declaration;

unless it has in the meantime been approved by resolution of that Assembly.

(4) A declaration under subsection (1) that a state of emergency exists in a part of Saint Christopher and Nevis that comprises or includes all or part of the island of Nevis shall, to the extent that it relates to that island, lapse

- (a) in the case of a declaration made when the Nevis Island Assembly is sitting, at the expiration of a period of seven days beginning with the date of publication of the declaration; and
- (b) in any other case, at the expiration of a period of twenty-one days beginning with the date of publication of the declaration;

unless it has in the meantime been approved by resolution of that Assembly.

(5) A declaration of emergency may at any time be revoked by the Governor-General by proclamation.

- (6) Unless sooner revoked,
  - (a) a declaration of emergency that has been approved by resolution of the National Assembly in pursuance of subsection (3) shall cease to be in force if that resolution ceases to be in force; and furthermore
  - (b) a declaration of emergency that has been approved by resolution of the Nevis Island Assembly in pursuance of subsection (4) shall, to the extent that it relates to the island of Nevis, cease to be in force if that resolution ceases to be in force notwithstanding that a declaration of the National Assembly approving it in pursuance of subsection (3) remains in force.

(7) A resolution of the National Assembly or the Nevis Island Assembly passed for the purposes of this section shall remain in force for twelve months or such shorter period as may be specified therein:

Provided that any such resolution may be extended from time to time by a further such resolution, each extension not exceeding twelve months from the date of the resolution effecting the extension; and any such resolution may be revoked at any time by a further resolution.

(8) A resolution of the National Assembly for the purposes of subsection (3) and a resolution of the Assembly extending any such resolution shall not be passed in the Assembly unless it is supported by the votes of not less than two-thirds of all the Representatives and Senators; and a resolution revoking any such resolution shall not be so passed unless it is supported by the votes of a majority of all the Representatives and Senators.

(9) Any provision of this section that a declaration of emergency shall lapse or cease to be in force at any particular time is without prejudice to the making of a further declaration of emergency whether before or after that time.

(10) In the exercise of his or her powers to make or revoke any such declaration as is referred to in subsection (4) the Governor-General shall act in accordance with the advice of the Prime Minister but no such advice shall be given without the concurrence of the Premier.

(11) In this section “declaration of emergency” means a declaration under subsection (1).

## 20. **Interpretation and savings.**

(1) In this Chapter, unless the context otherwise requires

“contravention”, in relation to any requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

“court” means any court of law having jurisdiction in Saint Christopher and Nevis other than a court established by a disciplinary law, and includes Her Majesty in Council and in sections 4 and 6 a court established by a disciplinary law;

“disciplinary law” means a law regulating the discipline of any disciplined force;

“disciplined force” means

- (a) a defence force;
- (b) the Police Force; or
- (c) a prison service;

“member”, in relation to a disciplined force, includes any person who, under the law regulating the discipline of that force, is subject to that discipline.

(2) In this Chapter, “a period of public emergency” means any period during which

- (a) Her Majesty is at war; or
- (b) there is in force a declaration under section 19 that a state of emergency exists in Saint Christopher and Nevis or in part of Saint Christopher and Nevis.

(3) In relation to any person who is a member of a disciplined force of Saint Christopher and Nevis, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter other than sections 4, 6 and 7.

(4) In relation to any person who is a member of a disciplined force of a country other than Saint Christopher and Nevis and lawfully present in Saint Christopher and

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Nevis, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

(5) Nothing in this Chapter shall be construed as empowering the legislature to make any law that would impede the due exercise by any person or authority (including any authority established for the island of Nevis by Chapter X) of any power or other function vested in that person or authority by this Constitution.

### *CHAPTER III – THE GOVERNOR-GENERAL*

#### **21. Establishment of office.**

There shall be for Saint Christopher and Nevis a Governor-General who shall be a citizen appointed by Her Majesty and shall hold office during Her Majesty's pleasure and who shall be Her Majesty's representative in Saint Christopher and Nevis.

#### **22. Acting Governor-General.**

(1) During any period when the office of Governor-General is vacant or the holder of the office of Governor-General is absent from Saint Christopher and Nevis or is for any other reason unable to perform the functions of his or her office those functions shall be performed by such person as Her Majesty may appoint.

(2) Any person appointed under subsection (1) shall hold office during Her Majesty's pleasure and shall in any case cease to perform the functions of the office of Governor-General if the holder of the office of Governor-General has notified him or her that he or she is about to assume or resume those functions.

(3) The holder of the office of Governor-General shall not, for the purposes of this section, be regarded as absent from Saint Christopher and Nevis or as unable to perform the function of his or her office

- (a) by reason that he or she is in passage from one part of Saint Christopher and Nevis to another; or
- (b) at any time when there is a subsisting appointment of a deputy under section 23(1).

#### **23. Deputy to Governor-General.**

- (1) When the Governor-General
  - (a) has occasion to be absent from the seat of government but not from Saint Christopher and Nevis;
  - (b) has occasion to be absent from Saint Christopher and Nevis for a period that he or she considers, in his or her own deliberate judgment, will be of short duration; or
  - (c) is suffering from an illness that he or she considers, in his or her own deliberate judgment, will be of short duration,

he or she may appoint any person in Saint Christopher and Nevis to be his or her deputy during such absence or illness and in that capacity to perform on his or her behalf such of the functions of the office of Governor-General as he or she may specify.

(2) Without prejudice to subsection (1), the Governor-General shall appoint a person in the island of Nevis as Deputy Governor-General to be his or her deputy in that island and in that capacity to signify on his or her behalf that he or she assents or withholds his or her assent to any bill passed by the Nevis Island Assembly and to perform on his or her behalf such other functions of the office of Governor-General relating to that island as he or she may specify.

(3) The power and authority of the Governor-General shall not be abridged, altered or in any way affected by the appointment of a deputy under this section and, subject to the provisions of this Constitution and any other law, a deputy shall conform to and observe all instructions that the Governor-General, acting in his or her own deliberate judgment, may from time to time address to him or her:

Provided that the question whether or not a deputy has conformed to and observed any such instructions shall not be enquired into by any court of law.

(4) Subject to subsection (5), a person appointed under subsection (1) or, as the case may be, subsection (2) shall hold his or her appointment for such period as may be specified by the Governor-General at the time of his or her appointment.

(5) Any appointment made under subsection (1) or, as the case may be, subsection (2) may be revoked at any time by the Governor-General.

(6) The Governor-General shall act

- (a) in relation to the making of an appointment under subsection (1) or the revocation of such an appointment, in accordance with the advice of the Prime Minister; and
- (b) in relation to the making of an appointment under subsection (2) or the revocation of such an appointment, in accordance with the advice of the Premier.

## 24. **Oaths.**

A person appointed to hold or act in the office of Governor-General or to be his or her deputy shall, before entering upon the duties of that office, take and subscribe the oath of allegiance and the oath of office.

## *CHAPTER IV – PARLIAMENT*

### PART 1 – COMPOSITION OF PARLIAMENT

## 25. **Establishment.**

There shall be for Saint Christopher and Nevis a Parliament which shall consist of Her Majesty and a National Assembly.

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**26. National Assembly.**

- (1) The National Assembly shall consist of
  - (a) such number of Representatives as corresponds with the number of constituencies for the time being established in accordance with section 50; and
  - (b) such number of Senators as is specified in subsection (2), who shall be appointed in accordance with section 30.

(2) The number of Senators shall be three or such greater number (not exceeding two-thirds of the number of Representatives) as may be prescribed by Parliament:

Provided that at any time when a person who is a Senator holds the office of Attorney-General the number of Senators shall be increased by one.

(3) If a person who is not a member of the National Assembly is elected to be Speaker he or her shall, by virtue of holding the office of Speaker, be a member of the Assembly.

(4) At any time when the office of Attorney-General is a public office the Attorney-General shall, by virtue of holding or acting in that office, be a member of the National Assembly.

(5) Any person who sits or votes in the National Assembly knowing or having reasonable grounds for knowing that he or she is not entitled to do so shall be guilty of a criminal offence and liable to a fine not exceeding one hundred dollars, or such other sum as may be prescribed by Parliament, for each day on which he or she so sits or votes in the Assembly.

(6) Any prosecution for an offence under subsection (5) shall be instituted in the High Court and shall not be so instituted except by the Director of Public Prosecutions.

**27. Qualifications for Representatives and Senators.**

Subject to section 28, a person shall be qualified to be elected or appointed as a member of the National Assembly if, and shall not be so qualified unless, he or she is a citizen of the age of twenty-one years or upwards and he or she or one of his or her parents was born in Saint Christopher and Nevis and he or she is domiciled there at the date of his or her nomination for election or his or her appointment, as the case may be.

**28. Disqualifications for Representatives and Senators.**

- (1) A person shall not be qualified to be elected or appointed as a member if he or she
  - (a) is, by virtue of his or her own act, under any acknowledgement of allegiance, obedience or adherence to a foreign power or state;
  - (b) is a minister of religion;
  - (c) is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law;

- (d) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law; or
- (e) is under sentence of death imposed on him or her by a court of law in any part of the Commonwealth or is serving a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him or her by such a court or substituted by competent authority for some other sentence imposed on him or her by such a court, or is under such a sentence of imprisonment the execution of which has been suspended.

(2) If it is so provided by Parliament, a person shall not be qualified to be elected or appointed as a member if he or she holds or is acting in any office that is specified by Parliament and the functions of which involve responsibility for, or in connection with, the conduct of any election of Representatives or members of the Nevis Island Assembly or the compilation of any register of voters for the purpose of electing Representatives or members of that Assembly.

(3) If it is so provided by Parliament, a person who is convicted by any court of law of any criminal offence that is prescribed by Parliament and that is connected with the election of Representatives or members of the Nevis Island Assembly or is reported guilty of such an offence by the court trying an election petition shall not be qualified, for such a period (not exceeding five years) following his or her conviction or, as the case may be, following the report of the court as may be so prescribed, to be elected or appointed as a member.

(4) A person shall not be qualified to be elected as a Representative who is a Senator; and a person shall not be qualified to be appointed as a Senator who is, or is nominated for election as, a Representative or who has at any time since Parliament was last dissolved stood as a candidate for election as a Representative without being so elected.

(5) If it is so provided by Parliament, and subject to such exceptions and limitations (if any) as Parliament may prescribe, a person shall not be qualified to be elected or appointed as a member if

- (a) he or she holds or is acting in any office or appointment (whether specified individually or by reference to a class of office or appointment) other than the office of elected member or nominated member of the Nevis Island Assembly or member of the Nevis Island Administration;
- (b) he or she belongs to any defence force or to any class of person that is comprised in any such force;
- (c) he or she belongs to any police force or to any class of person that is comprised in any such force; or
- (d) subject to any exceptions or limitations prescribed by Parliament, he or she has any such interest in any such government contract as may be so prescribed.

(6) In this section



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“government contract” means any contract made with the Government or with a department of the Government or with an officer of the Government contracting as such;

“member” means member of the National Assembly;

“minister of religion” means any person in holy orders and any other person the principal functions of whose occupation include teaching or preaching in any congregation for religious worship.

- (7) For the purposes of paragraph (e) of subsection (1),
- (a) two or more sentences of imprisonment that are required to be served consecutively shall be regarded as separate sentences if none of those sentences exceeds twelve months, but if any one of such sentences exceeds that term they shall be regarded as one sentence; and
  - (b) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

## 29. **Election of Representatives.**

(1) Each of the constituencies established in accordance with the provisions of section 50 of this Constitution shall return one Representative to the National Assembly who shall be directly elected in such manner as may, subject to the provisions of this Constitution, be prescribed by or under any law enacted by Parliament.

(2) Every Commonwealth citizen of the age of eighteen years or upwards who possesses such qualifications relating to residence or domicile in Saint Christopher and Nevis as Parliament may prescribe shall, unless he or she is disqualified by Parliament from registration as such, be entitled to be registered as a voter for the purpose of electing Representatives in one (but not more than one) constituency in accordance with the provisions of any law in that behalf and no other person may be registered as such.

(3) Every person who is registered under subsection (2) in any constituency shall, unless he or she is disqualified by Parliament from voting in any election of Representatives or of members of the Nevis Island Assembly, be entitled so to vote in that constituency in accordance with the provisions of any law in that behalf and no other person may so vote.

(4) In any election of Representatives the votes shall be given by ballot in such manner as not to disclose how any particular person votes.

## 30. **Appointment of Senators.**

- (1) Of the Senators
- (a) one-third of their number (excluding any Senator who holds the office of Attorney-General) shall be appointed by the Governor-General, acting in accordance with the advice of the Leader of the Opposition; and
  - (b) the others shall be appointed by the Governor-General, acting in accordance with the advice of the Prime Minister.

(2) In this section “one-third” means, in relation to a number of Senators that is not a multiple of three, one-third of the next higher number that is such a multiple.

### **31. Tenure of office of Representatives and Senators.**

(1) An elected or appointed member shall vacate his or her seat in the National Assembly at the next dissolution of Parliament after his or her election or appointment.

(2) A Senator appointed under subsection (1)(a) of section 30 shall vacate his or her seat in the National Assembly if his or her appointment is revoked by the Governor-General, acting in accordance with the advice of the Leader of the Opposition, and a Senator appointed under subsection (1)(b) of that section shall vacate his or her seat in the Assembly if his or her appointment is revoked by the Governor-General, acting in accordance with the advice of the Prime Minister.

(3) An elected or appointed member shall also vacate his or her seat in the Assembly

- (a) if he or she is absent from the sittings of the Assembly for such period and in such circumstances as may be prescribed in the rules of procedure of the Assembly;
  - (b) if he or she ceases to be a citizen;
  - (c) subject to subsection (4), if any other circumstances arise that, if he or she were not a member, would cause him or her to be disqualified to be elected or appointed as such by virtue of subsection (1) of section 28 or of any law enacted in pursuance of subsection (2), (3) or (5) of that section; or
  - (d) in the case of a Senator who holds the office of Attorney-General, if he or she ceases to hold that office.
- (4) (a) If any such circumstances as are referred to in paragraph (c) of subsection (3) arise because an elected or appointed member is under sentence of death or imprisonment, adjudged to be of unsound mind, declared bankrupt or convicted or reported guilty of an offence relating to elections and if it is open to the member to appeal against the decision (either with the leave of a court of law or other authority or without such leave) he or she shall forthwith cease to perform his or her functions as a member but, subject to the provisions of this section, he or she shall not vacate his or her seat until the expiration of a period of thirty days thereafter:

Provided that the Speaker may, at the request of the member, from time to time extend that period for further periods of thirty days to enable the member to pursue an appeal against the decision, so, however, that extensions of time exceeding in the aggregate one hundred and fifty days shall not be given without the approval, signified by resolution, of the National Assembly.

- (b) If, on the determination of any appeal, such circumstances continue to exist and no further appeal is open to the member or if, by reason of

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the expiration of any period for entering an appeal or notice thereof on the refusal of leave to appeal or for any other reason, it ceases to be open to the member to appeal, he or she shall forthwith vacate his or her seat.

- (c) If at any time before the member vacates his or her seat such circumstances cease to exist, his or her seat shall not become vacant on the expiration of the period referred to in paragraph (a) and he or she may resume the performance of his or her functions as a member.

- (5) In this section, "member" means member of the National Assembly.

### 32. **Speaker and Deputy Speaker.**

(1) When the National Assembly first meets after any general election and before it proceeds to the despatch of any other business, it shall elect a person to be the Speaker of the Assembly; and if the office of Speaker falls vacant at any time before the next dissolution of Parliament the Assembly shall, as soon as practicable, elect another person to that office.

(2) The Speaker may be elected from among the members of the National Assembly who are not members of the Cabinet or Parliamentary Secretaries or from among persons who are not members of the Assembly but who are qualified for election as a Representative or appointment as a Senator.

(3) When the National Assembly first meets after any general election and before it proceeds to the despatch of any other business except the election of the Speaker the Assembly shall elect a member of the Assembly who is not a member of the Cabinet or a Parliamentary Secretary to be Deputy Speaker of the Assembly, and if the office of Deputy Speaker falls vacant at any time before the next dissolution of Parliament, the Assembly shall, as soon as convenient, elect another such member to that office.

(4) No business shall be transacted in the National Assembly (other than the election of a Speaker) at any time when the office of Speaker is vacant.

- (5) A person shall vacate the office of Speaker or Deputy Speaker,
  - (a) in the case of a Speaker elected from among the members of the National Assembly or in the case of the Deputy Speaker,

- (i) if he ceases to be a member of the Assembly;

Provided that the Speaker shall not vacate his or her office by reason only that he or she has ceased to be a member of the Assembly on a dissolution of Parliament, until the Assembly first meets after the dissolution; or

- (ii) if he or she becomes a member of the Cabinet or a Parliamentary Secretary.
  - (b) in the case of a Speaker elected from among persons who are not members of the Assembly,
    - (i) when the Assembly first meets after any dissolution of Parliament;

- (ii) if he or she ceases to be a citizen; or
- (iii) if any circumstances arise that would cause him or her to be disqualified for election as a Representative or appointment as a Senator; or
- (c) in the case of the Deputy Speaker, if he or she is elected to be Speaker.
- (6)(a) If, by virtue of section 31(4), the Speaker or the Deputy Speaker is required to cease to perform his or her functions as a member of the National Assembly he or she shall also cease to perform his or her functions as Speaker or Deputy Speaker, as the case may be, and those functions shall, until he or she vacates his or her seat in the Assembly or resumes the performance of the functions of his or her office, be performed,
  - (i) in the case of the Speaker, by the Deputy Speaker or, if the office of Deputy Speaker is vacant or the Deputy Speaker is required to cease to perform his or her functions as a member of the Assembly, by such member of the Assembly (not being a member of the Cabinet or a Parliamentary Secretary) as the Assembly may elect for the purpose;
  - (ii) in the case of the Deputy Speaker, by such member of the Assembly (not being a member of the Cabinet or a Parliamentary Secretary) as the Assembly may elect for the purpose.
- (b) If the Speaker or Deputy Speaker resumes the performance of his or her functions as a member of the Assembly, he or she shall also resume the performance of his or her functions as Speaker or Deputy Speaker, as the case may be.

### 33. **Electoral Commission.**

(1) There shall be for Saint Christopher and Nevis an Electoral Commission (hereinafter in this section referred to as the Commission) which shall consist of:

- (a) a chairperson appointed by the Governor-General, acting in his or her own deliberate judgment;
- (b) one member appointed by the Governor-General, acting in accordance with the advice of the Prime Minister; and
- (c) one member appointed by the Governor-General, acting in accordance with the advice of the Leader of the Opposition.

(2) A person shall not be qualified to be appointed as a member of the Commission if he or she is a Representative, a Senator or a member of the Nevis Island Assembly or a public officer nor, in the case of the chairperson, unless he or she holds one of the specified qualifications and has held one or other of those qualifications for a total period of not less than seven years.

- (3) A member of the Commission shall vacate his or her office

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- (a) at the expiration of such period as may be specified by the Governor-General at the time of his or her appointment;
- (b) if any circumstances arise that, if he or she were not a member of the Commission, would cause him or her to be disqualified for appointment as such; or
- (c) if the Governor-General, acting in his or her own deliberate judgment in the case of the chairperson, in accordance with the advice of the Prime Minister in the case of a member appointed under subsection (1)(b) or in accordance with the advice of the Leader of the Opposition in the case of a member appointed under subsection (1)(c), so directs.

(4) The function of the Commission shall be to supervise the Supervisor of Elections in the performance of his or her functions under sections 34(1), 38(9) and 113(5).

(5) The Commission may regulate its own procedure and, with the consent of the Prime Minister, may confer powers and impose duties on any public officer or on any authority of the Government for the purpose of the discharge of its functions.

(6) The Commission may, subject to its rules of procedure, act notwithstanding any vacancy in its membership and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings:

Provided that any decision of the Commission shall require the concurrence of a majority of all its members.

#### **34. Supervisor of Elections.**

(1) There shall be a Supervisor of Elections whose duty it shall be to exercise general supervision over the registration of voters in elections of Representatives and over the conduct of such elections.

(2) The functions of the office of Supervisor of Elections shall be exercised either by the person holding or acting in such public office as may for the time being be designated in that behalf by the Governor-General or, if the Governor-General so decides, by such other person who is not a public officer as may for the time being be so designated.

(3) A person shall not enter upon the duties of the office of Supervisor of Elections until he or she has taken and subscribed the oath of allegiance and the oath of office.

(4) For the purposes of the exercise of his or her functions under subsection (1), the Supervisor of Elections may give such directions as he or she considers necessary or expedient to any registering officer, presiding officer or returning officer relating to the exercise by that officer of his or her functions under any law regulating the registration of voters or the conduct of elections, and any officer to whom any such directions are given shall comply with those directions.

(5) The Supervisor of Elections may, whenever he or she considers it necessary or expedient to do so and shall whenever so required by the Commission, report to the Electoral Commission on the exercise of his or her functions under subsection (1); he or she shall also submit every such report to the Minister for the time being responsible for matters relating to the election of Representatives; and that Minister shall, not later than seven days after the National Assembly first meets after he or she has received the report, lay it before the Assembly together with such comments thereon as he or she may have received from the Commission.

(6) In the exercise of his or her powers under subsection (2) the Governor-General shall act in his or her own deliberate judgment after consulting the Prime Minister, the Premier and the Leader of the Opposition.

(7) In the exercise of his or her functions under subsection (1), the Supervisor of Elections shall act in accordance with such directions as he or she may from time to time be given by the Electoral Commission but shall not be subject to the direction or control of any other person or authority.

(8) The Supervisor of Elections shall exercise such other functions in relation to elections (whether to the National Assembly or to local government authorities) as may be prescribed by or under any law enacted by Parliament.

**35. Clerk of National Assembly and his or her staff.**

(1) There shall be a Clerk of the National Assembly.

(2) The office of the Clerk of the National Assembly and the offices of the members of his or her staff shall be public offices.

**36. Determination of questions of membership.**

(1) The High Court shall have jurisdiction to hear and determine any question whether

- (a) any person has been validly elected as a Representative;
- (b) any person has been validly appointed as a Senator;
- (c) any person who has been elected as Speaker from among persons who were not members of the National Assembly was qualified to be so elected or has vacated the office of Speaker; or
- (d) any member of the Assembly has vacated his or her seat or is required, by virtue of section 31(4), to cease to perform his or her functions as a member of the Assembly.

(2) An application to the High Court for the determination of any question under subsection (1)(a) may be made by any person entitled to vote in the election to which the application relates or by any person who was, or who alleges that he or she was, a candidate at that election or by the Attorney-General and, if it is made by a person other than the Attorney-General, the Attorney-General may intervene and may then appear or be represented in the proceedings.

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(3) An application to the High Court for the determination of any question under subsection (1)(b) or (1)(c) may be made by any Representative or by the Attorney-General and, if it is made by a person other than the Attorney-General, the Attorney-General may intervene and may then appear or be represented in the proceedings.

(4) An application to the High Court for the determination of any question under subsection (1)(d) may be made

- (a) by any Representative or by the Attorney-General; or
- (b) in the case of the seat of a Representative, by any person registered in some constituency as a voter in elections of Representatives,

and, if it is made by a person other than the Attorney-General, the Attorney-General may intervene and may then appear and be represented in the proceedings.

(5) There shall be such provision as may be made by Parliament with respect to

- (a) the circumstances and manner in which and the imposition of conditions upon which any application may be made to the High Court for the determination of any question under this section; and
- (b) the powers, practice and procedure of the High Court in relation to any such application.

(6) An appeal shall lie as of right to the Court of Appeal from any final decision of the High Court determining any such question as is referred to in subsection (1).

(7) No appeal shall lie from any decision of the Court of Appeal in exercise of the jurisdiction conferred by subsection (6) and no appeal shall lie from any decision of the High Court in proceedings under this section other than a final decision determining any such question as is referred to in subsection (1) of this section.

(8) In the exercise of his or her functions under this section, the Attorney-General shall not be subject to the direction or control of any other person or authority.

## PART 2 – LEGISLATION AND PROCEDURE OF PARLIAMENT

### 37. **Power to make laws.**

(1) Subject to the provisions of this Constitution, Parliament may make laws for the peace, order and good government of Saint Christopher and Nevis.

(2) Save as otherwise provided in subsections (3) and (4), the power of Parliament to make laws having effect in the island of Nevis shall not extend to any of the specified matters (that is to say, matters with respect to which the Nevis Island Legislature has exclusive power to make laws so having effect).

(3) If it is expressly declared in any law enacted by Parliament that the Nevis Island Administration has requested and consented to the enactment in respect to the island of Nevis of any of the provisions of that law relating to any of the specified matters those provisions shall accordingly have effect in the island of Nevis as if they had been enacted by the Nevis Island Legislature and may be amended or revoked accordingly.

(4) At any time when there is in force a declaration made by the Governor-General by proclamation that any provisions of any law enacted by Parliament specified in that declaration (being provisions that relate to a specified matter) are required to have effect in the island of Nevis,

- (a) in the interests of external affairs; or
- (b) in the interests of defence,

those provisions shall accordingly have effect in the island of Nevis; and if there is any inconsistency between those provisions and the provisions of any law enacted by the Nevis Island Legislature, the provisions of the law enacted by Parliament shall prevail.

(5) A law enacted by Parliament shall not be regarded as extending to a specified matter by reason only that it contains incidental or supplementary provisions relating to that matter and having effect in the island of Nevis; and if there is any inconsistency between any such provisions and the provisions of any law enacted by the Nevis Island Legislature, the provisions of the law enacted by Parliament shall prevail.

(6) Parliament may make additions to the specified matters but a bill for that purpose shall not be regarded as being passed in the National Assembly unless on its final reading it is supported by the votes of not less than two-thirds of all the Representatives.

(7) In the exercise of his or her powers to make or revoke any such declaration as is referred to in subsection (4) the Governor-General shall act in accordance with the advice of the Prime Minister but no such advice shall be given without the concurrence of the Premier.

### **38. Alteration of Constitution and Supreme Court Order.**

(1) Parliament may alter any of the provisions of this Constitution or of the Supreme Court Order in the manner specified in the following provisions of this section.

(2) A bill to alter any of the provisions of this Constitution or of the Supreme Court Order shall not be regarded as being passed by the National Assembly unless on its final reading the bill is supported by the votes of not less than two-thirds of all the Representatives.

(3) A bill to alter this section, schedule 1 to this Constitution or any of the provisions of this Constitution specified in Part 1 of that schedule or any of the provisions of the Supreme Court Order specified in Part 2 of that schedule shall not be submitted to the Governor-General for his or her assent unless

- (a) there has been an interval of not less than ninety days between the introduction of the bill in the National Assembly and the beginning of the proceedings in the Assembly on the second reading of the bill; and
- (b) after it has been passed by the Assembly the bill has been approved on a referendum by not less than two-thirds of all the votes validly cast on that referendum in the island of Saint Christopher and two-thirds of all the votes validly cast on that referendum in the island of Nevis.



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(4) The provisions of paragraph (b) of subsection (3) shall not apply in relation to any bill to alter

- (a) section 99 in order to give effect to any agreement between Saint Christopher and Nevis and the United Kingdom concerning appeals from any court having jurisdiction in Saint Christopher and Nevis to Her Majesty in Council;
- (b) any of the provisions of the Supreme Court Order in order to give effect to any international agreement to which Saint Christopher and Nevis is a party relating to the Supreme Court or any other court of law (or any officer or authority having functions in respect of any such court) constituted in common for Saint Christopher and Nevis and for other countries also parties to the agreement; or
- (c) any of the provisions of this Constitution relating to the island of Nevis that have become spent or inappropriate as a result of the enactment by the Nevis Island Legislature of a law under section 113(1) providing that the island of Nevis shall cease to be federated with the island of Saint Christopher.

(5) A bill to alter section 104 in its application to other provisions of this Constitution (not being provisions referred to in subsection (3) of this section) shall not be submitted to the Governor-General for his or her assent unless the alteration is in accordance with a request from, or the consent of, the Nevis Island Assembly signified by resolution; and references in section 104 to those other provisions shall not be construed as including references to any law altering those other provisions unless that section is altered so to provide.

(6) Every person who, at the time when a referendum is held for the purposes of this section, would be entitled to vote in elections of Representatives held in the island of Saint Christopher shall be entitled to vote on that referendum in that island; every person who, at that time, would be entitled to vote in elections of Representatives held in the island of Nevis shall be entitled to vote on that referendum in that island: and no other person shall be entitled to vote on that referendum in the island of Saint Christopher or, as the case may be, in the island of Nevis.

(7) The right of any person to vote on a referendum under this section shall be exercised in accordance with such procedures as may be prescribed by Parliament for the purposes of the referendum.

(8) In any referendum for the purposes of this section the votes shall be given by ballot in such manner as not to disclose how any particular person votes.

(9) The conduct of any referendum for the purposes of this section shall be the responsibility of the Supervisor of Elections and the provisions of subsections (4), (5) and (7) of section 34 shall apply in relation to the exercise by the Supervisor of Elections or by any other officer of his or her functions with respect to a referendum as they apply in relation to the exercise of his or her functions with respect to elections of Representatives.

- (10) (a) A bill to alter any of the provisions of this Constitution or of the Supreme Court Order shall not be submitted to the Governor-General

for his or her assent unless it is accompanied by a certificate under the hand of the Speaker that the provisions of subsection (2) and, where applicable, those of subsection (3)(a) have been complied with and, where a referendum has been held in pursuance of subsection (3)(b), by a certificate under the hand of the Supervisor of Elections stating the results of the referendum.

- (b) The certificate of the Speaker under this subsection shall be conclusive that the provisions of subsection (2) and, where applicable, those of subsection (3) have been complied with and shall not be enquired into in any court of law.
- (c) In this subsection, references to the Speaker shall, if the person holding the office of Speaker is for any reason unable to perform the functions of his or her office and no other person is performing them, include references to the Deputy Speaker.

**39. Oath.**

(1) Every member of the National Assembly shall, before taking his or her seat in the Assembly, take and subscribe before the Assembly the oath of allegiance but a member may before taking that oath take part in the election of the Speaker.

(2) Any person elected to the office of Speaker shall, if he or she has not already taken and subscribed the oath of allegiance under subsection (1), take and subscribe that oath before the National Assembly before entering upon the duties of his or her office.

**40. Presiding.**

There shall preside at any sitting of the National Assembly

- (a) the Speaker;
- (b) in the absence of the Speaker, the Deputy Speaker; or
- (c) in the absence of the Speaker and the Deputy Speaker, such member of the Assembly (not being a member of the Cabinet or a Parliamentary Secretary) as the Assembly may elect for that purpose.

**41. Voting.**

(1) Save as otherwise provided in sections 19(8), 37(6) or 38(2), any question proposed for decision in the National Assembly shall be determined by a majority of the votes of the members present and voting:

Provided that questions of no confidence in the Government shall be determined by a majority of the votes of all the Representatives.

(2) Except in the case of a question of no confidence in the Government, a question shall not be regarded as having been validly determined by a vote in the National Assembly on occasions when the numbers of members voting are recorded unless not less than three-fifths of all the members, or such greater number of members as Parliament may prescribe, take part in the voting.

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(3) Subject to subsection (4), a person presiding in the Assembly shall not vote unless on any question the votes of the members are equally divided, in which case he or she shall have and exercise a casting vote:

Provided that in the case of the question of the final reading of any such bill as is referred to in section 38(2) he or she shall, if he or she is a Representative, have an original vote but no casting vote.

(4) A Speaker who was elected from among persons who were not members of the National Assembly shall have neither an original nor a casting vote and if, upon any question before the Assembly when such a Speaker is presiding, the votes of the members are equally divided, the motion shall be lost.

#### 42. **Mode of exercise of legislative power.**

(1) The power of Parliament to make laws shall be exercised by bills passed by the National Assembly and assented to by the Governor-General.

(2) When a bill is submitted to the Governor-General for assent in accordance with the provisions of this Constitution he or she shall signify that he or she assents or that he or she withholds assent.

(3) When the Governor-General assents to a bill that has been submitted to him or her in accordance with the provisions of this Constitution the bill shall become law and the Governor-General shall thereupon cause it to be published in the Gazette as law.

(4) No law made by Parliament shall come into operation until it has been published in the Gazette but Parliament may postpone the coming into operation of any such law and may make laws with retrospective effect.

#### 43. **Restrictions with regard to certain financial measures.**

Except on the recommendation of the Governor-General signified by a Minister, the National Assembly shall not

- (a) proceed upon any bill (including any amendment to a bill) that, in the opinion of the person presiding, makes provision for any of the following purposes:
  - (i) for the imposition of taxation or the alteration of taxation otherwise than by reduction;
  - (ii) for the imposition of any charge upon the Consolidated Fund or any other public fund of the Government or the alteration of any such charge otherwise than by reduction;
  - (iii) for the payment, issue or withdrawal from the Consolidated Fund or any other public fund of the Government of any moneys not charged thereon or any increase in the amount of such payment, issue or withdrawal; or
  - (iv) for the composition or remission of any debt due to the Crown in right of the Government; or

- (b) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding, would be to make provision for any of those purposes.

**44. Regulation of procedure in National Assembly.**

(1) Subject to the provisions of this Constitution, the National Assembly may regulate its own procedure and may in particular make rules for the orderly conduct of its own proceedings.

(2) The National Assembly may act notwithstanding any vacancy in its membership (including any vacancy not filled when the Assembly first meets after any general election) and the presence or participation of any person not entitled to be present at or to participate in the proceedings of the Assembly shall not invalidate those proceedings.

**45. Freedom of speech.**

Without prejudice to any provision made by Parliament relating to the powers, privileges and immunities of the National Assembly and its committees, or the privileges and immunities of the members and officers of the Assembly and of other persons concerned in the business of the Assembly or its committees, no civil or criminal proceedings may be instituted against any member of the Assembly for words spoken before, or written in a report to, the Assembly or a committee thereof or by reason of any matter or thing brought by him or her therein by petition, bill, resolution, motion or otherwise.

**PART 3 – SUMMONING, PROROGATION AND DISSOLUTION**

**46. Sessions.**

(1) Each session of Parliament shall be held at such place within Saint Christopher and Nevis and shall begin at such time, not being later than one hundred and eighty days from the end of the preceding session if Parliament has been prorogued or ninety days from the holding of a general election of Representatives if Parliament has been dissolved, as the Governor-General shall appoint by proclamation.

(2) Subject to subsection (1), the sittings of the National Assembly shall be held at such time and place as the Assembly may, by its rules of procedure or otherwise, determine.

**47. Prorogation and dissolution.**

(1) The Governor-General may at any time prorogue or dissolve Parliament.

(2) Subject to subsection (3), Parliament, unless sooner dissolved, shall continue for five years from the date of the first sitting of the National Assembly after any dissolution and shall then stand dissolved.

(3) At any time when Her Majesty is at war, Parliament may extend the period of five years specified in subsection (2) for not more than twelve months at a time:

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Provided that the life of Parliament shall not be extended under this subsection for more than five years.

(4) In the exercise of his or her powers to dissolve Parliament the Governor-General shall act in accordance with the advice of the Prime Minister:

Provided that if the office of the Prime Minister is vacant and the Governor-General, acting in his or her own deliberate judgment, considers that there is no prospect of his or her being able within a reasonable time to appoint to that office a person who can command the support of the majority of the Representatives, the Governor-General shall dissolve Parliament.

(5) If, after a dissolution of Parliament and before the holding of the general election of Representatives, the Prime Minister advises the Governor-General that, because of some matter of urgent national importance, it is necessary to recall Parliament, the Governor-General shall summon the Parliament that has been dissolved to meet, but the general election of Representatives shall proceed and the Parliament that has been recalled shall, if not sooner dissolved, again stand dissolved on the date appointed for the nomination of candidates in that general election.

#### 48. **Holding of elections.**

(1) A general election of members of the National Assembly shall be held at such time within ninety days after any dissolution of Parliament as the Governor-General may appoint.

(2) Where the seat of a member of the National Assembly falls vacant otherwise than by reason of a dissolution of Parliament,

- (a) if the vacant seat is that of a Representative, a by-election shall be held; or
- (b) if the vacant seat is that of a Senator, an appointment shall be made,

to fill the vacancy within ninety days of the occurrence of the vacancy unless Parliament is sooner dissolved.

### PART 4 – DELIMITATION OF CONSTITUENCIES

#### 49. **Constituency Boundaries Commission.**

(1) There shall be for Saint Christopher and Nevis a Constituency Boundaries Commission (hereinafter in this section referred to as the Commission) which shall consist of:

- (a) a chairperson appointed by the Governor-General, acting in accordance with the advice of the Prime Minister given after the Governor-General has consulted the Leader of the Opposition and such other persons as the Governor-General, acting in his or her own deliberate judgment, has seen fit to consult;

- (b) two members of the National Assembly appointed by the Governor-General, acting in accordance with the advice of the Prime Minister; and
- (c) two members of the Assembly appointed by the Governor-General, acting in accordance with the advice of the Leader of the Opposition:

Provided that the chairperson shall not be a member of the Assembly or of the Nevis Island Assembly.

- (2) A member of the Commission shall vacate his or her office
  - (a) at the next dissolution of Parliament after his or her appointment;
  - (b) in the case of the chairperson, if any circumstances arise that, if he or she were not a member of the Commission, would cause him or her to be disqualified for appointment as such;
  - (c) in the case of a member other than the chairperson, if he or she ceases to be a member of the National Assembly otherwise than by reason of the dissolution of Parliament; or
  - (d) if the Governor-General, acting in accordance with the advice of the Prime Minister given after the Governor-General has consulted the Leader of the Opposition in the case of the chairperson, in accordance with the advice of the Prime Minister in the case of a member appointed under subsection (1)(b) or in accordance with the advice of the Leader of the Opposition in the case of a member appointed under subsection (1)(c), so directs.

(3) The Commission may regulate its own procedure and, with the consent of the Prime Minister, may confer powers and impose duties on any public officer or on any authority of the Government for the purpose of the discharge of its functions.

(4) The Commission may, subject to its rules of procedure, act notwithstanding any vacancy in its membership and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings:

Provided that any decision of the Commission shall require the concurrence of a majority of all its members.

#### **50. Review of constituency boundaries.**

(1) The Constituency Boundaries Commission (hereinafter in this section referred to as the Commission) shall, in accordance with the provisions of this section, review the number and boundaries of the constituencies into which Saint Christopher and Nevis is divided and submit to the Governor-General reports either

- (a) showing the constituencies into which it recommends that Saint Christopher and Nevis should be divided in order to give effect to the rules set out in Schedule 2; or

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- (b) stating that, in its opinion, no alteration is required to the existing number or boundaries of constituencies in order to give effect to those rules.
- (2) Reports under subsection (1) shall be submitted by the Commission at intervals of not less than two nor more than five years.
- (3) As soon as may be after the Commission has submitted a report under subsection (1)(a), the Prime Minister shall lay before the National Assembly for its approval the draft of a proclamation by the Governor-General for giving effect, whether with or without modifications, to the recommendations contained in the report, and that draft proclamation may make provision for any matters that appear to the Prime Minister to be incidental to or consequential upon the other provisions of the draft.
- (4) Where any draft proclamation laid before the National Assembly gives effect to any recommendations of the Commission with modifications, the Prime Minister shall lay before the Assembly together with the draft a statement of the reasons for the modifications.
- (5) If the motion for the approval of any draft proclamation laid before the National Assembly under subsection (3) is rejected by the Assembly, or is withdrawn by leave of the Assembly, the Prime Minister shall amend the draft and lay the amended draft before the Assembly.
- (6) If any draft proclamation laid before the National Assembly under subsection (3) or (5) is approved by a resolution of the Assembly, the Prime Minister shall submit it to the Governor-General who shall make a proclamation in terms of the draft; and that proclamation shall come into force upon the next dissolution of Parliament after it is made.
- (7) The question of the validity of any proclamation by the Governor-General purporting to be made under subsection (6) and reciting that a draft thereof has been approved by resolution of the National Assembly shall not be enquired into in any court of law except upon the ground that the proclamation does not give effect to rule 1 in schedule 2.

## CHAPTER V – THE EXECUTIVE

### 51. **Executive authority.**

- (1) The executive authority of Saint Christopher and Nevis is vested in Her Majesty.
- (2) Subject to the provisions of this Constitution, the executive authority of Saint Christopher and Nevis may be exercised on behalf of Her Majesty by the Governor-General either directly or through officers subordinate to him or her.
- (3) Nothing in this section shall prevent the legislature from conferring functions on persons or authorities other than the Governor-General.

(4) In this section references to the executive authority of Saint Christopher and Nevis include references to the executive authority of the island of Nevis with respect to the specified matters.

## 52. **Ministers.**

(1) There shall be a Prime Minister of Saint Christopher and Nevis who shall be appointed by the Governor-General.

(2) Whenever the Governor-General has occasion to appoint a Prime Minister he or she shall appoint a Representative who appears to him or her likely to command the support of the majority of the Representatives.

(3) There shall be, in addition to the office of Prime Minister, an office of Deputy Prime Minister and such other offices of Minister of the Government as may be established by Parliament, or, subject to the provisions of any law enacted by Parliament, by the Governor-General, acting in accordance with the advice of the Prime Minister.

(4) Appointments to the office of Minister, other than the office of Prime Minister, shall be made by the Governor-General, acting in accordance with the advice of the Prime Minister, from among the members of the National Assembly.

(5) If occasion arises for making an appointment to the office of Prime Minister or any other Minister while Parliament is dissolved, then, notwithstanding the provisions of subsections (2) and (4), a person who was a Representative immediately before the dissolution may be appointed as Prime Minister and a person who was a Representative or a Senator immediately before the dissolution may be appointed as any Minister other than Prime Minister.

(6) The Governor-General shall remove the Prime Minister from office if a resolution of no confidence in the Government is passed by the National Assembly and the Prime Minister does not within three days either resign from his or her office or advise the Governor-General to dissolve Parliament.

(7) If, at any time between the holding of a general election of Representatives and the first meeting of the National Assembly there-after, the Governor-General considers that in consequence of changes in the membership of the Assembly resulting from that election the Prime Minister will not be able to command the support of the majority of the Representatives, the Governor-General may remove the Prime Minister from office.

(8) The office of any Minister shall become vacant

- (a) if the holder of the office ceases to be a member of the National Assembly otherwise than by reason of the dissolution of Parliament;
- (b) in the case of the Prime Minister, if, when the Assembly first meets after any dissolution of Parliament, he or she is not then a Representative;
- (c) in the case of any other Minister, if, when the Assembly first meets after any dissolution of Parliament, he or she is not then a Representative or a Senator; or



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- (d) if, by virtue of section 31(4), he or she is required to cease to perform his or her functions as a member of the Assembly.
- (9) The office of a Minister other than the Prime Minister shall become vacant
  - (a) if the Governor-General, acting in accordance with the advice of the Prime Minister, so directs;
  - (b) if the Prime Minister resigns from office within three days after a resolution of no confidence in the Government has been passed by the National Assembly or is removed from office under subsection (6) or (7); or
  - (c) on the appointment of any person to the office of Prime Minister.
- (10) In the exercise of the powers conferred upon him or her by subsections (2) and (7) the Governor-General shall act in his or her own deliberate judgment.

### 53. **Cabinet.**

(1) There shall be for Saint Christopher and Nevis a Cabinet of Ministers which shall consist of the Prime Minister and the other Ministers.

(2) At any time when the office of Attorney-General is a public office the Attorney-General shall, by virtue of holding or acting in that office, be a member of the Cabinet in addition to the Ministers.

(3) The functions of the Cabinet shall be to advise the Governor-General in the government of Saint Christopher and Nevis and the Cabinet shall be collectively responsible to the National Assembly for any advice given to the Governor-General by or under the general authority of the Cabinet and for all things done by or under the authority of any Minister in the execution of his or her office.

- (4) Subsection (3) shall not apply in relation to
  - (a) the appointment and removal from office of Ministers and Parliamentary Secretaries, the assignment of responsibility to any Minister under section 54, or the authorisation of another Minister to perform the functions of the Prime Minister during absence or illness;
  - (b) the dissolution of Parliament;
  - (c) the matters referred to in section 66 (which relate to the prerogative of mercy); or
  - (d) the government of the island of Nevis, any matter in respect of which Parliament has no power to make laws for the island of Nevis.

### 54. **Allocation of portfolios.**

The Governor-General, acting in accordance with the advice of the Prime Minister, may, by directions in writing, assign to the Prime Minister or any other Minister responsibility for any business of the Government, including the administration of any department of the Government.

**55. Absence or illness of Prime Minister.**

(1) Whenever the Prime Minister is absent from Saint Christopher and Nevis or by reason of illness is unable to perform the functions conferred upon him or her by this Constitution, the Governor-General may authorise some other Minister to perform those functions (other than the functions conferred by this section) and that Minister may perform those functions until his or her authority is revoked by the Governor-General.

(2) The powers of the Governor-General under this section shall be exercised by him or her in accordance with the advice of the Prime Minister:

Provided that if the Governor-General, acting in his or her own deliberate judgment, considers that it is impracticable to obtain the advice of the Prime Minister owing to his or her absence or illness he or she may exercise those powers without that advice and in his or her own deliberate judgment.

**56. Exercise of Governor-General's functions.**

(1) In the exercise of his or her functions the Governor-General shall act in accordance with the advice of the Cabinet or a Minister acting under the general authority of the Cabinet except in cases where he or she is required by this Constitution to act in accordance with the advice of, or the recommendation of, any person or authority other than the Cabinet:

Provided that the foregoing provisions shall not apply where the Governor-General is authorised to act in his or her own deliberate judgment in accordance with the following provisions:

- (a) section 23 (which relates to the Governor-General's deputy);
- (b) sections 33 and 34 (which relate respectively to the Electoral Commission and to the Supervisor of Elections);
- (c) section 49 (which relates to the Constituency Boundaries Commission);
- (d) sections 52 and 55 (which relate to Ministers);
- (e) section 58 (which relates to the Leader of the Opposition);
- (f) section 77 (which relates to the Public Service Commission);
- (g) section 78 (which relates to the appointment etc. of public officers);
- (h) section 86 (which relates to the Public Service Board of Appeal); and
- (i) section 102 (which relates to the Nevis Island Administration).

(2) Where the Governor-General is directed to exercise any function in accordance with the recommendation of any person or authority, he or she shall exercise that function accordingly:

Provided that before the Governor-General acts in accordance with a recommendation in any case he or she may, acting in his or her own deliberate judgment, once request the person or authority by whom it is made to reconsider the recommendation and if, upon any reconsideration of a recommendation, the person or authority makes a different recommendation, the Governor-General, acting in his or her own deliberate

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judgment, may likewise once request the person or authority by whom it is made to reconsider that different recommendation.

(3) During any period in which there is a vacancy in the office of Leader of the Opposition by reason of the fact that no person is both qualified for appointment to that office in accordance with section 58 and willing to accept appointment or if the Governor-General, acting in his or her own deliberate judgment, considers that it is not practicable for him or her to obtain the advice of, or to consult, the Leader of the Opposition within the time within which it may be necessary for him or her to act, he or she may act without that advice and in his or her own deliberate judgment or, as the case may be, without such consultation, in the exercise of any power conferred upon him or her by this Constitution in respect of which it is provided that he or she shall act on the advice of, or after consultation with, the Leader of the Opposition.

(4) Nothing in subsection (1) shall require the Governor-General to act in accordance with the advice of the Cabinet or a Minister in exercise of the functions conferred upon him or her by the following provisions:

- (a) the proviso to section 47(4) (which requires the Governor-General to dissolve Parliament in certain circumstances);
- (b) section 52(6) (which requires the Governor-General to remove the Prime Minister from office in certain circumstances);
- (c) section 57 (which entitles the Governor-General to information);
- (d) sections 58(5), 77(5), 81(7), 82(7) and 86(5) (which require the Governor-General to remove the holders of certain offices from office in certain circumstances).

(5) The references in this section to sections 47, 52, 55, 57 and 58 include references to those sections as applied with modifications by section 104 (which relates to institutions established for the island of Nevis by Chapter X).

#### **57. Governor-General to be kept informed.**

The Prime Minister shall keep the Governor-General fully informed concerning the general conduct of the Government and shall furnish the Governor-General with such information as he or she may request with respect to any particular matter for which the Government is responsible.

#### **58. Leader of the Opposition.**

(1) There shall (except at times when no Representative is eligible for appointment) be a Leader of the Opposition in the National Assembly who shall be appointed by the Governor-General.

(2) Whenever there is occasion for the appointment of a Leader of the Opposition the Governor-General shall appoint the Representative who appears to him or her most likely to command the support of a majority of the Representatives who do not support the Government: or, if no Representative appears to him or her to command such support, the Representative who appears to him or her to command the support of the largest single group of Representatives who do not support the Government:

Provided that no Representative shall be eligible for appointment unless it appears to the Governor-General that that Representative commands the support of at least one other Representative.

(3) If occasion arises to appoint a Leader of the Opposition during the period between a dissolution of Parliament and the day on which the ensuing election of Representatives is held, an appointment may be made as if Parliament had not been dissolved.

(4) The office of Leader of the Opposition shall become vacant

- (a) if he or she ceases to be a member of the National Assembly otherwise than by reason of a dissolution of Parliament;
- (b) if, when the Assembly first meets after a dissolution of Parliament, he or she is not then a Representative;
- (c) if, by virtue of section 31(4), he or she is required to cease to perform his or her functions as a member of the Assembly; or
- (d) if he or she is removed from office by the Governor-General under subsection (5).

(5) If it appears to the Governor-General that the Leader of the Opposition is no longer able to command the support of a majority of the Representatives who do not support the Government or (if no Representative appears to him or her to be able to command such support) the support of the largest single group of Representatives who do not support the Government, he or she shall remove the Leader of the Opposition from office.

(6) The powers of the Governor-General under this section shall be exercised by him or her in his or her own deliberate judgment.

#### **59. Parliamentary Secretaries.**

(1) The Governor-General, acting in accordance with the advice of the Prime Minister, may appoint Parliamentary Secretaries from among the members of the National Assembly to assist Ministers in the performance of their duties:

Provided that, if occasion arises for making an appointment while Parliament is dissolved, a person who was a Representative or a Senator immediately before the dissolution may be appointed as a Parliamentary Secretary.

(2) The office of a Parliamentary Secretary shall become vacant

- (a) if the Governor-General, acting in accordance with the advice of the Prime Minister, so directs;
- (b) if the Prime Minister resigns from office within three days after a resolution of no confidence in the Government has been passed by the National Assembly or is removed from office under section 52(6);
- (c) upon the appointment of any person to the office of Prime Minister;
- (d) if the holder of the office ceases to be a member of the Assembly otherwise than by reason of a dissolution of Parliament;

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- (e) if, when the Assembly first meets after the dissolution of Parliament, he or she is not then a Representative or a Senator; or
- (f) if, by virtue of section 31(4), he or she is required to cease to perform his or her functions as a member of the Assembly.

**60. Oaths.**

A Minister or a Parliamentary Secretary shall not enter upon the duties of his or her office unless he or she has taken and subscribed the oath of allegiance, the oath of office and the oath of secrecy.

**61. Permanent Secretaries.**

Where any Minister has been charged with responsibility for any department of the Government, he or she shall exercise general direction and control over that department; and, subject to such direction and control, every department of the Government shall be under the supervision of a permanent secretary whose office shall be a public office:

Provided that two or more departments may be placed under the supervision of one permanent secretary.

**62. Secretary to Cabinet.**

(1) There shall be a Secretary to the Cabinet whose office shall be a public office.

(2) The Secretary to the Cabinet, who shall have charge of the Cabinet Office, shall be responsible, in accordance with such instructions as may be given to him or her by the Prime Minister, for arranging the business for, and keeping the minutes of, the Cabinet and for conveying the decisions of the Cabinet to the appropriate person or authority and shall have such other functions as the Prime Minister may direct.

**63. Constitution of offices etc.**

Subject to the provisions of this Constitution and of any other law, the Governor-General may constitute offices for Saint Christopher and Nevis, make appointments to any such office and terminate any such appointment.

**64. Attorney-General.**

(1) There shall be an Attorney-General who shall be the principal legal adviser to the Government.

(2) The office of Attorney-General shall be either a public office or the office of a Minister.

(3) No person shall be qualified to hold or act in the office of Attorney-General unless he or she is qualified for election as a Representative or appointment as a Senator and is also qualified to practice as a barrister in Saint Christopher and Nevis.

**65. Control of public prosecutions.**

(1) There shall be a Director of Public Prosecutions whose office shall be a public office.

(2) The Director of Public Prosecutions shall have power in any case in which he or she considers it desirable so to do

- (a) to institute and undertake criminal proceedings against any person before any court of law (other than in a court-martial) in respect of any offence under a law alleged to have been committed by that person;
- (b) to take over and continue any such criminal proceedings that have been instituted or undertaken by any other person or authority; and
- (c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or herself or any other person or authority.

(3) The powers of the Director of Public Prosecutions under subsection (2) may be exercised by him or her in person or through other persons acting under and in accordance with his or her general or special instructions.

(4) The powers conferred on the Director of Public Prosecutions by paragraphs (b) and (c) of subsection (2) shall be vested in him or her to the exclusion of any other person or authority:

Provided that where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority and with the leave of the court.

(5) For the purposes of this section, any appeal from a judgment in criminal proceedings before any court or any case stated or question of law reserved for the purpose of any such proceedings, to any other court (including Her Majesty in Council) shall be deemed to be part of those proceedings:

Provided that the power conferred on the Director of Public Prosecutions by subsection (2)(c) shall not be exercised in relation to any appeal by a person convicted in any criminal proceedings or to any case stated or question of law reserved at the instance of such a person.

(6) In the exercise of the functions vested in him or her by subsection (2) and by sections 26(5) and 101(6), the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority.

**66. Prerogative of mercy.**

(1) The Governor-General may

- (a) grant a pardon, either free or subject to lawful conditions, to any person convicted of any criminal offence under a law;

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- (b) grant to any person a respite, either indefinite or for a specified period, of the execution of any punishment imposed on that person for any such offence;
- (c) substitute a less severe form of punishment for any punishment imposed on any person for any such offence; or
- (d) remit the whole or any part of any punishment imposed on any person for any such offence or of any penalty or forfeiture otherwise due to the Crown on account of any such offence.

(2) The powers of the Governor-General under this section shall be exercised by him or her in accordance with the advice of such Minister as may from time to time be designated by the Governor-General, acting in accordance with the advice of the Prime Minister.

**67. Committee on Prerogative of Mercy.**

(1) There shall be for Saint Christopher and Nevis an Advisory Committee on the Prerogative of Mercy (hereinafter in this section referred to as the Committee) which shall consist of:

- (a) the Minister for the time being designated under section 66(2), who shall be chairperson;
- (b) the Attorney-General; and
- (c) not less than three nor more than four other members appointed by the Governor-General.

(2) A member of the Committee appointed under subsection (1)(c) shall hold his or her seat thereon for such period as may be specified by the Governor-General at the time of his or her appointment:

Provided that his or her seat shall become vacant

- (a) in the case of a person who was a Minister when he or she was appointed, if he or she ceases to be a Minister; or
- (b) if the Governor-General so directs.

(3) The Committee may act notwithstanding any vacancy in its membership or the absence of any member and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings.

(4) The Committee may regulate its own procedure.

(5) In the exercise of his or her functions under this section, the Governor-General shall act in accordance with the advice of the Prime Minister.

**68. Functions of Committee.**

(1) Where any person has been sentenced to death (otherwise than by a court-martial) for a criminal offence under any law, the Minister for the time being designated under section 66(2) shall cause a written report of the case from the trial judge (or the

Chief Justice, if a report from the trial judge cannot be obtained) together with such other information derived from the record of the case or elsewhere as he or she may require, to be taken into consideration at a meeting of the Advisory Committee of the Prerogative of Mercy; and after obtaining the advice of the Committee he or she shall decide in his or her own deliberate judgment whether to advise the Governor-General to exercise any of his or her powers under section 66(1).

(2) The Minister for the time being designated under section 66(2) may consult with the Advisory Committee on the Prerogative of Mercy before tendering any advice to the Governor-General under that subsection in any case not falling within subsection (1) of this section but he or she shall not be obliged to act in accordance with the recommendation of the Committee.

#### *CHAPTER VI – FINANCE*

#### **69. Consolidated Fund.**

All revenue or other moneys raised or received by the Government (not being revenues or other moneys that are payable, by or under any law, into some other fund of the Government established for a specific purpose) shall be paid into and form a Consolidated Fund.

#### **70. Withdrawals from Consolidated Fund or other public funds.**

- (1) No moneys shall be withdrawn from the Consolidated Fund except
- (a) to meet expenditure that is charged upon the Fund by this Constitution or by any law enacted by Parliament; or
  - (b) where the issue of those moneys has been authorised by an appropriation law or by a law made in pursuance of section 72.

(2) Where any moneys are charged by this Constitution or any law enacted by Parliament upon the Consolidated Fund or any other public fund of the Government, they shall be paid out of that fund by the Government to the person or authority to whom payment is due.

(3) No moneys shall be withdrawn from any public fund of the Government other than the Consolidated Fund unless the issue of those moneys has been authorised by or under any law.

(4) There shall be such provision as may be made by Parliament prescribing the manner in which withdrawals may be made from the Consolidated Fund or any other public fund of the Government.

(5) The investment of moneys forming part of the Consolidated Fund shall be made in such manner as may be prescribed by or under a law enacted by Parliament.

(6) Notwithstanding subsection (1), provision may be made by or under a law enacted by Parliament authorising withdrawals to be made from the Consolidated Fund, in such circumstances and to such extent as may be prescribed by or under a law enacted by Parliament, for the purpose of making repayable advances.



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**71. Authorisation of expenditure from Consolidated Fund by the appropriation law.**

(1) The Minister for the time being responsible for finance shall cause to be prepared and laid before the National Assembly before, or not later than sixty days after, the commencement of each financial year estimates of the revenues and expenditure of the Government for that financial year.

(2) When the estimates of expenditure (other than expenditure charged upon the Consolidated Fund by this Constitution or by any law enacted by Parliament) have been approved by the National Assembly, a bill, known as an appropriation bill, shall be introduced in the Assembly providing for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums, under separate votes for the several services required, to the purposes specified therein.

(3) If in respect of any financial year it is found

- (a) that the amount appropriated by the appropriation law to any purpose is insufficient or that a need has arisen for expenditure for a purpose to which no amount has been appropriated by that law; or
- (b) that any moneys have been expended for any purpose in excess of the amount appropriated to that purpose by the appropriation law or for a purpose to which no amount has been appropriated by that law,

a supplementary estimate showing the sums required or spent shall be laid before the National Assembly and, when the supplementary estimate has been approved by the Assembly, a supplementary appropriation bill shall be introduced in the Assembly providing for the issue of such sums from the Consolidated Fund and appropriating them to the purposes specified therein.

**72. Authorisation of expenditure in advance of appropriation.**

There shall be such provision as may be made by Parliament under which, if the appropriation law in respect of any financial year has not come into operation by the beginning of that financial year, the Minister for the time being responsible for finance may authorise the withdrawal of moneys from the Consolidated Fund for the purpose of meeting expenditure necessary to carry on the services of the Government until the expiration of four months from the beginning of that financial year or the coming into operation of the law, whichever is the earlier.

**73. Warrants for unforeseen expenditure.**

(1) If it appears to the Minister for the time being responsible for finance that

- (a) there is an urgent need to incur expenditure;
- (b) no provision exists for that expenditure in any appropriation law or other law; and
- (c) it would not be in the public interest to delay the authorisation of that expenditure until such time as a supplementary estimate can be laid before the National Assembly,

the Minister may, by special warrant, authorise the issue from the Consolidated Fund of the moneys required to meet that expenditure:

Provided that the total sum for the time being authorised to be issued under this subsection, for which no provision has been made by an appropriation law, shall not exceed such amount as may be prescribed by Parliament.

(2) Where in any financial year any expenditure has been authorised by special warrant under subsection (1) the Minister for the time being responsible for finance shall cause a supplementary estimate relating to that expenditure to be laid before the National Assembly at the first sitting of the Assembly occurring after the expiration of fourteen days from the date of the warrant and a supplementary appropriation bill shall be introduced in the Assembly providing for the issue of the sums authorised to be spent and appropriating them to the purposes specified therein.

#### **74. Remuneration of certain officers.**

(1) There shall be paid to the holders of the offices to which this section applies such salaries and such allowances as may be prescribed by or under a law enacted by Parliament.

(2) The salaries and allowances prescribed under subsection (1) shall be a charge on the Consolidated Fund.

(3) The salary prescribed under subsection (1) in respect of the holder of an office and his or her other terms of service (other than allowances that are not taken into account in computing, under any law in that behalf, any pension payable in respect of his or her service in that office) shall not be altered to his or her disadvantage after his or her appointment.

(4) When a person's salary or other terms of service depend upon his or her option, the salary or terms for which he or she opts shall, for the purposes of subsection (3), be deemed to be more advantageous to him or her than any others for which he or she might have opted.

(5) This section applies to the offices of the Governor-General, member of the Public Service Commission, member of the Police Service Commission, member of the Public Service Board of Appeal, the Director of Public Prosecutions and the Director of Audit.

(6) Nothing in this section shall be construed as affecting section 88 of this Constitution (which protects pensions rights in respect of service as a public officer).

#### **75. Public debt.**

(1) All debt charges for which the Government is liable shall be a charge on the Consolidated Fund.

(2) For the purposes of this section debt charges include interest, sinking fund charges, the repayment or amortization of debt and all expenditure in connection with the raising of loans on the security of the Consolidated Fund and the service and redemption of the debt created thereby.

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**76. Audit of public accounts etc.**

- (1) There shall be a Director of Audit whose office shall be a public office.
- (2) The Director of Audit shall
  - (a) satisfy himself or herself that all moneys that have been appropriated by Parliament and disbursed have been applied to the purposes to which they were so appropriated and that the expenditure conforms to the authority that governs it; and
  - (b) at least once in every year audit and report on the public accounts of the Government, the accounts of all officers and authorities of the Government, the accounts of all courts of law in Saint Christopher and Nevis (including any accounts of the Supreme Court maintained in Saint Christopher and Nevis), the accounts of every Commission and Board established by this Constitution and the accounts of the Clerk of the National Assembly.
- (3) The Director of Audit and any officer authorised by him or her shall have access to all books, records, returns, reports and other documents that in his or her opinion relate to any of the accounts referred to in subsection (2).
- (4) The Director of Audit shall submit every report made by him or her in pursuance of subsection (2) to the Minister for the time being responsible for finance who shall, not later than seven days after the National Assembly first meets after he or she has received the report, lay it before the Assembly.
- (5) If the Minister fails to lay a report before the National Assembly in accordance with subsection (4) the Director of Audit shall transmit copies of the report to the Speaker who shall, as soon as practicable, present them to the Assembly.
- (6) The Director of Audit shall exercise such other functions in relation to the accounts of the Government or the accounts of other authorities or bodies established by law for public purposes as may be prescribed by or under any law enacted by Parliament.
- (7) In the exercise of his or her functions under subsections (2), (3), (4) and (5), the Director of Audit shall not be subject to the direction or control of any other person or authority.

*CHAPTER VII – THE PUBLIC SERVICE*

PART 1 – THE PUBLIC SERVICE COMMISSION

**77. Public Service Commission.**

- (1) There shall be for Saint Christopher and Nevis a Public Service Commission (hereinafter in this section referred to as the Commission) which shall consist of a chairperson and not less than two nor more than four other members who shall be appointed as follows:

- (a) the chairperson and not more than three other members shall be appointed by the Governor-General, acting in accordance with the advice of the Prime Minister; and
- (b) one member shall be appointed by the Governor-General, acting in accordance with the advice of the Prime Minister, from among persons selected by the appropriate representative body or, if there is no such body, by the Governor-General, acting in his or her own deliberate judgment:

Provided that, for the purposes of discharging its functions in relation to public offices on the staff of the Nevis Island Administration, the Commission shall consist of:

- (i) the chairperson who has been appointed as aforesaid;
- (ii) such one of the members appointed as aforesaid as may be designated in that behalf by the chairperson; and
- (iii) two members appointed specifically in relation to the island of Nevis by the Governor-General, acting in accordance with the advice of the Prime Minister after the Prime Minister has consulted the Premier.

(2) A person shall not be qualified to be appointed as a member of the Commission

- (a) unless he or she is a Commonwealth citizen ordinarily resident in Saint Christopher and Nevis; or
- (b) if he or she is a member of the National Assembly or the Nevis Island Assembly or a public officer.

(3) Subject to the provisions of this section, the office of a member of the Commission shall become vacant

- (a) at the expiration of such period (not being less than two years nor more than five years from the date of his or her appointment) as may be specified by the Governor-General, acting in accordance with the advice of the Prime Minister, at the time of his or her appointment; or
- (b) if any circumstances arise that, if he or she were not a member of the Commission, would cause him or her to be disqualified to be appointed as such under subsection (2).

(4) A member of the Commission may be removed from office only for inability to exercise the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(5) A member of the Commission shall be removed from office by the Governor-General if the question of his or her removal from office has been referred to a tribunal appointed under subsection (6) and the tribunal has recommended to the Governor-General that he or she ought to be removed from office for inability as aforesaid or for misbehaviour.

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(6) If the Prime Minister represents to the Governor-General that the question of removing a member of the Commission under this section ought to be investigated then

- (a) the Governor-General shall appoint a tribunal which shall consist of a chairperson and not less than two other members, selected by the Chief Justice from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court; and
- (b) the tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and recommend to him or her whether the member ought to be removed under this section.

(7) If the question of removing a member of the Commission has been referred to a tribunal under this section, the Governor-General, acting in accordance with the advice of the Prime Minister, may suspend that member from the exercise of the functions of his or her office and any such suspension may at any time be revoked by the Governor-General, acting in accordance with such advice as aforesaid, and shall in any case cease to have effect if the tribunal recommends to the Governor-General that that member should not be removed.

(8) If the office of chairperson of the Commission is vacant or if the holder of that office is for any reason unable to exercise the functions of this office, then, until a person has been appointed to and has assumed the functions of that office or until the person holding that office has resumed those functions, as the case may be, they shall be exercised by such other member of the Commission as may for the time being be designated by the Governor-General, acting in accordance with the advice of the Prime Minister.

(9) If at any time there are less than two members of the Commission beside the chairperson or if any such member is acting as chairperson or is for any reason unable to exercise the functions of his or her office, the Governor-General, acting in accordance with the advice of the Prime Minister, may appoint a person who is qualified to be appointed as a member of the Commission to act as a member, and any person so appointed shall, subject to subsection (4), continue to act until the office in which he or she is acting has been filled or, as the case may be, until the holder thereof has resumed his or her functions or until his or her appointment to act has been revoked by the Governor-General, acting in accordance with the advice of the Prime Minister.

(10) A member of the Commission shall not enter upon the duties of his or her office until he or she has taken and subscribed the oath of allegiance and the oath of office.

(11) The Commission shall, in the exercise of its functions under this Constitution, not be subject to the direction or control of any other person or authority.

(12) The Commission may by regulation or otherwise regulate its own procedure, and, with the consent of the Prime Minister, may confer powers or impose duties on any public officer or on any authority of the Government for the purpose of the exercise of its functions.

(13) The Commission may, subject to its rules of procedure, act notwithstanding any vacancy in its membership or the absence of any member and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings:

Provided that any decision of the Commission shall require the concurrence of a majority of all its members.

(14) In this section “the appropriate representative body” means such body (if any) as may be designated by the Governor-General, acting in accordance with the advice of the Prime Minister, as the principal body in Saint Christopher and Nevis representing the interests of public officers.

#### **78. Appointment etc. of public officers.**

(1) Subject to section 87, the power to appoint persons to hold or act in offices in the public service (including the power to confirm appointments), and the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Governor-General, acting in accordance with the recommendation of the Public Service Commission (hereinafter in this section referred to as the Commission).

(2) The Governor-General, acting in accordance with the recommendation of the Commission, may, by directions in writing and subject to such conditions as he or she thinks fit, delegate any of his or her powers under subsection (1) to any one or more members of the Commission or, with the consent of the Prime Minister, to any public officer.

(3) The provisions of this section shall not apply in relation to the following offices, that is to say,

- (a) any office to which section 79 applies;
- (b) the office of Attorney-General;
- (c) the office of Director of Public Prosecutions;
- (d) the office of Director of Audit;
- (e) any office to which section 83 applies; or
- (f) any office in the Police Force.

(4) No person shall be appointed under this section to or to act in any office on the Governor-General’s personal staff except with the concurrence of the Governor-General, acting in his or her own deliberate judgment.

(5) Before the Commission makes any recommendation in relation to the Clerk of the National Assembly or a member of his or her staff for the purposes of subsection (1) or (2) and before any other person exercises in relation to the Clerk of the National Assembly or a member of his or her staff any power delegated to him or her under subsection (2), the Commission or that person shall consult the Speaker.

(6) Before the Commission recommends the Governor-General under subsection (1), or any other person exercises any power delegated to him or her under

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subsection (2), to appoint to hold or act in any public office any person who is in the public service of the Government of any other country or territory, the Commission or that person shall consult the Prime Minister.

(7) Before the Commission recommends the Governor-General under subsection (1), or any other person exercises any power delegated to him or her under subsection (2), to appoint to or to act in any public office any person who holds or is acting in any office to which section 83 of this Constitution applies, the Commission or that person shall consult the Judicial and Legal Services Commission.

(8) A public officer shall not be removed from office or subjected to any other punishment under this section on the grounds of any act done or omitted by him or her in the exercise of a judicial function conferred on him or her unless the Judicial and Legal Services Commission concurs therein.

#### PART 2 – APPOINTMENT ETC. TO PARTICULAR OFFICES

#### 79. **Appointment etc. of permanent secretaries and certain other officers.**

(1) This section applies to the offices of Secretary to the Cabinet, permanent secretary of a department of the Government, head or deputy head of a department of the Government, any office for the time being designated by the Public Service Commission as an office of a chief professional adviser to a department of the Government and any office for the time being designated by the Commission, after consultation with the Prime Minister, as an office the holders of which are required to reside outside Saint Christopher and Nevis or whose functions relate to external affairs.

(2) The power to appoint persons to hold or to act in offices to which this section applies (including the power to confirm appointments), and, subject to section 87, the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Governor-General, acting in accordance with the recommendation of the Public Service Commission:

Provided that

- (a) the power to appoint a person to hold or act in an office of permanent secretary on transfer from another office carrying the same salary shall vest in the Governor-General, acting in accordance with the advice of the Prime Minister;
- (b) before the Public Service Commission makes a recommendation to the Governor-General with respect to the appointment of any person to hold an office to which this section applies (other than an appointment to an office of permanent secretary on transfer from another such office carrying the same salary) it shall consult with the Prime Minister and if the Prime Minister signifies his or her objection to the appointment of any person to the office, the Commission shall not make a recommendation to the Governor-General to appoint that person;
- (c) in relation to any office of Ambassador, High Commissioner or other principal representative of Saint Christopher and Nevis in any other

country or accredited to any international organization the Governor-General shall act in accordance with the advice of the Prime Minister, who shall, before tendering any such advice in respect of any person who holds any public office to which appointments are made by the Governor-General in accordance with the recommendation of some other person or authority, consult that person or authority.

(3) References in this section to a department of the Government shall not include the office of the Governor-General, the department of the Attorney-General, the department of the Director of Public Prosecutions, the department of the Director of Audit, the department of the Clerk of the National Assembly or the Police Force.

#### **80. Attorney-General when a public officer.**

(1) This section shall have effect at any time when the office of Attorney-General is a public office.

(2) The power to appoint a person to hold or act in the office of Attorney-General shall vest in the Governor-General, acting in accordance with the recommendation of the Public Service Commission:

Provided that before the Public Service Commission makes any recommendation under this subsection it shall consult the Prime Minister and the Judicial and Legal Services Commission.

(3) The power to exercise disciplinary control over and remove from office a person holding or acting in the office of Attorney-General shall vest in the Governor-General, acting in accordance with the recommendation of the Judicial and Legal Services Commission:

Provided that before the Judicial and Legal Services Commission makes any recommendation under this subsection it shall consult the Public Service Commission.

#### **81. Director of Public Prosecutions.**

(1) The Director of Public Prosecutions shall be appointed by the Governor-General, acting in accordance with the recommendation of the Judicial and Legal Services Commission.

(2) If the office of Director of Public Prosecutions is vacant or if the holder of that office is for any reason unable to exercise the functions of his or her office, the Governor-General, acting in accordance with the recommendation of the Judicial and Legal Services Commission, may appoint a person to act as Director.

(3) A person shall not be qualified to be appointed to hold the office of Director of Public Prosecutions unless he or she holds one of the specified qualifications and has held one or other of those qualifications for a total period of not less than five years.

(4) A person appointed to act in the office of Director of Public Prosecutions shall, subject to subsections (5), (7), (8) and (9), cease so to act



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- (a) when a person is appointed to hold that office and has assumed the functions thereof or, as the case may be, when the person in whose place he or she is acting resumes the functions of that office; or
- (b) at such earlier time (if any) as may be specified by the Governor-General at the time of his or her appointment.

(5) Subject to subsection (7), the Director of Public Prosecutions shall vacate his or her office when he or she attains the prescribed age.

(6) A person holding the office of Director of Public Prosecutions may be removed from office only for inability to exercise the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(7) The Director of Public Prosecutions shall be removed from office by the Governor-General if the question of his or her removal from office has been referred to a tribunal appointed under subsection (8) and the tribunal has recommended to the Governor-General that he or she ought to be removed for inability as aforesaid or for misbehaviour.

(8) If the Prime Minister or the chairperson of the Judicial and Legal Service Commission represents to the Governor-General that the question of removing the Director of Public Prosecutions under this section ought to be investigated, then

- (a) the Governor-General shall appoint a tribunal which shall consist of a chairperson and not less than two other members, selected by the Chief Justice from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court; and
- (b) the tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and recommend to him or her whether the Director ought to be removed under this section.

(9) If the question of removing the Director of Public Prosecutions has been referred to a tribunal under this section, the Governor-General, acting in accordance with the advice of the Judicial and Legal Services Commission, may suspend the Director from the exercise of the functions of his or her office and any such suspension may at any time be revoked by the Governor-General, acting in accordance with such advice as aforesaid, and shall in any case cease to have effect if the tribunal recommends to the Governor-General that the Director should not be removed.

(10) The prescribed age for the purposes of subsection (5) is the age of fifty-five years or such other age as may be prescribed by Parliament:

Provided that any law enacted by Parliament, to the extent to which it alters the prescribed age after a person has been appointed to be or to act as Director of Public Prosecutions, shall not have effect in relation to that person unless he or she consents that it should have effect.

**82. Director of Audit.**

(1) The Director of Audit shall be appointed by the Governor-General, acting in accordance with the recommendation of the Public Service Commission.

(2) If the office of Director of Audit is vacant or if the holder of that office is for any reason unable to exercise the functions of his or her office, the Governor-General, acting in accordance with the recommendation of the Public Service Commission, may appoint a person to act as Director.

(3) Before making any recommendation for the purposes of subsection (1) or (2), the Public Service Commission shall consult the Prime Minister.

(4) A person appointed to act in the office of Director of Audit shall, subject to subsections (5), (7), (8) and (9), cease to act

- (a) when a person is appointed to hold that office and has assumed the functions thereof or, as the case may be, when the person in whose place he or she is acting resumes the functions of that office; or
- (b) at such earlier time (if any) as may be specified by the Governor-General at the time of his or her appointment.

(5) Subject to subsection (7), the Director of Audit shall vacate his office when he or she attains the prescribed age.

(6) A person holding the office of Director of Audit may be removed from office only for inability to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(7) The Director of Audit shall be removed from office by the Governor-General if the question of his or her removal from office has been referred to a tribunal appointed under subsection (8) and the tribunal has recommended to the Governor-General that he or she ought to be removed for inability as aforesaid or for misbehaviour.

(8) If the Prime Minister or the chairperson of the Public Service Commission represents to the Governor-General that the question of removing the Director of Audit under this section ought to be investigated

- (a) the Governor-General shall appoint a tribunal which shall consist of a chairperson and not less than two other members selected by the Chief Justice from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court; and
- (b) the tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and recommend to him or her whether the Director ought to be removed under this section.

(9) If the question of removing the Director of Audit has been referred to a tribunal under this section, the Governor-General, acting in accordance with the advice of the Public Service Commission, may suspend the Director of Audit from the exercise of

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the functions of his or her office and any such suspension may at any time be revoked by the Governor-General, acting in accordance with such advice, and shall in any case cease to have effect if the tribunal recommends to the Governor-General that the Director should not be removed.

(10) The prescribed age for the purposes of subsection (5) is the age of fifty-five or such other age as may be prescribed by Parliament:

Provided that any law enacted by Parliament, to the extent to which it alters the prescribed age after a person has been appointed to be or to act as Director of Audit, shall not have effect in relation to that person unless he or she consents that it should have effect.

**83. Appointment etc. of magistrates, registrars and legal officers.**

(1) This section applies to the offices of magistrate, registrar of the High Court and assistant registrar of the High Court and to any public office in the department of the Attorney-General (other than the public office of Attorney-General) or the department of the Director of Public Prosecutions (other than the office of Director) for appointment to which persons are required to hold one or other of the specified qualifications.

(2) The power to appoint persons to hold or act in offices to which this section applies (including the power to confirm appointments) shall vest in the Governor-General, acting in accordance with the recommendation of the Public Service Commission:

Provided that before making any recommendation as to the exercise of the powers conferred by this section in any case the Public Service Commission shall consult the Judicial and Legal Services Commission.

(3) The power to exercise disciplinary control over persons holding or acting in offices to which this section applies and the power to remove such persons from office shall vest in the Governor-General, acting in accordance with the recommendation of the Judicial and Legal Services Commission:

Provided that before making any recommendation as to the exercise of the powers conferred by this subsection in any case the Judicial and Legal Services Commission shall consult the Public Service Commission.

**PART 3 – THE POLICE**

**84. Police Service Commission.**

(1) There shall be for Saint Christopher and Nevis a Police Service Commission (hereinafter in this section referred to as the Commission) which shall consist of:

- (a) the chairperson and the members of the Public Service Commission appointed under paragraph (a) of section 77(1); and
- (b) one member appointed by the Governor-General, acting in accordance with the advice of the Prime Minister, who shall, if persons have been selected in that behalf by the appropriate representative body, be so appointed from among those persons.

(2) The provisions of sections 77(2), 77(3), 77(4), 77(5), 77(6), 77(7) and 77(10) shall apply in relation to a member of the Commission appointed under paragraph (b) of subsection (1) as they apply in relation to a member of the Public Service Commission.

(3) The member of the Public Service Commission for the time being performing the functions of the chairperson of that Commission shall perform the functions of the chairperson of the Commission.

(4) Any person for the time being authorised to act as a member of the Public Service Commission under section 77(9) (other than a person so authorised on account of the inability of a member thereof appointed under section 77(1)(b)) shall act as a member of the Commission.

(5) If at any time the member of the Commission appointed under paragraph (b) of subsection (1) of this section is for any reason unable to exercise the functions of his or her office, the Governor-General, acting in accordance with the advice of the Prime Minister, may appoint a person who is qualified to be appointed as a member of the Commission to act as a member, and any person so appointed shall, subject to subsection (2), continue to act until the holder of the office has resumed his or her functions or until his or her appointment to act has been revoked by the Governor-General, acting in accordance with the advice of the Prime Minister.

(6) The Commission shall, in the exercise of its functions under this Constitution, not be subject to the direction or control of any other person or authority.

(7) The Commission may by regulation or otherwise regulate its own procedure and, with the consent of the Prime Minister, may confer powers or impose duties on any public officer or on any authority of the Government for the purpose of the exercise of its functions.

(8) The Commission may, subject to its rules of procedure, act notwithstanding any vacancy in its membership or the absence of any member and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings:

Provided that any decision of the Commission shall require the concurrence of a majority of all its members.

(9) In this section “the appropriate representative body” means such body (if any) as may be designated by the Governor-General, acting in accordance with the advice of the Prime Minister, as the principal body in Saint Christopher and Nevis representing the interests of officers of the Police Force.

## **85. Appointment etc. of police officers.**

(1) Subject to section 87, the power to appoint persons to hold or act in offices in the Police Force (including the power to confirm appointments), the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Governor-General, acting in accordance with the recommendation of the Police Service Commission:

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Provided that before the Commission makes any recommendation to the Governor-General with respect to the appointment of any person to hold the office of Chief of Police or deputy Chief of Police the Commission shall consult with the Prime Minister and if the Prime Minister signifies his or her objection to the appointment of any person to the office the Commission shall not recommend the Governor-General to appoint that person.

(2) The Governor-General, acting in accordance with the recommendation of the Police Service Commission, may, by directions in writing and subject to such conditions as he or she thinks fit, delegate any of his or her powers under subsection (1) to any one or more members of the Commission or, with the consent of the Prime Minister, to the Chief of Police or any other officer of the Police Force.

(3) Before the Police Service Commission recommends to the Governor-General under subsection (1), or any other person or authority exercises any power delegated to him or her under subsection (2), to appoint to or to act in any office in the Police Force any person who holds or is acting in any office to which section 83 applies the Commission shall consult with the Judicial and Legal Services Commission.

(4) An officer of the Police Force shall not be removed from office or subjected to any other punishment under this section on the grounds of any act done or omitted by him or her in the exercise of a judicial function conferred on him or her unless the Judicial and Legal Services Commission concurs therein.

#### PART 4 – THE PUBLIC SERVICE BOARD OF APPEAL

##### 86. **Public Service Board of Appeal.**

(1) There shall be for Saint Christopher and Nevis a Public Service Board of Appeal (hereinafter in this section referred to as the Board) which shall consist of:

- (a) one member appointed by the Governor-General, who shall be chairperson;
- (b) one member appointed by the Governor-General, acting in accordance with the advice of the Prime Minister; and
- (c) one member appointed by the Governor-General, who shall, when there is an appropriate representative body, act in accordance with the recommendation of that body.

(2) A person shall not be qualified for appointment as a member of the Board if he or she is a member of the National Assembly and a person shall not be qualified for appointment under subsection (1)(c) unless he or she is or has at any time been a public officer.

(3) Subject to the provisions of this section, the office of a member of the Board shall become vacant

- (a) at the expiration of three years from the date of his or her appointment; or
- (b) if any circumstances arise that, if he or she were not a member of the Board, would cause him or her to be disqualified to be appointed as such under subsection (2).

(4) A member of the Board may be removed from office only for inability to exercise the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(5) A member of the Board shall be removed from office by the Governor-General, if the question of his or her removal from office has been referred to a tribunal appointed under subsection (6) and the tribunal has recommended to the Governor-General that he or she ought to be removed from office for inability as aforesaid or for misbehaviour.

(6) If the Governor-General considers that the question of removing a member of the Board under this section ought to be investigated, then

- (a) the Governor-General shall appoint a tribunal which shall consist of a chairperson and not less than two other members, selected by the Chief Justice from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court; and
- (b) the tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and recommend to him or her whether the member ought to be removed under this section.

(7) If the question of removing a member of the Board has been referred to a tribunal under this section, the Governor-General may suspend that member from the exercise of the functions of his or her office and any such suspension may at any time be revoked by the Governor-General and shall in any case cease to have effect if the tribunal recommends to the Governor-General that that member should not be removed.

- (8) (a) If at any time any member of the Board is for any reason unable to exercise the functions of his or her office, the Governor-General may appoint a person who is qualified to be appointed as a member of the Board to act as a member, and any person so appointed shall, subject to subsection (4), continue to act until the holder of the office has resumed his or her functions or until his or her appointment to act has been revoked by the Governor-General.
- (b) Where the member of the Board unable to exercise the functions of his or her office was appointed under paragraph (b) of subsection (1), the Governor-General shall act in accordance with the advice of the Prime Minister and where he or she was appointed under paragraph (c) of that subsection the Governor-General shall, when there is an appropriate representative body, act in accordance with the recommendation of that body in exercise of the powers conferred by this subsection.

(9) The Board shall, in the exercise of its functions under this Constitution, not be subject to the direction or control of any other person or authority.

(10) In this section “appropriate representative body” means a body designated under section 77(14).

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(11) In the exercise of the powers conferred upon him or her by this section the Governor-General shall, except where it is otherwise expressly provided, act in his or her own deliberate judgment.

**87. Appeals to Public Service Board of Appeal.**

- (1) This section applies to
  - (a) any decision of the Governor-General, acting in accordance with the recommendation of the Public Service Commission or the Police Service Commission, to remove a public officer from office or to exercise disciplinary control over a public officer (including a decision made on appeal from or confirming a decision of any person to whom powers are delegated under section 77(2) or 85(2);
  - (b) any decision of any person to whom powers are delegated under section 77(2) or 85(2) to remove a public officer from office or to exercise disciplinary control over a public officer (not being a decision that is subject to appeal to or confirmation by the Governor-General, acting in accordance with the recommendation of the Public Service Commission or the Police Service Commission); and
  - (c) such decisions with respect to the discipline of any defence force established for Saint Christopher and Nevis as may be prescribed by Parliament.

(2) Subject to subsection (5), an appeal shall lie to the Public Service Board of Appeal (hereinafter in this section referred to as the Board) from any decision to which this section applies at the instance of the public officer or member of the defence force in respect of whom the decision is made.

(3) Upon an appeal under this section the Board may affirm or set aside the decision appealed against or may make any other decision that the authority or person from whom the appeal lies could have made.

(4) Every decision of the Board shall require the concurrence of a majority of all its members.

(5) The Board may by regulation make provision for its own procedure and the procedure on appeals under this section and may, with the approval of the Governor-General, by regulation

- (a) except from the provisions of subsection (2) decisions in respect of public officers holding offices whose emoluments do not exceed such amount as may be prescribed by the regulations or such decisions to exercise disciplinary control over public officers, other than decisions to remove a public officer from office, as may be so prescribed; and
- (b) confer powers or impose duties on any public officer or on any authority of the Government for the purpose of the exercise of its functions.

**PART 5 – PENSIONS****88. Pensions laws and protection of pensions rights.**

(1) The law to be applied with respect to any pension benefits that were granted to any person at any time before 19th September 1983 shall be the law that was in force at the date on which those benefits were granted or any law in force at a later date that is not less favourable to that person.

(2) The law to be applied with respect to any pensions benefits (not being benefits to which subsection (1) applies) shall

- (a) in so far as those benefits are wholly in respect of a period of service as a public officer or a judge that commenced at any time before 19th September 1983 be the law that was in force on that date; and
- (b) in so far as those benefits are wholly or partly in respect of a period of service as a public officer or a judge that commenced on or after that date, be the law in force on the date on which that period of service commenced,

or any law in force at a later date that is not less favourable to that person.

(3) Where a person is entitled to exercise an option as to which of two or more laws shall apply in his case, the law for which he opts shall, for the purposes of this section, be deemed to be more favourable to him than the other law or laws.

(4) All pensions benefits shall (except to the extent they are charged by law upon and duly paid out of some other fund) be a charge on the Consolidated Fund.

(5) In this section “pensions benefits” means any pensions, compensation, gratuities or other like allowances for persons in respect of their service as members of the National Assembly, judges or officers of the Supreme Court or public officers or for the widows, children, dependants or personal representatives of such persons in respect of such service.

(6) References in this section to the law with respect to pensions benefits include (without prejudice to their generality) references to the law regulating the circumstances in which such benefits may be granted or in which the grant of such benefits may be refused, the law regulating the circumstances in which any such benefits that have been granted may be withheld, reduced in amount or suspended and the law regulating the amount of any such benefits.

**89. Power to withhold pensions etc.**

(1) Where under any law any person or authority has a discretion

- (a) to decide whether or not any pensions benefits shall be granted; or
- (b) to withhold, reduce in amount or suspend any such benefits that have been granted,



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those benefits shall be granted and may not be withheld, reduced in amount or suspended unless the Public Service Commission concurs in the refusal to grant the benefits or, as the case may be, in the decision to withhold them, reduce them in amount or suspend them.

(2) Where the amount of any pensions benefits that may be granted to any person is not fixed by law, the amount of the benefits to be granted to him or her shall be the greatest amount for which he or she is eligible unless the Public Service Commission concurs in his or her being granted benefits of a smaller amount.

(3) The Public Service Commission shall not concur under subsection (1) or (2) in any action taken on the ground that any person who holds or has held the office of judge of the Court of Appeal, judge of the High Court, Director of Public Prosecutions or Director of Audit has been guilty of misbehaviour in that office unless he or she has been removed from that office by reason of such misbehaviour.

(4) Before the Public Service Commission concurs under subsection (1) or (2) in any action taken on the ground that any person who holds or has held any office to which, at the time of such action, section 83 of this Constitution applies has been guilty of misbehaviour in that office, the Public Service Commission shall consult the Judicial and Legal Services Commission.

(5) In this section “pensions benefits” means any pensions, compensation, gratuities or other like allowances for persons in respect of their service as judges or officers of the Supreme Court or public officers or for the widows, children, dependants or personal representatives of such persons in respect of such service.

## CHAPTER VIII – CITIZENSHIP

### 90. **Persons who become citizens at independence.**

The following persons shall become citizens on 19th September 1983:

- (a) every person who, having been born in Saint Christopher and Nevis, was immediately before that date a British citizen or a British Dependent Territories citizen;
- (b) every person who, having been born outside Saint Christopher and Nevis, was immediately before that date a British citizen or a British Dependent Territories citizen by virtue of registration or naturalization in Saint Christopher and Nevis or by virtue of his or her adoption in Saint Christopher and Nevis in a manner recognized by law;
- (c) every other person who was immediately before that date a British citizen or a British Dependent Territories citizen and either of whose parents becomes, or but for death or renunciation of citizenship would have become, a citizen by virtue of paragraph (a), (b) or (d);
- (d) every other person who was immediately before that date a British citizen or a British Dependent Territories citizen and who is or has been married to a person who becomes, or but for death or

renunciation of citizenship would have become, a citizen by virtue of paragraph (a), (b) or (c);

- (e) every other person who, having been born, adopted in a manner recognised by law, registered or, as the case may be, naturalized in Anguilla before 19<sup>th</sup> December 1980 and having been ordinarily resident in Saint Christopher and Nevis since a date earlier than that date, was immediately before 19th September 1983 a British citizen or a British Dependent Territories citizen;
- (f) any person who was immediately before 19th September 1983 a British citizen or a British Dependent Territories citizen and one of whose grandparents becomes, or but for death or renunciation of citizenship would have become, a citizen by virtue of paragraph (a) or (b);
- (g) every other person who immediately before that date by virtue of section 113(10) of the Constitution then in force belonged to Saint Christopher and Nevis for the purposes of that Constitution; and
- (h) every other person who was immediately before that date under the age of eighteen years and is the child of a person who becomes, or but for death or renunciation of citizenship would have become, a citizen by virtue of any of the preceding paragraphs.

**91. Persons who become citizens after independence.**

The following persons born on or after 19th September 1983 shall become citizens at the date of their birth:

- (a) every person born in Saint Christopher and Nevis:  
Provided that a person shall not become a citizen by virtue of this paragraph if at the time of his or her birth
  - (i) neither of his or her parents is a citizen and either of them possess such immunity from suit and legal process as is accorded to the envoy of a foreign sovereign power accredited to Saint Christopher and Nevis; or
  - (ii) either of his or her parents is a citizen of a country with which Her Majesty is at war and the birth occurs in a place then under occupation by that country;
- (b) every person born outside Saint Christopher and Nevis if at the date of his or her birth either of his or her parents is, or but for death would have become, a citizen by virtue of paragraph (a) of section 90; and
- (c) every person born outside Saint Christopher and Nevis if at the date of his or her birth either of his or her parents is, or but for death would have become, a citizen employed in service under the Government or under an authority of the Government that requires

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him or her to reside outside Saint Christopher and Nevis for the proper discharge of his or her functions.

**92. Registration.**

(1) The following persons shall, if they do not already possess citizenship, be entitled, upon making application, to be registered as citizens:

- (a) any person who is married to a citizen;
- (b) any person who, being a Commonwealth citizen, is ordinarily resident in Saint Christopher and Nevis having been so resident for the period of fourteen years immediately preceding the date of his or her application;
- (c) any person who, having been a citizen, has renounced his or her citizenship;
- (d) any person who, but for renunciation of citizenship, would have become a citizen by virtue of section 90;
- (e) any person who is married to any such person as is mentioned in paragraph (b), (c) or (d);
- (f) any person who
  - (i) was married to a person who but for his or her death would have become a citizen by virtue of section 90; or
  - (ii) was married to a person who became a citizen by virtue of that section, but whose marriage to that person had been terminated by dissolution at any time before 19th September 1983 after having subsisted for at least three years;
- (g) any person under the age of eighteen years who is the child of a citizen or the child of a person who is or would but for his or her death have been entitled to be registered as a citizen under any of the preceding paragraphs; and
- (h) such other persons as may be prescribed by Parliament:

Provided that if it is so provided by Parliament an application for registration as a citizen under this subsection may in such circumstances as may be prescribed by Parliament in the interests of defence, public safety or public order, be refused by the Minister responsible for the matter in any case in which he or she is satisfied that there are reasonable grounds for refusing the application.

(2) An application for registration under subsection (1) shall be made in such manner as may be prescribed, as respects that application, by or under a law enacted by Parliament and, in the case of a person under the age of eighteen years, it shall be made on his or her behalf by his or her parent or guardian:

Provided that, if any such person is or has been married, he or she may make the application himself or herself.

(3) Every person not already owing allegiance to the Crown who, having reached the age of eighteen years, applies for registration under subsection (1) shall, before such registration, take the oath of allegiance.

(4) For the purposes of paragraph (b) of subsection (1) any person who was ordinarily resident in Anguilla for any period before 19th December 1980 shall be regarded as having been ordinarily resident in Saint Christopher and Nevis during that period.

**93. Dual citizenship.**

(1) If a person who is a citizen of some other country or entitled to be registered as such is entitled to registration as a citizen under section 92, he or she shall not, by reason only that he or she is or may become a citizen of that other country, be refused registration under that section or be required to renounce his or her citizenship of that country as a condition of being registered under that section.

(2) Any such person as is referred to in subsection (1) shall not, if he or she is a citizen

- (a) be refused a passport of Saint Christopher and Nevis, or have such a passport withdrawn, cancelled or impounded, by reason only that he or she is in possession of a passport issued by some other country of which he or she is a citizen; or
- (b) be required to surrender, or be prohibited from acquiring, a passport issued by some other country of which he or she is a citizen before being issued with a passport of Saint Christopher and Nevis or as a condition of retaining such a passport.

**94. Acquisition, renunciation, certification and deprivation.**

There shall be such provision as may be made by Parliament

- (a) for the naturalization as citizens of persons who are not entitled to become citizens under section 92;
- (b) for the renunciation by any person of his or her citizenship;
- (c) for the certification of citizenship in relation to persons who are or were formerly citizens upon application by such persons or by such other interested persons as may be prescribed; and
- (d) for depriving of his or her citizenship any person who has become a citizen by virtue of registration or naturalisation if his or her citizenship was obtained by false representation or fraud or wilful concealment of material facts or if he or she is convicted under any law of an act of treason or sedition:

Provided that any law enacted for the purposes of paragraph (d) shall include provisions under which the person concerned shall have a right of appeal to a court of law of competent jurisdiction or other independent authority and shall be permitted to appear before the court or authority in person or, at his or her own expense, to be represented by a legal practitioner of his or her own choice.

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95. **Interpretation.**

(1) For the purposes of this Chapter, a person born aboard a registered ship or aircraft, or aboard an unregistered ship or aircraft of the Government of any country, shall be deemed to have been born in the place in which the ship or aircraft was registered or, as the case may be, in that country.

(2) Any reference in this Chapter to the national status of the parent of a person at the time of that person's birth shall, in relation to a person born after his or her father's death, be construed as a reference to the national status of the father at the time of the father's death; and where that death occurred before 19th September 1983 and the birth occurred on or after that date the national status that the father would have had if he or she had died on that date shall be deemed to be his or her national status at the time of his or her death.

(3) References in this Chapter to registration or naturalization are references to registration as a citizen under section 92 or naturalization as a citizen under any law made in pursuance of section 94 and include references to

- (a) registration or naturalization as a British citizen or a British Dependent Territories citizen under the British Nationality Act 1981<sup>(a)</sup>;
- (b) registration or naturalization as a citizen of the United Kingdom and Colonies under the British Nationality Act 1948<sup>(b)</sup>; and
- (c) naturalization as a British subject before that Act came into force.

(4) References in this Chapter to renunciation of citizenship in relation to the period before 19th September 1983 are references to renunciation of British citizenship, citizenship of the British Dependent Territories, citizenship of the United Kingdom and Colonies or, as the case may be, the status of a British subject before the British Nationality Act 1948 came into force.

(5) For the purposes of this Chapter,

- (a) a person shall be regarded as having been registered or naturalized in Saint Christopher and Nevis or, as the case may be, in Anguilla if he or she was registered or naturalized while resident in Saint Christopher and Nevis or, as the case may be, while resident in Anguilla;
- (b) a person who was adopted by a person who at the time of the adoption was resident in Saint Christopher and Nevis or, as the case may be, in Anguilla shall be regarded as having been adopted in Saint Christopher and Nevis or, as the case may be, in Anguilla; and
- (c) a newborn infant found abandoned in Saint Christopher and Nevis or, as the case may be, in Anguilla shall, unless the contrary is shown, be regarded as having been born in Saint Christopher and Nevis or, as the case may be, in Anguilla.

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<sup>(a)</sup> 1981 c. 61

<sup>(b)</sup> 1948 c. 56.

**CHAPTER IX – JUDICIAL PROVISIONS****96. Original jurisdiction of High Court in constitutional questions.**

(1) Subject to sections 23(3), 37(10)(b), 50(7) and 116(2), any person who alleges that any provision of this Constitution (other than a provision of Chapter II) has been or is being contravened may, if he or she has a relevant interest, apply to the High Court for a declaration and for relief under this section.

(2) The High Court shall have jurisdiction on an application made under this section to determine whether any provision of this Constitution (other than a provision of Chapter II) has been or is being contravened and to make a declaration accordingly.

(3) Where the High Court makes a declaration under this section that a provision of this Constitution has been or is being contravened and the person on whose application the declaration is made has also applied for relief, the High Court may grant to that person such remedy as it considers appropriate, being a remedy available generally under any law in proceedings in the High Court.

(4) The Chief Justice may make rules with respect to the practice and procedure of the High Court in relation to the jurisdiction and powers conferred on the court by or under this section, including provision with respect to the time within which any application under this section may be made.

(5) A person shall be regarded as having a relevant interest for the purpose of an application under this section only if the contravention of this Constitution alleged by him or her is such as to affect his or her interests.

(6) The rights conferred on a person by this section to apply for a declaration and relief in respect of an alleged contravention of this Constitution shall be in addition to any other action in respect of the same matter that may be available to that person under any law.

(7) Nothing in this section shall confer jurisdiction on the High Court to hear or determine any such question as is referred to in section 36.

**97. Reference of constitutional questions to High Court.**

(1) Where any question as to the interpretation of this Constitution arises in any court of law established for Saint Christopher and Nevis (other than the Court of Appeal, the High Court or a court-martial) and the court is of the opinion that the question involves a substantial question of law, the court may, and shall if any party to the proceedings so requests, refer the question to the High Court.

(2) Where any question is referred to the High Court in pursuance of this section, the High Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision or, if the decision is the subject of an appeal to the Court of Appeal or to Her Majesty in Council, in accordance with the decision of the Court of Appeal or, as the case may be, of Her Majesty in Council.

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**98. Appeals to Court of Appeal.**

Subject to section 36, an appeal shall lie from decisions of the High Court to the Court of Appeal as of right in the following cases:

- (a) final decisions in any civil or criminal proceedings that involve a question as to the interpretation of this Constitution;
- (b) final decisions given in exercise of the jurisdiction conferred on the High Court by section 18 (which relates to the enforcement of the fundamental rights and freedoms);
- (c) final decisions given in exercise of the jurisdiction conferred on the High Court by section 112 (which relates to disputes between the Nevis Island Administration and the Government); and
- (d) such other cases as may be prescribed by Parliament.

**99. Appeals to Her Majesty in Council.**

(1) An appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council as of right in the following cases:

- (a) final decisions in any civil proceedings where the matter in dispute on the appeal to Her Majesty in Council is of the prescribed value or upwards or where the appeal involves directly or indirectly a claim to or question respecting property or a right of the prescribed value or upwards;
- (b) final decisions in proceedings for dissolution or nullity of marriage;
- (c) final decisions in any civil or criminal proceedings that involve a question as to the interpretation of this Constitution;
- (d) final decisions given in exercise of the jurisdiction conferred on the High Court by section 112; and
- (e) such other cases as may be prescribed by Parliament.

(2) Subject to section 36(7), an appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council with the leave of the Court of Appeal in the following cases:

- (a) decisions in any civil proceedings where in the opinion of the Court of Appeal the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to Her Majesty in Council; and
- (b) such other cases as may be prescribed by Parliament.

(3) An appeal shall lie to Her Majesty in Council with the special leave of Her Majesty from any decision of the Court of Appeal in any civil or criminal matter.

(4) Reference in this section to decisions of the Court of Appeal shall be construed as references to decisions of the Court of Appeal in exercise of the jurisdiction conferred upon that court by this Constitution or any other law.

(5) In this section the prescribed value means the value of five thousand dollars or such other value as may be prescribed by Parliament.

#### *CHAPTER X – THE ISLAND OF NEVIS*

##### **100. Nevis Island Legislature.**

There shall be a legislature for the island of Nevis, which shall be styled the Nevis Island Legislature and shall consist of Her Majesty and an assembly styled the Nevis Island Assembly.

##### **101. Nevis Island Assembly.**

- (1) The Nevis Island Assembly shall consist of:
  - (a) such number of elected members as corresponds with the number of electoral districts for the time being established under section 50, as applied with modifications by section 104(1); and
  - (b) three nominated members or such greater number (not exceeding two-thirds of the number of elected members) as may be prescribed by the Nevis Island Legislature.
- (2) Of the nominated members,
  - (a) one-third of their number shall be appointed by the Governor-General in accordance with the advice of the Leader of the Opposition in the Assembly; and
  - (b) the others shall be appointed by the Governor-General in accordance with the advice of the Premier.

(3) Without prejudice to sections 27 and 28, as applied with modifications by section 104(1), a person shall not be qualified for election to the Assembly unless, at the time when the election is held, he or she would be entitled to vote in elections of Representatives held in the island of Nevis.

(4) For the purposes of section 29(2), as applied with modifications by section 104(1), the provision made by Parliament in relation to the election of elected members of the Assembly shall be such that the persons entitled to vote in elections of such elected members are persons entitled to vote in elections of Representatives in the island of Nevis.

(5) If a person who is not a member of the Assembly is elected to be president of the Assembly he or she shall, by virtue of holding the office of president, be a member of the Assembly.

(6) Any person who sits or votes in the Assembly knowing or having reasonable grounds for knowing that he or she is not entitled to do so shall be guilty of a criminal offence and liable to a fine not exceeding one hundred dollars, or such other sum as may be prescribed by the Nevis Island Legislature, for each day on which he or she so sits or votes in the Assembly.



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(7) Any prosecution for an offence under subsection (6) shall be instituted in the High Court and shall not be so instituted except by the Director of Public Prosecutions.

(8) In subsection (2) “one-third” means, in relation to a number of nominated members that is not a multiple of three, one-third of the next higher number that is such a multiple.

**102. Nevis Island Administration.**

(1) There shall be a Nevis Island Administration, which shall consist of:

- (a) a Premier; and
- (b) two other members or not less than two nor more than such greater number of members as the Nevis Island Legislature may prescribe, who shall be appointed by the Governor-General.

(2) The Governor-General, acting in his or her own deliberate judgment, shall appoint as Premier an elected member of the Assembly who seems to him or her likely to command the support of the majority of the elected members of the Assembly.

(3) The Governor-General, acting in accordance with the advice of the Premier, shall appoint the other members of the Administration from among the members of the Assembly.

(4) If a member of the Administration is absent from Saint Christopher and Nevis or is for any reason unable to discharge his or her functions as such, the Governor-General, acting in accordance with the advice of the Premier, may appoint another member of the Assembly to be a temporary member of the Administration in his or her place and may terminate any such appointment.

(5) The functions of the Administration shall be to advise the Governor-General in the government of the island of Nevis and the Administration shall be collectively responsible to the Assembly for any advice given to the Governor-General by or under the general authority of the Administration and for all things done by or under the authority of any member of the Administration in the execution of his or her office.

(6) Subsection (5) shall not apply in relation to

- (a) the assignment of responsibility to any member of the Administration under section 54, as applied with modifications by section 104(4), or the authorisation of another member of the Administration to perform the functions of the Premier during absence or illness;
- (b) the dissolution of the Nevis Island Legislature;
- (c) the matters referred to in section 66 of this Constitution (which relate to the prerogative of mercy); or
- (d) any matter in respect of which the Nevis Island Legislature has no power to make laws for the island of Nevis.

**103. Power to make laws.**

(1) Subject to the provisions of this Constitution, the Nevis Island Legislature may make laws, which shall be styled Ordinances, for the peace, order and good government of the island of Nevis with respect to the specified matters.

(2) A law made by the Nevis Island Legislature may contain incidental and supplementary provisions that relate to a matter other than a specified matter but if there is any inconsistency between those provisions and the provisions of any law enacted by Parliament, the provisions of the law enacted by Parliament shall prevail.

**104. Provisions applied with modifications.**

(1) Sections 27, 28, 29, 31, 32, 34, 35, 36, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 56(3), 58, 78(5), 88(5) and 117(1) and (2) and schedule 2 shall apply in relation to the Assembly as they apply in relation to the National Assembly and for that purpose they shall have effect as if

- (a) references to the National Assembly (except the reference in the proviso to section 49(1)) were references to the Assembly;
- (b) references to Representatives or to Senators (except the references in subsection 28(2) and (3) to Representatives) were references to elected members or, as the case may be, to nominated members of the Assembly;
- (c) references to constituencies were references to electoral districts;
- (d) references to the Government, to the Prime Minister or any other Minister, to the Leader of the Opposition or to the Speaker were references to the Administration, to the Premier, to the Leader of the Opposition in the Assembly or, as the case may be, to the president of the Assembly;
- (e) references to the Consolidated Fund or any other public fund of the Government of Saint Christopher and Nevis were references to the Nevis Island Consolidated Fund or any other public fund of the Administration;
- (f) references to the Deputy Speaker or to a Parliamentary Secretary were deleted;
- (g) the reference in section 28(5)(a) to the office of elected member or nominated member of the Assembly or member of the Administration were a reference to the office of Representative, Senator, Minister or Parliamentary Secretary;
- (h) the reference in section 29(2) to residence in Saint Christopher and Nevis were a reference to residence in the island of Nevis;
- (i) the reference in section 31 to section 30 were a reference to section 101(2), paragraph (d) of section 31(3) were deleted, the references in section 41 to sections 19(8) and 37(6) were deleted and the references in that section to section 38(2) were references to section 113(2);

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- (j) the references in sections 31, 32, 42, 46, 47 and 48 to Parliament were references to the Nevis Island Legislature and the references in sections 46, 49 and 50 to Saint Christopher and Nevis were references to the island of Nevis; and
- (k) rule 1 and paragraph (a) of rule 2 were deleted from schedule 2 and in place of rule 1 the following rule were substituted:

“1. There shall be not less than five electoral districts in the island of Nevis.”

(2) Any provision made by Parliament such as is referred to in section 45 shall apply in relation to the Assembly and its members, officers and committees as it applies in relation to the National Assembly and its members, officers and committees.

(3) Before advising the Governor-General to dissolve the Assembly under section 47, as applied with modifications by subsection (1) of this section, the Premier shall consult the Prime Minister.

(4) Section 52 (except subsections (1), (2), (3) and (4)) and sections 54, 55, 57, 60, 61 and 62 shall apply in relation to the Administration as they apply in relation to the Cabinet and for that purpose they and Part 3 of schedule 4 shall have effect as if

- (a) references to the Prime Minister were references to the Premier;
- (b) references to a Minister were references to a member of the Administration;
- (c) references to the Government or to the Cabinet were references to the Administration;
- (d) references to Parliament or to the National Assembly were references to the Nevis Island Legislature or, as the case may be, to the Assembly.

#### **105. Exercise of Governor-General's functions.**

(1) In the exercise of the functions to which this section applies the Governor-General shall act in accordance with the advice of the Administration or a member of the Administration acting under its general authority except in cases where he or she is required by this Constitution to act in accordance with the advice of or on the recommendation of, any person or authority other than the Administration.

(2) This section applies to the functions of the Governor-General with respect to the government of the island of Nevis that relate to the specified matters but does not include any functions conferred upon him or her

- (a) by any of the provisions of this Constitution except sections 43, 46 and 48, as applied with modifications by section 104; or
- (b) by or under any law enacted by Parliament having effect in the island of Nevis that relates to any specified matter.

**106. Responsibilities of Administration.**

(1) The Administration shall have exclusive responsibility for the administration within the island of Nevis, in accordance with the provisions of any relevant laws, of the following matters:

- (a) airports and seaports;
  - (b) education;
  - (c) extraction and processing of minerals;
  - (d) fisheries;
  - (e) health and welfare;
  - (f) labour;
  - (g) land and buildings vested in the Crown and specifically appropriated to the use of the Government; and
  - (h) licensing of imports into and exports out of Saint Christopher and Nevis.
- (2) Nothing in subsection (1) shall
- (a) affect the exercise of any power vested by law in the Governor-General or a Minister; or
  - (b) empower the Administration to take any action that is inconsistent with the general policy of the Government as signified by the Prime Minister in a written communication to the Premier, or that relates to a question that in the opinion of the Prime Minister as so signified involves issues of national concern, without the prior concurrence of the Prime Minister.

(3) If land in the island of Nevis is required for the use of the Government, the Administration shall either make available suitable land that is vested in the Crown or else acquire and make available other suitable land and the Government shall be responsible for paying appropriate compensation to any private person whose interests may have been adversely affected and appropriate compensation to the Administration for any buildings or other property previously paid for by the Administration and appropriated for the use of the Government with the land.

(4) Nothing in subsection (1) shall be construed as precluding the legislature from conferring other responsibilities on the Administration.

**107. Public safety and public order.**

(1) The Premier may give such general directions with respect to the maintaining and securing of public safety and public order in the island of Nevis as he or she may consider necessary to

- (a) the senior officer of the Police Force stationed in the island of Nevis;  
or
- (b) the senior officer of any defence force of Saint Christopher and Nevis stationed in the island of Nevis

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and, subject to subsection (2), that officer shall comply with those general directions.

(2) Nothing in subsection (1) shall preclude the Prime Minister from giving general directions with respect to the maintaining and securing of public safety and public order in Saint Christopher and Nevis to the Chief of Police or the officer commanding any defence force of Saint Christopher and Nevis and if there is any inconsistency between any such directions and any directions given under subsection (1), the officers concerned shall comply with the directions given by the Prime Minister.

**108. Finance.**

(1) All revenues or other moneys raised or received by the Administration (not being revenues or other moneys that are payable by or under any law into some other fund of the Administration established for a specific purpose) shall be paid into and form a fund styled the Nevis Island Consolidated Fund (hereinafter in this section referred to as the Fund).

(2) Sections 70, 71, 72, 73, 75 and 76 shall apply in relation to the Administration as they apply in relation to the Government and for that purpose they shall have effect as if

- (a) references to the Consolidated Fund were references to the Fund;
- (b) references to Parliament and to the National Assembly were references to the Nevis Island Legislature or, as the case may be, to the Assembly;
- (c) references to the Minister for the time being responsible for finance were references to the member of the Administration for the time being responsible for finance; and
- (d) references to the Government were references to the Administration.

**109. Staff.**

(1) The staff of the Administration shall consist of such number of public offices as may be constituted in that behalf under section 63 after consultation between the Prime Minister and the Premier.

(2) The staff of the Administration shall be under the supervision of an Establishment Officer stationed in the island of Nevis, whose office shall be a public office and who shall be entitled to communicate direct with the chairperson of the Public Service Commission on all matters concerning the staff of the Administration.

**110. Revenue allocation.**

(1) Subject to subsection (2), the proceeds of all taxes collected in Saint Christopher and Nevis under any law shall be shared between the Government and the Administration and the share of each shall be determined by reference to the proportion between the population of the island of Saint Christopher and the population of Saint Christopher and Nevis as a whole or, as the case may be, the population of the island of Nevis and the population of Saint Christopher and Nevis as a whole, as ascertained by

reference to the latest available results of a census of those populations carried out in pursuance of a law enacted by Parliament.

(2) The share of the Administration under subsection (1) shall be subject to the following deductions:

- (a) a contribution to the cost of common services provided for Saint Christopher and Nevis by the Government; and
- (b) a contribution to the cost of meeting the debt charges for which the Government is responsible under section 75.

(3) The Governor-General may make rules for the purpose of giving effect to the provisions of this section and (without prejudice to the generality of the foregoing power) any such rules may make provision

- (a) for prescribing what services are to be regarded as common services;
- (b) for determining the contributions to be made by the Administration in relation to any common service so prescribed;
- (c) for determining the contributions to be made by the Administration in respect of the debt charges for which the Government is responsible; and
- (d) for prescribing the time at which and the manner in which calculations and payments (including provisional payments) are to be made.

(4) The powers of the Governor-General under subsection (3) shall be exercised by him or her on the advice of the Prime Minister but no such advice shall be given without the concurrence of the Premier.

#### **111. Grants and loans.**

(1) The Governor-General may make rules providing that

- (a) the existing or contingent liability of the Administration for servicing its public debt shall not exceed such limits as may be prescribed;
- (b) the Minister responsible for finance shall be informed in advance of any proposal that the Administration should obtain any grant or loan of money; and
- (c) there shall be such consultation between the Government and the Administration as may be prescribed concerning any such proposal before the proposal is put into effect.

(2) The powers of the Governor-General under subsection (1) shall be exercised by him or her on the advice of the Prime Minister but no such advice shall be given without the concurrence of the Premier.

#### **112. Disputes between Administration and Government.**

The High Court shall, to the exclusion of any other court of law, have original jurisdiction in any dispute between the Administration and the Government if and in so far

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as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends.

**113. Separation of Nevis from Saint Christopher.**

(1) The Nevis Island Legislature may provide that the island of Nevis shall cease to be federated with the island of Saint Christopher and accordingly that this Constitution shall no longer have effect in the island of Nevis.

(2) A bill for the purposes of subsection (1) shall not be regarded as being passed by the Assembly unless on its final reading the bill is supported by the votes of not less than two-thirds of all the elected members of the Assembly and such a bill shall not be submitted to the Governor-General for his or her assent unless

- (a) there has been an interval of not less than ninety days between the introduction of the bill in the Assembly and the beginning of the proceedings in the Assembly on the second reading of the bill;
- (b) after it has been passed by the Assembly, the bill has been approved on a referendum held in the island of Nevis by not less than two-thirds of all the votes validly cast on that referendum; and
- (c) full and detailed proposals for the future constitution of the island of Nevis (whether as a separate state or as part of or in association with some other country) have been laid before the Assembly for at least six months before the holding of the referendum and those proposals, with adequate explanations of their significance, have been made available to the persons entitled to vote on the referendum at least ninety days before the holding of the referendum.

(3) Every person who, at the time when the referendum is held, would be entitled to vote at elections of Representatives held in the island of Nevis shall be entitled to vote on a referendum held for the purposes of this section in accordance with such procedures as may be prescribed by the Nevis Island Legislature for the purposes of the referendum and no other person shall be entitled so to vote.

(4) In any referendum for the purposes of this section the votes shall be given by ballot in such manner as not to disclose how any particular person votes.

(5) The conduct of any referendum for the purposes of this section shall be the responsibility of the Supervisor of Elections and the provisions of subsections (4), (5) and (7) of section 34 shall apply in relation to the exercise by the Supervisor of Elections or by any other officer of his or her functions with respect to a referendum as they apply in relation to the exercise of his or her functions with respect to elections of Representatives.

(6) There shall be such provision as may be made by the Nevis Island Legislature to enable independent and impartial persons nominated by an international authority to observe the conduct of a referendum for the purposes of this section and to make reports on the conduct or results of the referendum to the Governor-General, who shall cause any such reports to be published, and for that purpose any such persons shall be accorded such powers, privileges and immunities as may be prescribed by or under any

law enacted by Parliament or, subject thereto, by or under any law enacted by the Nevis Island Legislature.

(7) A bill for the purposes of subsection (1) shall not be submitted to the Governor-General for his or her assent unless it is accompanied by a certificate under the hand of the president of the Assembly that the provisions of subsection (2) have been complied with and a certificate under the hand of the Supervisor of Elections stating the results of the referendum.

(8) The certificate of the president of the Assembly under this subsection shall be conclusive that the provisions of subsection (2) have been complied with and shall not be enquired into in any court of law.

#### **114. Interpretation.**

In this Chapter,

“the Administration” means the Nevis Island Administration;

“the Assembly” means the Nevis Island Assembly.

### *CHAPTER XI – MISCELLANEOUS*

#### **115. Secession of Nevis.**

If, by virtue of a law enacted by the Nevis Island Legislature under section 113(1), the island of Nevis ceases to be federated with the island of Saint Christopher, the provisions of schedule 3 shall forthwith have effect.

#### **116. Functions of Governor-General.**

(1) Any reference in this Constitution to the functions of the Governor-General shall be construed as a reference to his or her powers and duties in the exercise of the executive authority of Saint Christopher and Nevis and to any other powers and duties conferred or imposed on him or her as Governor-General by or under this Constitution or any other law.

(2) Where by this Constitution the Governor-General is required to perform any function in his or her own deliberate judgment or in accordance with the advice or recommendation of, or after consultation with, any person or authority, the question whether the Governor-General has so exercised that function shall not be enquired into in any court of law.

(3) Where by this Constitution the Governor-General is required to perform any function after consultation with any person or authority he or she shall not be obliged to exercise that function in accordance with the recommendation of that person or authority.



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**117. Resignations.**

(1) A Representative or a Senator may resign his or her seat by writing under his or her hand addressed to the Speaker and the resignation shall take effect, and the seat shall accordingly become vacant, when the writing is received, as the case may be, by

- (a) the Speaker;
- (b) if the office of Speaker is vacant or the Speaker is for any reason unable to perform the functions of his or her office and no other person is performing them, the Deputy Speaker; or
- (c) if the office of Deputy Speaker is vacant or the Deputy Speaker is for any reason unable to perform the functions of his or her office and no other person is performing them, the Clerk of the National Assembly.

(2) The Speaker or the Deputy Speaker may resign his or her office by writing under his or her hand addressed to the National Assembly and the resignation shall take effect, and the office shall accordingly become vacant, when the writing is received by the Clerk of the National Assembly.

(3) Any person who has been appointed to an office established by this Constitution (other than an office to which subsection (1) or (2) applies) or any office of Minister established under this Constitution may resign that office by writing under his or her hand addressed to the person or authority by whom he or she was appointed and the resignation shall take effect, and the office shall accordingly become vacant

- (a) at such time or on such date (if any) as may be specified in the writing; or
- (b) when the writing is received by the person or authority to whom it is addressed, or by such person as may be authorised to receive it,

whichever is the later:

Provided that the resignation may be withdrawn before it takes effect if the person or authority to whom the resignation is addressed consents to its withdrawal.

**118. Re-appointment and concurrent appointments.**

(1) Where any person has vacated any office established by this Constitution or any office of Minister or Parliamentary Secretary established under this Constitution, he or she may, if qualified, again be appointed or elected to hold that office in accordance with the provisions of this Constitution.

(2) Where this Constitution vests in any person or authority the power to make any appointment to any office other than that of Senator, Minister, Parliamentary Secretary, Leader of the Opposition, nominated member of the Nevis Island Assembly, member of the Nevis Island Administration or Leader of the Opposition in the Nevis Island Assembly, a person may be appointed to that office, notwithstanding that some other person may be holding that office, when that other person is on leave of absence pending the relinquishment of the office; and where two or more persons are holding the same office by reason of an appointment made in pursuance of this subsection, then, for the

purposes of any function conferred upon the holder of that office, the person last appointed shall be deemed to be the sole holder of the office.

**119. Interpretation.**

- (1) In this Constitution, unless the context otherwise requires,
- “child”, in relation to any other person, means a person of whom that other person is a parent;
  - “citizen” means a citizen of Saint Christopher and Nevis and “citizenship” shall be construed accordingly;
  - “Commonwealth citizen” has such meaning as Parliament may prescribe;
  - “defence force” means a naval, military or air force;
  - “dollars” means dollars in the currency of Saint Christopher and Nevis;
  - “financial year” means any period of twelve months beginning on 1st January in any year or such other date as may be prescribed by any law enacted by Parliament;
  - “the Gazette” means the official Gazette of Saint Christopher and Nevis;
  - “the Government” means Her Majesty’s Government of Saint Christopher and Nevis;
  - “grandparent”, in relation to any other person, means a parent of one of his or her parents;
  - “law” means any law in force in Saint Christopher and Nevis or any part thereof, including any instrument having the force of law and any unwritten rule of law and “lawful” and “lawfully” shall be construed accordingly;
    - “Leader of the Opposition” means the Leader of the Opposition in the National Assembly;
  - “legal practitioner” means a person entitled to be in or to enter Saint Christopher and Nevis and entitled to practise as a barrister in Saint Christopher and Nevis or, except in relation to proceedings before a court in which a solicitor has no right of audience, so entitled to practise as a solicitor;
  - “the legislature” means Parliament:
    - Provided that in relation to any specified matter it includes the Nevis Island Legislature;
  - “Minister” means a Minister of the Government;
  - “parent”, in relation to any other person, includes
    - (a) any person who has adopted him or her in a manner recognized by law; and

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- (b) in the case of a person born out of wedlock and not legitimated, his or her mother and the person (if any) who acknowledges and can show that he or she is his or her father or has been found by a court of competent jurisdiction to be his or her father;

but, in the case of a person who has been adopted, it does not include any person who has relinquished his or her parental rights over him or her as a consequence of the adoption;

“Parliament” means the Parliament of Saint Christopher and Nevis;

“oath” includes affirmation;

“oath of allegiance” means the oath of allegiance set out in Schedule 4;

“oath of office” means, in relation to any office, the oath for the due execution of that office set out in Schedule 4;

“oath of secrecy” means the oath of secrecy set out in Schedule 4;

“the Police Force” means the Royal Saint Christopher and Nevis Police Force and includes any other police force established to succeed to the functions of that Force;

“proclamation” means a proclamation published in the Gazette or, if such publication is not reasonably practicable, published in Saint Christopher and Nevis by such means as are reasonably practicable and effective;

“public office” means any office of emolument in the public service;

“public officer” means a person holding or acting in any public office;

“the public service” means, subject to the provisions of this section, the service in a civil capacity of the Crown in right of the Government;

“session” means,

- (a) in relation to the National Assembly, the period beginning when it first meets after Parliament has at any time been prorogued or dissolved and ending when Parliament is prorogued or when Parliament is dissolved without having been prorogued;
- (b) in relation to the Nevis Island Assembly, the period beginning when it first meets after the Nevis Island Legislature has at any time been prorogued or dissolved and ending when that Legislature is prorogued or when that Legislature is dissolved without having been prorogued;

“sitting” means,

- (a) in relation to the National Assembly, the period during which it is sitting continuously without adjournment and includes any period during which it is in committee;

- (b) in relation to the Nevis Island Assembly, the period during which it is sitting continuously without adjournment and includes any period during which it is in committee;

“Speaker” and “Deputy Speaker” means the respective persons holding office as Speaker and Deputy Speaker of the National Assembly;

“specified matter” means, in relation to the government of the island of Nevis, a matter specified in Schedule 5 to this Constitution.

(2) In this Constitution references to an office in the public service shall not be construed as including

- (a) references to the office of the Speaker or Deputy Speaker, the Prime Minister or any other Minister, a Parliamentary Secretary or a member of the National Assembly;
- (b) references to the office of the president of the Nevis Island Assembly, the Premier or any other member of the Nevis Island Administration or a member of the Nevis Island Assembly;
- (c) references to the office of a member of any Commission established by this Constitution or a member of the Advisory Committee on the Prerogative of Mercy or a member of the Public Service Board of Appeal;
- (d) references to the office of judge or officer of the Supreme Court: or
- (e) save in so far as may be provided by Parliament, references to the office of a member of any other council, board, panel, committee or other similar body (whether incorporated or not) established by or under any law.

(3) In this Constitution,

- (a) references to this Constitution, the Supreme Court Order, the British Nationality Act 1948 or the British Nationality Act 1981, or any provision thereof, include, unless otherwise provided, references to any law altering this Constitution or that Order, Act or provision, as the case may be;
- (b) references to the Supreme Court, the Court of Appeal, the High Court and the Judicial and Legal Services Commission are references to the Supreme Court, the Court of Appeal, the High Court and the Judicial and Legal Services Commission established by the Supreme Court Order;
- (c) references to the Chief Justice have the same meaning as in the Supreme Court Order;
- (d) references to a judge of the Supreme Court are references to a judge of the High Court or of the Court of Appeal and, unless the context otherwise requires, include references to a judge of the former Supreme Court of the Windward Islands and Leeward Islands; and

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- (e) references to officers of the Supreme Court are references to the Chief Registrar and other officers of the Supreme Court appointed under the Supreme Court Order.

(4) In this Constitution, “the specified qualifications” means the professional qualifications specified by or under any law, one of which must be held by any person before he or she may apply under that law to be admitted to practice as a barrister or a solicitor in Saint Christopher and Nevis.

(5) For the purposes of this Constitution, a person shall not be regarded as holding an office by reason only of the fact that he or she is in receipt of a pension or other like allowance.

(6) In this Constitution, unless the context otherwise requires, a reference to the holder of an office by the term designating his or her office shall be construed as including, to the extent of his or her authority, a reference to any person for the time being authorised to exercise the functions of that office.

(7) Except in the case where this Constitution provides for the holder of any office thereunder to be such person holding or acting in any other office as may for the time being be designated in that behalf by some other specified person or authority, no person may, without his or her consent, be nominated for election to any such office or be appointed to or to act therein or otherwise be selected therefor.

(8) References in this Constitution to the power to remove a public officer from his or her office shall be construed as including references to any power conferred by any law to require or permit that officer to retire from the public service:

Provided that

- (a) nothing in this subsection shall be construed as conferring on any person or authority the power to require the Director of Public Prosecutions or the Director of Audit to retire from the public service; and
- (b) any power conferred by any law to permit a person to retire from the public service shall, in the case of any public officer who may be removed from office by some person or authority other than a Commission established by this Constitution, vest in the Public Service Commission.

(9) Any provision in this Constitution that vests in any person or authority the power to remove any public officer from his or her office shall be without prejudice to the power of any person or authority to abolish any office or to any law providing for the compulsory retirement of public officers generally or any class of public officer on attaining an age specified by or under that law.

(10) Where this Constitution vests in any person or authority the power to appoint any person to act in, or to exercise the functions of, any office if the holder thereof is himself or herself unable to exercise those functions, no such appointment shall be called in question on the grounds that the holder of the office was not unable to exercise those functions.

(11) No provision of this Constitution that any person or authority shall not be subject to the direction or control of any other person or authority in the exercise of any functions under this Constitution shall be construed as precluding a court of law from exercising jurisdiction in relation to any question whether that person or authority has exercised those functions in accordance with this Constitution or any other law.

(12) Without prejudice to section 14 of the Interpretation Act 1978<sup>(a)</sup> (as applied by subsection (17) of this section), where any power is conferred by this Constitution to make any proclamation, regulation or rule or give any direction or make any designation, the power shall be construed as including the power, exercisable in like manner and subject to the like conditions, if any, to amend or revoke any such proclamation, regulation, rule, direction or designation.

(13) Subject to subsection (3)(a), any reference in this Constitution to a law made before 19th September 1983 shall, unless the context otherwise requires, be construed as a reference to that law as it had effect immediately before that date.

(14) In this Constitution, references to altering this Constitution or any other law, or any provision thereof, include references

- (a) to revoking it with or without re-enactment thereof or the making of different provision in lieu thereof;
- (b) to modifying it whether by omitting or amending any of its provisions or inserting additional provisions in it or otherwise; and
- (c) to suspending its operation for any period or terminating any such suspension.

(15) In this Constitution any reference to a time when Her Majesty is at war shall be construed as a reference to a time when Saint Christopher and Nevis is engaged in hostilities with another country.

(16) In this Constitution any reference to land or buildings vested in the Crown includes a reference to any land or buildings vested in any person or authority in trust for, or otherwise on behalf of, the Crown.

(17) The Interpretation Act 1978 shall apply, with the necessary adaptations, for the purpose of interpreting this Constitution and otherwise in relation thereto as it applies for the purpose of interpreting and in relation to Acts of the Parliament of the United Kingdom.

## 120. **Text of modified provisions.**

(1) The provisions of this Constitution that are applied with modifications in relation to the Nevis Island Assembly or the Nevis Island Administration by section 104 or 108 are reproduced with those modifications in schedule 6.

(2) If any of the provisions applied with modifications by section 104 or 108 are altered, the Governor-General may, by Order, make corresponding alterations to Schedule 6.

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<sup>(a)</sup> 1978 c. 30.

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(3) Where any provision of this Constitution is applied with modifications by section 104 or 108 references to that provision in other provisions of this Constitution, when so applied, are references to that provision as so applied.

## **SCHEDULE 1 TO THE CONSTITUTION**

(Section 38.(3))

### **PROVISIONS REFERRED TO IN SECTION 38(3)**

#### **PART 1 – PROVISIONS OF THE CONSTITUTION**

- (i) Chapter I;
- (ii) Chapter II;
- (iii) sections 21, 22, 51 and 56;
- (iv) sections 25, 26, 29, 30, 33, 34, 36, 37, 42, 46, 47, 48, 49 and 50;
- (v) section 65;
- (vi) Chapter VI;
- (vii) Chapter VII (except sections 86 and 87);
- (viii) Chapter IX;
- (ix) Chapter X (except sections 104 and 108(2));
- (x) schedules 2 and 5;
- (xi) sections 104, 108(2) and 119 in their application to any of the provisions mentioned in the foregoing items of this Part.

#### **PART 2 – PROVISIONS OF THE SUPREME COURT ORDER**

(Sections 4, 5, 6, 8, 11, 18 and 19)

## **SCHEDULE 2 TO THE CONSTITUTION**

(Section 50(1))

### **RULES FOR DELIMITATION OF CONSTITUENCIES**

1. There shall be not less than eight constituencies in the island of Saint Christopher and not less than three constituencies in the island of Nevis and if the number of constituencies is increased beyond eleven, not less than one-third of their number shall be in the island of Nevis.
2. All constituencies shall contain as nearly equal numbers of inhabitants as appears to the Constituency Boundaries Commission to be reasonably practicable but the Commission may depart from this rule to such extent as it considers expedient to take account of the following factors, that is to say,

- (a) the requirements of rule 1 and the differences in the density of the populations in the respective islands of Saint Christopher and Nevis;
- (b) the need to ensure adequate representation of sparsely populated rural areas;
- (c) the means of communication;
- (d) geographical features; and
- (e) existing administrative boundaries.

### **SCHEDULE 3 TO THE CONSTITUTION**

(Section 115)

#### **ALTERATIONS IF NEVIS SECEDES**

1. Section 1 is revoked and the following section is substituted:

“1. **The State and its territory.**

(1) The island of Saint Christopher (which is otherwise known as Saint Kitts) shall be a sovereign democratic state which may be styled Saint Christopher or Saint Kitts.

(2) The territory of Saint Christopher shall comprise all areas that were comprised in the associated state of Saint Christopher and Nevis immediately before 19th September 1983 except the island of Nevis, together with such other areas as may be declared by Parliament to form part of the territory of Saint Christopher.”

2. Sections 8(8), 19(4), 23(2), 37(2) to (7), 38(5), 51(4), the proviso to section 77(1), sections 98(1)(c) and 99(1)(d), Chapter X, section 120 and schedules 5 and 6 are revoked.

3. Subject to paragraphs 1 and 2, the Constitution shall have effect

- (a) as if the words “and Nevis” immediately following the words “Saint Christopher” wherever they occur were deleted; and
- (b) as if any provisions, to the extent that they refer to the island of Nevis, the specified matters, the Nevis Island Legislature, the Nevis Island Administration or the Premier, were revoked.

4. The constituencies in the island of Nevis shall cease to be included among the number of constituencies and the Representatives elected in the island of Nevis and any Senator who is ordinarily resident in the island of Nevis shall vacate their seats in the National Assembly.

5. The National Assembly shall, unless Parliament stands dissolved, meet within thirty days.

6. Parliament shall have power to make provision for depriving persons who are citizens of their citizenship if they acquire, or are entitled to acquire, some other citizenship by virtue of their connection with the island of Nevis and do not possess such qualifications for retaining their citizenship as Parliament may prescribe.



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## SCHEDULE 4 TO THE CONSTITUTION

(Section 119(1))

### FORMS OF OATH

#### PART 1

##### Oath (or affirmation) of allegiance

I, ..... , do swear (*or solemnly affirm*) that I will faithfully bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law.

So help me God. (*To be omitted in affirmation*).

#### PART 2

##### Oath (*or affirmation*) of office

I, ..... do swear (*or solemnly affirm*) that I will honour, uphold and preserve the Constitution of Saint Christopher and Nevis and the law, that I will conscientiously, impartially and to the best of my ability discharge my duties as ..... and do right to all manner of people without fear or favour, affection or ill-will.

So help me God. (*To be omitted in affirmation*).

#### PART 3

##### Oath (*or affirmation*) of secrecy

I, ..... , do swear (*or solemnly affirm*) that I will not on any account, at any time whatsoever, disclose any counsel, advice, opinion or vote given by any Minister as a member of the Cabinet and that I will not, except with the authority of the Cabinet and to such extent as may be required for the proper conduct of the government of Saint Christopher and Nevis, directly or indirectly reveal the business or proceedings of the Cabinet or any matter coming to my knowledge as a member of (*or Secretary to*) the Cabinet.

So help me God. (*To be omitted in affirmation*).

## SCHEDULE 5 TO THE CONSTITUTION

(Section 119(1))

### LEGISLATIVE POWERS

#### PART 1 – MATTERS WITH RESPECT TO WHICH THE NEVIS ISLAND LEGISLATURE HAS EXCLUSIVE POWER TO MAKE LAWS

- (1) Agriculture.
- (2) Amenities for tourists.
- (3) Animals.
- (4) Archaeological or historical sites and monuments.

- (5) Borrowing of moneys, or obtaining grants of moneys, for the purposes of the Nevis Island Administration and the making of grants and loans for those purposes.
- (6) Cemeteries.
- (7) Cinemas.
- (8) Conservation and supply of water.
- (9) Dangerous or inflammable substances.
- (10) Economic planning and development other than national planning and development.
- (11) Employment of persons who are not citizens.
- (12) Hotels, restaurants, bars, casinos and other similar establishments.
- (13) Housing.
- (14) Industries, trades and businesses.
- (15) Land and buildings other than land and buildings vested in the Crown and specifically appropriated to the use of the Government, including holding of land by persons who are not citizens.
- (16) Manufacture and supply of electricity.
- (17) Parks and other places for public recreation.
- (18) Prevention and control of fires.
- (19) Roads and highways.
- (20) Sport and cultural activities.
- (21) The matters with respect to which the Nevis Island Legislature is empowered to make laws by sections 47,70,71,72 and 73, as applied with modifications by section 104, and by sections 102(1) and 113.
- (22) Any matter added by Parliament under section 37(6).
- (23) Any matter that is incidental or supplementary to any matter referred to in this list.

#### PART 2 – INTERPRETATION

1. In this schedule, references to incidental and supplementary matters include, without prejudice to their generality,

- (a) offences;
- (b) the jurisdiction, powers, practice and procedure of courts of law;
- (c) the compulsory acquisition and tenure of land;
- (d) the establishment and regulation of tribunals of enquiry;
- (e) fees and charges in respect of services provided;

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- (f) rates and taxes on buildings and land other than buildings and land vested in the Crown and specifically appropriated for the use of the Government;
  - (g) fees and charges in respect of administrative costs relating to carrying out inspections, tests and examinations and the issue of licences, permits and certificates;
  - (h) taxes in respect of the use of premises as hotels, restaurants, bars, casinos or other similar establishments;
  - (i) taxes in respect of the use of premises for the manufacture of aerated water for use as a beverage;
  - (j) taxes in respect of the use of premises for the sale of alcoholic beverages or tobacco to the public; and
  - (k) taxes on itinerant traders or mobile establishments for the sale of refreshments to the public.
2. Nothing in this schedule shall be construed as including the imposition of any fee, charge, rate or tax that is not expressly mentioned in paragraph (1) nor the imposition of any rate or tax levied
- (a) on rents, profits or other income or on gains on capital transactions;
  - (b) on the import into, or export out of, Saint Christopher and Nevis or the island of Nevis of any article or commodity;
  - (c) on succession to or transfer of property; or
  - (d) on land or other property used for the purposes of the extraction or processing of minerals otherwise than by reference to its unimproved value.
3. Nothing in this schedule shall be construed as including legal proceedings by or against the Crown other than the conduct of proceedings under section 112 (which relates to disputes between the Nevis Island Administration and the Government).
4. The reference in this schedule to roads and highways does not include a reference to offences relating to vehicular traffic.

## **SCHEDULE 6 TO THE CONSTITUTION**

(Section 120)

### **TEXT OF PROVISIONS APPLIED WITH MODIFICATIONS**

#### Arrangement of provisions

#### PART 1 – PROVISIONS APPLIED BY SECTION 104(1)

#### CHAPTER IV – THE LEGISLATURE

#### PART 1 – COMPOSITION OF THE LEGISLATURE

- 27. Qualifications for elected and nominated members
- 28. Disqualifications for elected and nominated members

- 32. President
- 34. Supervision of elections
- 35. Clerk of Assembly and his staff
- 36. Determination of questions of membership

**PART 2 – PROCEDURE IN THE LEGISLATURE**

- 39. Oath
- 40. Presiding
- 41. Voting
- 42. Mode of exercise of legislative power
- 43. Restrictions with regard to certain financial measures
- 44. Regulation of procedure in Assembly
- 45. Freedom of speech

**PART 3 – SUMMONING, PROROGATION AND DISSOLUTION**

- 46. Sessions
- 47. Prorogation and dissolution
- 48. Holding of elections

**PART 4 – DELIMITATION OF ELECTORAL DISTRICTS**

- 49. Boundaries Commission
- 50. Review of boundaries of electoral districts

**CHAPTER V – THE EXECUTIVE**

- 56. Exercise of Governor-General's functions
- 58. Leader of the Opposition

**CHAPTER VII – THE PUBLIC SERVICE****PART 1 – THE PUBLIC SERVICE COMMISSION**

- 78. Appointment etc. of public officers

**PART 5 – PENSIONS**

- 88. Pensions laws and protection of pensions rights

**CHAPTER XI – MISCELLANEOUS**

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*CHAPTER IV – THE LEGISLATURE*

**PART 1 – COMPOSITION OF THE LEGISLATURE**

**27. Qualifications for elected and nominated members.**

Subject to section 28, a person shall be qualified to be elected or appointed as a member of the Assembly if, and shall not be so qualified unless, he or she is a citizen of the age of twenty-one years or upwards and he or she or one of his or her parents was born in Saint Christopher and Nevis and he or she is domiciled there at the date of his or her nomination for election or his or her appointment, as the case may be.

**28. Disqualifications for elected and nominated members.**

- (1) A person shall not be qualified to be elected or appointed as a member if he or she
  - (a) is, by virtue of his or her own act, under any acknowledgment of allegiance, obedience or adherence to a foreign power or state;
  - (b) is a minister of religion;
  - (c) is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law;
  - (d) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law; or
  - (e) is under sentence of death imposed on him or her by a court of law in any part of the Commonwealth or is serving a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him or her by such a court or substituted by a competent

authority for some other sentence imposed on him or her by such a court, or is under such a sentence of imprisonment the execution of which has been suspended.

(2) If it is so provided by Parliament, a person shall not be qualified to be elected or appointed as a member if he or she holds or is acting in any office that is specified by Parliament and the functions of which involve responsibility for, or in connection with, the conduct of any election of Representatives or members or the compilation of any register of voters for the purpose of electing Representatives or members.

(3) If it is so provided by Parliament, a person who is convicted by any court of law of any criminal offence that is prescribed by Parliament and that is connected with the election of Representatives or members or is reported guilty of such an offence by the court trying an election petition shall not be qualified, for such a period (not exceeding five years) following his or her conviction or, as the case may be, following the report of the court as may be so prescribed, to be elected or appointed as a member.

(4) A person shall not be qualified to be elected as a member who is a nominated member; and a person shall not be qualified to be appointed as a nominated member who is, or is nominated for election as, an elected member or who has at any time since the Legislature was last dissolved stood as a candidate for election as a member without being so elected.

(5) If it is so provided by Parliament, and subject to such exceptions and limitations (if any) as Parliament may prescribe, a person shall not be qualified to be elected or appointed as a member if

- (a) he or she holds or is acting in any office or appointment (whether specified individually or by reference to a class of office or appointment) other than the office of Representative, Senator, Minister or Parliamentary Secretary;
- (b) he or she belongs to any defence force or to any class of person that is comprised in any such force;
- (c) he or she belongs to any police force or to any class of person that is comprised in any such force; or
- (d) subject to any exceptions or limitations prescribed by Parliament, he or she has any such interest in any such government contract as may be so prescribed.

(6) In this section,

“government contract: means any contract made with the Administration or with a department of the Administration or with an officer of the Administration contracting as such;

“member” means member of the Assembly;

“minister of religion” means any person in holy orders and any other person the principal functions of whose occupation include teaching or preaching in any congregation for religious worship.

(7) For the purposes of paragraph (e) of subsection (1),

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- (a) two or more sentences of imprisonment that are required to be served consecutively shall be regarded as separate sentences if none of those sentences exceeds twelve months, but if any one of such sentences exceeds that term they shall be regarded as one sentence; and
- (b) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

**29. Election of members.**

(1) Each of the electoral districts established in accordance with the provisions of section 50 shall return one member to the Assembly who shall be directly elected in such manner as may, subject to the provisions of this Constitution, be prescribed by or under any law enacted by Parliament.

(2) Every Commonwealth citizen of the age of eighteen years or upwards who possesses such qualifications relating to residence in the island of Nevis or domicile in Saint Christopher and Nevis as Parliament may prescribe shall, unless he or she is disqualified by Parliament from registration as such, be entitled to be registered as a voter for the purpose of electing members of the Assembly in one (but not more than one) electoral district in accordance with the provisions of any law in that behalf and no other person may be registered as such.

(3) Every person who is registered under subsection (2) in any electoral district shall, unless he or she is disqualified by Parliament from voting in any election of Representatives or of members of the Assembly, be entitled to vote in that electoral district in accordance with the provisions of any law in that behalf and no other person may so vote.

(4) In any election of members of the Assembly, the votes shall be given by ballot in such manner as not to disclose how any particular person votes.

**31. Tenure of office of elected and nominated members.**

(1) An elected or appointed member shall vacate his or her seat in the Assembly at the next dissolution of the Legislature after his or her election or appointment.

(2) A member appointed in accordance with the provisions of subsection (2)(a) of section 101 shall vacate his or her seat in the Assembly if his or her appointment is revoked by the Governor-General, acting in accordance with the advice of the Leader of the Opposition, and a member appointed in accordance with the provisions of subsection (2)(b) of that section shall vacate his or her seat in the Assembly if his or her appointment is revoked by the Governor-General, acting in accordance with the advice of the Premier.

(3) An elected or appointed member shall also vacate his or her seat in the Assembly

- (a) if he or she is absent from the sittings of the Assembly for such period and in such circumstances as may be prescribed in the rules of procedure of the Assembly;
- (b) if he or she ceases to be a citizen; or

- (c) subject to subsection (4), if any other circumstances arise that, if he or she were not a member, would cause him or her to be disqualified to be elected or appointed as such by virtue of subsection (1) of section 28 or of any law enacted in pursuance of subsection (2), (3) or (5) of that section.
- (4) (a) If any such circumstances as are referred to in paragraph (c) of subsection (3) arise because any elected or appointed member is under sentence of death or imprisonment, adjudged to be of unsound mind, declared bankrupt or convicted or reported guilty of an offence relating to elections and if it is open to the member to appeal against the decision (either with the leave of a court of law or other authority or without such leave) he or she shall forthwith cease to perform his or her functions as a member but, subject to the provisions of this section, he or she shall not vacate his or her seat until the expiration of a period of thirty days thereafter:
- Provided that the president of the Assembly may, at the request of the member, from time to time extend that period for further periods of thirty days to enable the member to pursue an appeal against the decision, so, however, that extensions of time exceeding in the aggregate one hundred and fifty days shall not be given without the approval, signified by resolution, of the Assembly.
- (b) If, on the determination of any appeal, such circumstances continue to exist and no further appeal is open to the member or if, by reason of the expiration of any period for entering an appeal or notice thereof or the refusal of leave to appeal or for any other reason, it ceases to be open to the member to appeal, he or she shall forthwith vacate his or her seat.
- (c) If at any time before the member vacates his or her seat such circumstances cease to exist, his or her seat shall not become vacant on the expiration of the period referred to in paragraph (a) and he or she may resume the performance of his or her functions as a member.
- (5) In this section, "member" means member of the Assembly.

### 32. **President.**

(1) When the Assembly first meets after any general election and before it proceeds to the despatch of any other business, it shall elect a person to be the President of the Assembly; and if the office of President falls vacant at any time before the next dissolution of the Legislature the Assembly shall, as soon as practicable, elect another person to that office.

(2) The President of the Assembly may be elected from among the members of the Assembly who are not members of the Administration or from among persons who are not members of the Assembly but who are qualified for election as an elected member, or appointment as a nominated member, of the Assembly.



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- (3) No business shall be transacted in the Assembly (other than the election of a President) at any time when the office of President of the Assembly is vacant.
- (4) A person shall vacate the office of President of the Assembly,
- (a) in the case of a president elected from among the members of the Assembly,
    - (i) if he or she ceases to be a member of the Assembly:  
Provided that he or she shall not vacate his or her office by reason only that he or she has ceased to be a member of the Assembly on a dissolution of the Legislature until the Assembly first meets after dissolution; or
    - (ii) if he or she becomes a member of the Administration.
  - (b) in the case of a President elected from among persons who are not members of the Assembly,
    - (i) when the Assembly first meets after any dissolution of the Legislature;
    - (ii) if he or she ceases to be a citizen; or
    - (iii) if any circumstances arise that would cause him or her to be disqualified for election as an elected member, or appointment as a nominated member, of the Assembly.
- (6) (a) If, by virtue of section 31(4), the president of the Assembly is required to cease to perform his or her functions as a member of the Assembly he or she shall also cease to perform his or her functions as president and those functions shall, until he or she vacates his or her seat in the Assembly or resumes the performance of the functions of his or her office, be performed by such member of the Assembly (not being a member of the Administration) as the Assembly may elect for the purpose.
- (b) If the president resumes the performance of his or her functions as a member of the Assembly, he or she shall also resume the performance of his or her functions as president.

#### 34. **Supervision of elections.**

(1) The Supervisor of Elections shall exercise general supervision over the registration of voters in elections of members of the Assembly and over the conduct of such elections.

(4) For the purposes of the exercise of his or her functions under subsection (1), the Supervisor of Elections may give such directions as he or she considers necessary or expedient to any registering officer, presiding officer or returning officer relating to the exercise by that officer of his or her functions under any law regulating the registration of voters or the conduct of elections, and any officer to whom any such directions are given shall comply with those directions.

(5) The Supervisor of Elections may, whenever he or she considers it necessary or expedient to do so, and shall, whenever so required by the Commission, report to the Electoral Commission on the exercise of his or her functions under subsection (1); he or she shall also submit every such report to the Minister for the time being responsible for matters relating to the election of members of the National Assembly; and that Minister shall, not later than seven days after the National Assembly first meets after he or she has received the report, lay it before that Assembly together with such comments thereon as he or she may have received from the Commission.

(7) In the exercise of his or her functions under subsection (1), the Supervisor of Elections shall act in accordance with such directions as he or she may from time to time be given by the Electoral Commission but shall not be subject to the direction or control of any other person or authority.

**35. Clerk of Assembly and his or her staff.**

(1) There shall be a Clerk of the Nevis Island Assembly.

(2) The office of the Clerk of the Nevis Island Assembly and the offices of the members of his or her staff shall be public offices.

**36. Determination of questions of membership.**

(1) The High Court shall have jurisdiction to hear and determine any question whether

- (a) any person has been validly elected as a member of the Assembly;
- (b) any person has been validly appointed as a member of the Assembly;
- (c) any person who has been elected as president of the Assembly from among persons who were not members of the Assembly was qualified to be so elected or has vacated the office of president; or
- (d) any member of the Assembly has vacated his or her seat or is required, by virtue of section 31(4), to cease to perform his or her functions as a member of the Assembly.

(2) An application to the High Court for the determination of any question under subsection (1)(a) may be made by any person entitled to vote in the election to which the application relates or by any person who was, or who alleges that he or she was, a candidate at that election or by the Attorney-General and, if it is made by a person other than the Attorney-General, the Attorney-General may intervene and may then appear or be represented in the proceedings.

(3) An application to the High Court for the determination of any question under subsection (1)(b) or subsection (1)(c) may be made by any elected member of the Assembly or by the Attorney-General and, if it is made by a person other than the Attorney-General, the Attorney-General may intervene and may then appear or be represented in the proceedings.

(4) An application to the High Court for the determination of any question under subsection (1)(d) may be made

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- (a) by any elected member of the Assembly or by the Attorney-General;  
or
- (b) in the case of the seat of an elected member of the Assembly, by any person registered in some electoral district as a voter in elections of members of the Assembly

and, if it is made by a person other than the Attorney-General, the Attorney-General may intervene and may then appear to be represented in the proceedings.

- (5) There shall be such provision as may be made by Parliament with respect to
  - (a) the circumstances and manner in which and the imposition of conditions upon which any application may be made to the High Court for the determination of any question under this section; and
  - (b) the powers, practice and procedure of the High Court in relation to any such application.

(6) An appeal shall lie as of right to the Court of Appeal from any final decision of the High Court determining any such question as is referred to in subsection (1).

(7) No appeal shall lie from any decision of the Court of Appeal in exercise of the jurisdiction conferred by subsection (6) and no appeal shall lie from any decision of the High Court in proceedings under this section other than a final decision determining any such question as is referred to in subsection (1).

(8) In the exercise of his or her functions under this section, the Attorney-General shall not be subject to the direction or control of any other person or authority.

## PART 2 – PROCEDURE IN THE LEGISLATURE

### 39. **Oath.**

(1) Every member of the Assembly shall, before taking his or her seat in the Assembly, take and subscribe before the Assembly the oath of allegiance but a member may before taking that oath take part in the election of the president of the Assembly.

(2) Any person elected to the office of president of the Assembly shall, if he or she has not already taken and subscribed the oath of allegiance under subsection (1), take and subscribe that oath before the Assembly before entering upon the duties of his or her office.

### 40. **Presiding.**

There shall preside at any sitting of the Assembly

- (a) the president of the Assembly; or
- (b) in the absence of the president, such member of the Assembly (not being a member of the Administration) as the Assembly may elect for that purpose.

**41. Voting.**

(1) Save as otherwise provided in section 113(2), any question proposed for decision in the Assembly shall be determined by a majority of the votes of the members present and voting:

Provided that questions of no confidence in the Administration shall be determined by a majority of the votes of all the elected members of the Assembly.

(2) Except in the case of a question of no confidence in the Administration, a question shall not be regarded as having been validly determined by a vote in the Assembly on occasions when the numbers of members voting are recorded unless not less than three-fifths of all the members, or such greater number of members as the Legislature may prescribe, take part in the voting.

(3) Subject to subsection (4), a person presiding in the Assembly shall not vote unless on any question the votes of the members are equally divided, in which case he or she shall have and exercise a casting vote:

Provided that in the case of the question of the final reading of any such bill as is referred to in section 113(2) he or she shall, if he or she is an elected member of the Assembly, have an original vote but no casting vote.

(4) A president of the Assembly who was elected from among persons who were not members of the Assembly shall have neither an original nor a casting vote and if, upon any question before the Assembly when such a president is presiding, the votes of the members are equally divided, the motion shall be lost.

**42. Mode of exercise of legislative power.**

(1) The power of the Legislature to make laws shall be exercised by bills passed by the Assembly and assented to by the Governor-General.

(2) When a bill is submitted to the Governor-General for assent in accordance with the provisions of this Constitution he or she shall signify that he or she assents or that he or she withholds assent.

(3) When the Governor-General assents to a bill that has been submitted to him or her in accordance with the provisions of this Constitution the bill shall become law and the Governor-General shall thereupon cause it to be published in the Gazette as law.

(4) No law made by the Legislature shall come into operation until it has been published in the Gazette but the Legislature may postpone the coming into operation of any such law and may make laws with retrospective effect.

**43. Restrictions with regard to certain financial measures.**

Except on the recommendation of the Governor-General signified by the Premier, the Assembly shall not

- (a) proceed upon any bill (including any amendment to a bill) that, in the opinion of the person presiding, makes provision for any of the following purposes:

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- (i) for the imposition of taxation or the alteration of taxation otherwise than by reduction;
  - (ii) for the imposition of any charge upon the Consolidated Fund or any other public fund of the Administration or the alteration of any such charge otherwise than by reduction;
  - (iii) for the payment, issue or withdrawal from the Consolidated Fund or any other public fund of the Administration of any moneys not charged thereon or any increase in the amount of such payment, issue or withdrawal; or
  - (iv) for the composition or remission of any debt due to the Crown in right of the Administration; or
- (b) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding, would be to make provision for any of those purposes.

**44. Regulation of procedure in Assembly.**

(1) Subject to the provisions of this Constitution, the Assembly may regulate its own procedure and may in particular make rules for the orderly conduct of its own proceedings.

(2) The Assembly may act notwithstanding any vacancy in its membership (including any vacancy not filled when the Assembly first meets after any general election) and the presence or participation of any person not entitled to be present at or to participate in the proceedings of the Assembly shall not invalidate those proceedings.

**45. Freedom of speech.**

Without prejudice to any provision made by Parliament relating to the powers, privileges and immunities of the Assembly and its committees, or the privileges and immunities of the members and officers of the Assembly and of other persons concerned in the business of the Assembly or its committees, no civil or criminal proceedings may be instituted against any member of the Assembly for words spoken before, or written in a report to, the Assembly or a committee thereof or by reason of any matter or thing brought by him or her therein by petition, bill, resolution, motion or otherwise.

PART 3 – SUMMONING, PROROGATION AND DISSOLUTION

**46. Sessions.**

(1) Each session of the Legislature shall be held at such place within the island of Nevis, and shall begin at such time, not being later than one hundred and eighty days from the end of the preceding session if the Legislature has been prorogued or ninety days from the holding of a general election of members of the Assembly if the Legislature has been dissolved, as the Governor-General shall appoint by proclamation.

(2) Subject to subsection (1), the sittings of the Assembly shall be held at such time and place as the Assembly may, by its rules of procedure or otherwise, determine.

**47. Prorogation and dissolution.**

(1) The Governor-General may at any time prorogue or dissolve the Legislature.

(2) Subject to subsection (3), the Legislature, unless sooner dissolved, shall continue for five years from the date of the first sitting of the Assembly after any dissolution and shall then stand dissolved.

(3) At any time when Her Majesty is at war, the Legislature may extend the period of five years specified in subsection (2) for not more than twelve months at a time:

Provided that the life of the Legislature shall not be extended under this subsection for more than five years.

(4) In the exercise of his or her powers to dissolve the Legislature the Governor-General shall act in accordance with the advice of the Premier but before any such advice is given the Premier shall consult the Prime Minister:

Provided that if the office of the Premier is vacant and the Governor-General, acting in his or her own deliberate judgment, considers that there is no prospect of his or her being able within a reasonable time to appoint to that office a person who can command the support of the majority of the elected members of the Assembly, the Governor-General shall dissolve the Legislature.

(5) If, after a dissolution of the Legislature and before the holding of the general election of members of the Assembly, the Premier advises the Governor-General that, because of some matter of urgent national importance, it is necessary to recall the Legislature the Governor-General shall summon the Legislature that has been dissolved to meet, but the general election of members of the Assembly shall proceed and the Legislature that has been recalled shall, if not sooner dissolved, again stand dissolved on the date appointed for the nomination of candidates in that general election.

**48. Holding of elections.**

(1) A general election of members of the Assembly shall be held at such time within ninety days after any dissolution of the Legislature as the Governor-General may appoint.

(2) Where the seat of a member of the Assembly falls vacant otherwise than by reason of a dissolution of the Legislature,

(a) if the vacant seat is that of an elected member, a by-election shall be held; or

(b) if the vacant seat is that of a nominated member, an appointment shall be made,

to fill the vacancy within ninety days of the occurrence of the vacancy unless the Legislature is sooner dissolved.

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PART 4 – DELIMITATION OF ELECTORAL DISTRICTS

49. **Boundaries Commission.**

(1) There shall be for the island of Nevis an Electoral Districts Boundaries Commission (hereinafter in this section referred to as the Commission) which shall consist of:

- (a) a chairperson appointed by the Governor-General, acting in accordance with the advice of the Premier given after the Governor-General has consulted the Leader of the Opposition and such other persons as the Governor-General, acting in his or her own deliberate judgment, has seen fit to consult;
- (b) two members of the Assembly appointed by the Governor-General, acting in accordance with the advice of the Premier; and
- (c) two members of the Assembly appointed by the Governor-General, acting in accordance with the advice of the Leader of the Opposition:

Provided that the chairperson shall not be a member of the Assembly or of the National Assembly.

- (2) A member of the Commission shall vacate his or her office
- (a) at the next dissolution of the Legislature after his or her appointment;
  - (b) in the case of the chairperson, if any circumstances arise that, if he or she were not a member of the Commission, would cause him or her to be disqualified for appointment as such;
  - (c) in the case of a member other than the chairperson, if he or she ceases to be a member of the Assembly otherwise than by reason of the dissolution of the Legislature; or
  - (d) if the Governor-General, acting in accordance with the advice of the Premier given after the Governor-General has consulted the Leader of the Opposition in the case of the chairperson, in accordance with the advice of the Premier in the case of a member appointed under subsection (1)(b) or in accordance with the advice of the Leader of the Opposition in the case of a member appointed under subsection (1)(c), so directs.

(3) The Commission may regulate its own procedure and, with the consent of the Premier, may confer powers and impose duties on any public officer or on any authority of the Government for the purpose of the discharge of its functions.

(4) The Commission may, subject to its rules of procedure, act notwithstanding any vacancy in its membership and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings:

Provided that any decision of the Commission shall require the concurrence of a majority of all its members.

**50. Review of boundaries of electoral districts.**

(1) The Electoral Districts Boundaries Commission (hereinafter in this section referred to as the Commission) shall, in accordance with the provisions of this section, review the number and boundaries of the electoral districts into which the island of Nevis is divided and submit to the Governor-General reports either

- (a) showing the electoral districts into which it recommends that the island of Nevis should be divided in order to give effect to the rules set out in schedule 2; or
- (b) stating that, in its opinion, no alteration is required to the existing number or boundaries of electoral districts in order to give effect to those rules.

(2) Reports under subsection (1) shall be submitted by the Commission at intervals of not less than two nor more than five years.

(3) As soon as may be after the Commission has submitted a report under subsection (1)(a), the Premier shall lay before the Assembly for its approval the draft of a proclamation by the Governor-General for giving effect, whether with or without modifications, to the recommendations contained in the report, and that draft proclamation may make provision for any matters that appear to the Premier to be incidental to or consequential upon the other provisions of the draft.

(4) Where any draft proclamation laid before the Assembly gives effect to any recommendations of the Commission with modifications, the Premier shall lay before the Assembly together with the draft a statement of the reasons for the modifications.

(5) If the motion for the approval of any draft proclamation laid before the Assembly under this section is rejected by the Assembly, or is withdrawn by leave of the Assembly, the Premier shall amend the draft and lay the amended draft before the Assembly.

(6) If any draft proclamation laid before the Assembly under this section is approved by resolution of the Assembly, the Premier shall submit it to the Governor-General who shall make a proclamation in terms of the draft; and that proclamation shall come into force upon the next dissolution of the Legislature after it is made.

(7) The question of the validity of any proclamation by the Governor-General purporting to be made under this section and reciting that a draft thereof has been approved by resolution of the Assembly shall not be enquired into in any court of law except upon the ground that the proclamation does not give effect to rule 1 in schedule 2.

**CHAPTER V – THE EXECUTIVE****56. Exercise of Governor-General's functions.**

(3) During any period in which there is a vacancy in the office of Leader of the Opposition by reason of the fact that no person is both qualified for appointment to that office in accordance with section 58 and willing to accept appointment or if the Governor-General, acting in his or her own deliberate judgment, considers that it is not practicable



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for him or her to obtain the advice of, or to consult, the Leader of the Opposition within the time within which it may be necessary for him or her to act, he or she may act without that advice and in his or her own deliberate judgment or, as the case may be, without such consultation, in the exercise of any power conferred upon him by this Constitution in respect of which it is provided that he or she shall act on the advice of, or after consultation with, the Leader of the Opposition.

**58. Leader of the Opposition.**

(1) There shall (except at times when no elected member of the Assembly is eligible for appointment) be a Leader of the Opposition in the Assembly who shall be appointed by the Governor-General.

(2) Whenever there is occasion for the appointment of a Leader of the Opposition the Governor-General shall appoint the elected member of the Assembly who appears to him or her most likely to command the support of a majority of the elected members of the Assembly who do not support the Administration or, if no elected member appears to him or her to command such support, the elected member who appears to him or her to command the support of the largest single group of elected members of the Assembly who do not support the Administration:

Provided that no elected member shall be eligible for appointment unless it appears to the Governor-General that the elected member commands the support of at least one other elected member.

(3) If occasion arises to appoint a Leader of the Opposition during the period between a dissolution of the Legislature and the day on which the ensuing election of members of the Assembly is held, an appointment may be made as if the Legislature had not been dissolved.

- (4) The office of Leader of the Opposition shall become vacant
- (a) if he or she ceases to be a member of the Assembly otherwise than by reason of a dissolution of the Legislature;
  - (b) if, when the Assembly first meets after a dissolution of the Legislature, he or she is not then an elected member of the Assembly;
  - (c) if, by virtue of section 31(4), he or she is required to cease to perform his or her functions as a member of the Assembly; or
  - (d) if he or she is removed from office by the Governor-General under the provisions of subsection (5).

(5) If it appears to the Governor-General that the Leader of the Opposition is no longer able to command the support of a majority of the elected members of the Assembly who do not support the Administration or (if no elected member appears to him or her to be able to command such support) the support of the largest single group of elected members of the Assembly who do not support the Administration, he or she shall remove the Leader of the Opposition from office.

(6) The powers of the Governor-General under this section shall be exercised by him or her in his or her own deliberate judgment.

*CHAPTER VII – THE PUBLIC SERVICE*

PART 1 – THE PUBLIC SERVICE COMMISSION

**78. Appointment etc. of public officers.**

(5) Before the Public Service Commission makes any recommendation in relation to the Clerk of the Nevis Island Assembly or a member of his or her staff for the purposes of subsection (1) or (2) and before any other person or authority exercises in relation to the Clerk of the Nevis Island Assembly or a member of his or her staff any power delegated to him or her under subsection (2), the Commission or that person or authority shall consult the president of the Assembly.

PART 5 – PENSIONS

**88. Pensions laws and protection of pensions rights.**

(5) In this section “pensions benefits” means any pensions, compensation, gratuities or other like allowances for persons in respect of their service as members of the Assembly or for the widows, children, dependants or personal representatives in respect of such service.

*CHAPTER XI – MISCELLANEOUS*

**117. Resignations.**

(1) A member of the Assembly may resign his or her seat by writing under his or her hand addressed to the president of the Assembly and the resignation shall take effect, and the seat shall accordingly become vacant, when the writing is received, as the case may be, by

- (a) the president; or
- (b) if the office of president is vacant or the president is for any reason unable to perform the functions of his or her office and no other person is performing them, the Clerk of the Nevis Island Assembly.

(2) The president of the Assembly may resign his or her office by writing under his or her hand addressed to the Assembly and the resignation shall take effect, and the office shall accordingly become vacant, when the writing is received by the Clerk of the Nevis Island Assembly.

**SCHEDULE 2**

(Section 50.(1))

**RULES FOR DELIMITATION OF ELECTORAL DISTRICTS**

1. There shall be not less than five electoral districts in the island of Nevis.

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2. All electoral districts shall contain as nearly equal numbers of inhabitants as appears to the Electoral Districts Boundaries Commission to be reasonably practicable but the Commission may depart from this rule to such extent as it considers expedient to take account of the following factors, that is to say,

- (b) the need to ensure adequate representation of sparsely populated rural areas;
- (c) the means of communication;
- (d) geographical features; and
- (e) existing administrative boundaries.

PART 2 – PROVISIONS APPLIED BY SECTION 104(4)

*CHAPTER V – THE EXECUTIVE*

**52. Members of the Administration.**

(5) If occasion arises for making an appointment to the office of Premier or any other member of the Administration while the Legislature is dissolved, then, notwithstanding the provisions of subsections (2) and (4), a person who was an elected member of the Assembly immediately before the dissolution may be appointed as Premier and a person who was an elected or nominated member of the Assembly immediately before the dissolution may be appointed as a member of the Administration other than the Premier.

(6) The Governor-General shall remove the Premier from office if a resolution of no confidence in the Administration is passed by the Assembly and the Premier does not within three days either resign from his or her office or advise the Governor-General to dissolve the Legislature.

(7) If, at any time between the holding of a general election of members of the Assembly and the first meeting of the Assembly thereafter, the Governor-General considers that in consequence of changes in the membership of the Assembly resulting from that election the Premier will not be able to command the support of the majority of the elected members of the Assembly, the Governor-General may remove the Premier from office.

- (8) The office of any Minister shall become vacant
  - (a) if the holder of the office ceases to be a member of the Assembly otherwise than by reason of the dissolution of the Legislature;
  - (b) in the case of the Premier, if, when the Assembly first meets after any dissolution of the Legislature, he or she is not then an elected member of the Assembly;
  - (c) in the case of any other member of the Administration, if, when the Assembly first meets after any dissolution of the Legislature, he or she is not then an elected or nominated member of the Assembly; or
  - (d) if, by virtue of section 31(4) of this Constitution, he or she is required to cease to perform his or her functions as a member of the Assembly.

(9) The office of a member of the Administration other than the Premier shall become vacant

- (a) if the Governor-General, acting in accordance with the advice of the Premier, so directs;
- (b) if the Premier resigns from office within three days after a resolution of no confidence in the Administration has been passed by the Assembly or is removed from office under subsection (6) or (7); or
- (c) on the appointment of any person to the office of Premier.

**54. Allocation of portfolios.**

The Governor-General, acting in accordance with the advice of the Premier, may, by directions in writing, assign to the Premier or any other member of the Administration, responsibility for any business of the Administration, including the administration of any department of the Administration.

**55. Absence or illness of Premier.**

(1) Whenever the Premier is absent from Saint Christopher and Nevis or by reason of illness is unable to perform the functions conferred upon him or her by this Constitution, the Governor-General may authorise some other member of the Administration to perform those functions (other than the functions conferred by this section) and that member may perform those functions until his or her authority is revoked by the Governor-General.

(2) The powers of the Governor-General under this section shall be exercised by him or her in accordance with the advice of the Premier:

Provided that if the Governor-General, acting in his or her own deliberate judgment, considers that it is impracticable to obtain the advice of the Premier owing to his or her absence or illness he may exercise those powers without that advice and in his or her own deliberate judgment.

**57. Governor-General to be kept informed.**

The Premier shall keep the Governor-General fully informed concerning the general conduct of the Administration and shall furnish the Governor-General with such information as he or she may request with respect to any particular matter for which the Administration is responsible.

**60. Oaths.**

A member of the Administration shall not enter upon the duties of his or her office unless he or she has taken and subscribed the oath of allegiance, the oath of office and the oath of secrecy.

**61. Permanent secretaries.**

Where any member of the Administration has been charged with responsibility for any department of the Administration, he or she shall exercise general direction and control over that department; and, subject to such direction and control, every department

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of the Administration shall be under the supervision of a permanent secretary whose office shall be a public office:

Provided that two or more departments may be placed under the supervision of one permanent secretary.

**62. Secretary to Administration.**

(1) There shall be a Secretary to the Administration whose office shall be a public office.

(2) The Secretary to the Administration, who shall have charge of the Administration Office, shall be responsible, in accordance with such instructions as may be given to him or her by the Premier, for arranging the business for, and keeping the minutes of, the Administration and for conveying the decisions of the Administration to the appropriate person or authority and shall have such other functions as the Premier may direct.

PART 3 – PROVISIONS APPLIED BY SECTION 108(2)

*CHAPTER VI – FINANCE*

**70. Withdrawals from Consolidated Fund or other public funds.**

- (1) No moneys shall be withdrawn from the Consolidated Fund except
- (a) to meet expenditure that is charged upon the Fund by any law enacted by the Legislature; or
  - (b) where the issue of those moneys has been authorised by an appropriation law or by a law made in pursuance of section 72.

(2) Where any moneys are charged by any law enacted by the Legislature upon the Consolidated Fund or any other public fund of the Administration, they shall be paid out of that fund by the Administration to the person or authority to whom payment is due.

(3) No moneys shall be withdrawn from any public fund other than the Consolidated Fund unless the issue of those moneys has been authorised by or under any law.

(4) There shall be such provision as may be made by the Legislature prescribing the manner in which withdrawals may be made from the Consolidated Fund or any other public fund of the Administration.

(5) The investment of moneys forming part of the Consolidated Fund shall be made in such manner as may be prescribed by or under a law enacted by the Legislature.

(6) Notwithstanding subsection (1), provision may be made by or under a law enacted by the Legislature authorising withdrawals to be made from the Consolidated Fund, in such circumstances and to such extent as may be prescribed by or under a law enacted by the Legislature, for the purpose of making repayable advances.

**71. Authorisation of expenditure from Consolidated Fund by the appropriation law.**

(1) The member of the Administration for the time being responsible for finance shall cause to be prepared and laid before the Assembly before, or not later than sixty days after, the commencement of each financial year estimates of the revenues and expenditure of the Administration for that financial year.

(2) When the estimates of expenditure (other than expenditure charged upon the Consolidated Fund by any law enacted by the Legislature) have been approved by the Assembly, a bill, known as an appropriation bill, shall be introduced in the Assembly providing for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums, under separate votes for the several services required, to the purposes specified therein.

(3) If in respect of any financial year it is found

- (a) that the amount appropriated by the appropriation law to any purpose is insufficient or that a need has arisen for expenditure for a purpose to which no amount has been appropriated by that law; or
- (b) that any moneys have been expended for any purpose in excess of the amount appropriated to that purpose by the appropriation law or for a purpose to which no amount has been appropriated by that law;

a supplementary estimate showing the sums required or spent shall be laid before the Assembly and, when the supplementary estimate has been approved by the Assembly, a supplementary appropriation bill shall be introduced in the Assembly providing for the issue of such sums from the Consolidated Fund and appropriating them to the purposes specified therein.

**72. Authorisation of expenditure in advance of appropriation.**

There shall be such provision as may be made by the Legislature under which, if the appropriation law in respect of any financial year has not come into operation by the beginning of that financial year, the member of the Administration for the time being responsible for finance may authorise the withdrawal of moneys from the Consolidated Fund for the purpose of meeting expenditure necessary to carry on the services of the Administration until the expiration of four months from the beginning of that financial year or the coming into operation of the law, whichever is the earlier.

**73. Warrants for unforeseen expenditure.**

(1) If it appears to the member of the Administration for the time being responsible for finance that

- (a) there is an urgent need to incur expenditure;
- (b) no provision exists for that expenditure in any appropriation law or other law; and
- (c) it would not be in the public interest to delay the authorisation of that expenditure until such time as a supplementary estimate can be laid before the Assembly;

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the member may, by special warrant, authorise the issue from the Consolidated Fund of the moneys required to meet that expenditure:

Provided that the total sum for the time being authorised to be issued under this subsection, for which no provision has been made by an appropriation law, shall not exceed such amount as may be prescribed by the Legislature.

(2) Where in any financial year any expenditure has been authorised by special warrant under subsection (1) the member of the Administration for the time being responsible for finance shall cause a supplementary estimate relating to that expenditure to be laid before the Assembly at the first sitting of the Assembly occurring after the expiration of the fourteen days from the date of the warrant and a supplementary appropriation bill shall be introduced in the Assembly providing for the issue of the sums authorised to be spent and appropriating them to the purposes specified therein.

**75. Public debt.**

(1) All debt charges for which the Administration is liable shall be a charge on the Consolidated Fund.

(2) For the purposes of this section debt charges include interest, sinking fund charges, the repayment or amortization of debt and all expenditure in connection with the raising of loans on the security of the Consolidated Fund and the service and redemption of the debt created thereby.

**76. Audit of public accounts etc.**

(2) The Director of Audit shall

- (a) satisfy himself or herself that all moneys that have been appropriated by the Legislature and disbursed have been applied to the purposes to which they were so appropriated and that the expenditure conforms to the authority that governs it; and
- (b) at least once in every year audit and report on the public accounts of the Administration, the accounts of all officers and authorities of the Administration and the accounts of the Clerk of the Assembly.

(3) The Director of Audit and any officer authorised by him or her shall have access to all books, records, returns, reports and other documents that in his or her opinion relate to any of the accounts referred to in subsection (2).

(4) The Director of Audit shall submit every report made by him or her in pursuance of subsection (2) to the member of the Administration for the time being responsible for finance who shall, not later than seven days after the Assembly first meets after he or she has received the report, lay it before the Assembly.

(5) If the member of the Administration fails to lay a report before the Assembly in accordance with subsection (4) the Director of Audit shall transmit copies of that report to the president of the Assembly who shall, as soon as practicable, present them to the Assembly.

(6) The Director of Audit shall exercise such other functions in relation to the accounts of the Administration or the accounts of other authorities or bodies established by

law for public purposes as may be prescribed by or under any law enacted by the Legislature.

(7) In the exercise of his or her functions under subsections (2), (3), (4) and (5), the Director of Audit shall not be subject to the direction or control of any other person or authority.

#### PART 4 – INTERPRETATION

In this schedule, unless the context otherwise requires,

“the Administration” means the Nevis Island Administration;

“the Assembly” means the Nevis Island Assembly;

“the Consolidated Fund” means the Nevis Island Consolidated Fund;

“Leader of the Opposition” means the Leader of the Opposition in the Assembly;

“the Legislature” means the Nevis Island Legislature;

### SCHEDULE 7 TO THE CONSTITUTION

#### SAINT CHRISTOPHER AND NEVIS CONSTITUENCY BOUNDARIES ORDER

(SRO 25 of 1983, 21 of 1988)

**1. Citation.**

This Order may be cited as the Saint Christopher and Nevis Constituency Boundaries Order.

**2. Number of Constituencies and Boundaries.**

There shall be eight (8) constituencies in the Island of Saint Christopher and three (3) constituencies in the Island of Nevis and their respective boundaries shall be as contained in the Schedule hereto.

#### SCHEDULE

**1. Electoral District of Saint Christopher (1).**

All that portion of the Parish of Saint George, Basseterre, including the town of Basseterre, to the east of a line running from the sea northwards through the centre of Fort Street, Victoria Road and its continuation to the Parish Boundary.

**2. Electoral District of Saint Christopher (2).**

All that central portion of the Parish of Saint George, Basseterre including the town of Basseterre, between a line running from the sea northwards through the centre of Fort Street, Victoria Road and its continuation to the Parish Boundary and a line running from



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the sea northwards through the centre of Wigley Avenue and its continuation to the Parish Boundary.

**3. Electoral District of Saint Christopher (3).**

All that portion of the Parish of Saint George, Basseterre, including the town of Basseterre, to the west of a line running from the sea northwards through the centre of Wigley Avenue and its continuation to the Parish Boundary, to Willits Ghaut in the Parish of Trinity Palmetto Point and its continuation to the Parish Boundary between the Parish of Trinity Palmetto Point and the Parish of Christ Church, Nichola Town.

**4. Electoral District of Saint Christopher (4).**

All that portion of the Parish of Trinity, Palmetto Point west of Willits Ghaut and the Parish of Saint Thomas, Middle Island.

**5. Electoral District of Saint Christopher (5).**

The Parish of Saint Anne, Sandy Point.

**6. Electoral District of Saint Christopher (6).**

The Parish of Saint Paul, Capisterre and all that portion of the Parish of Saint John, Capisterre northwest of Harris Ghaut and its continuation to the Parish Boundary between the Parish of Saint John, Capisterre and the Parish of Saint Thomas, Middle Island.

**7. Electoral District of Saint Christopher (7).**

All that portion of the Parish of Saint John, Capisterre, southeast of Harris Ghaut and its continuation to the Parish Boundary between the Parish of Saint John, Capisterre and the Parish of St. Thomas, Middle Island to the Parish of Christ Church Nichola Town and all that portion of the Parish of Saint Mary, Cayon West of Ottleys Ghaut from the sea to the Island Main Road and west of the road leading to Ottleys Estate from that point and the continuation of that road and the track to the Parish Boundary between the Parish of Saint Mary, Cayon and the Parish of Trinity, Palmetto Point.

*(Substituted by SRO 21/1988)*

**8. Electoral District of Saint Christopher (8).**

All that portion of the Parish of Saint Mary, Cayon, east of Ottleys Ghaut from the sea to the Island Main Road and east of the road leading to Ottleys Estate from that point and the continuation of that road and the track to the Parish Boundary between the Parish of Saint Mary, Cayon and the Parish of Trinity, Palmetto Point and the Parish of Saint Peter, Basseterre.

*(Substituted by SRO 21/1988)*

**9. Electoral District of Nevis (9).**

The Parishes of Saint John, Fig Tree and Saint Paul, Charlestown.

**10. Electoral District of Nevis (10).**

The Parish of Saint George, Gingerland.

**11. Electoral District of Nevis (11).**

The Parishes of Saint James, Windward and Saint Thomas, Lowland.

**SCHEDULE 8 TO THE CONSTITUTION**

(Section 77(12))

**PUBLIC SERVICE COMMISSION REGULATIONS****1. Short title.**

These Regulations may be cited as the Public Service Commission Regulations.

**2. Interpretation.**

In these regulations, unless the context otherwise requires,

- (a) “acting appointment” means the temporary appointment of a person or officer whether on promotion or otherwise to an office whether that office is vacant or not;
- (b) “appointment” means the placing of a person in an office in the public service including appointments on contract;
- (c) “the Commission” means the Public Service Commission instituted by section 77 of the Constitution;
- (d) “Constitution” means the Saint Christopher and Nevis Constitution Order 1983;
- (e) “member” means a member of the Commission and includes the Chairman;
- (f) “public office” means any office of emolument in the public service;
- (g) “public officer” means the holder of any public office and includes any person appointed to act in any such office;
- (h) “the public service” means the service of the Crown in a civil capacity in respect of the Government of Saint Christopher and Nevis subject to the provisions of section 119 of the Constitution;
- (i) “regulation” means one of these regulations.

**3. Oath of office.**

A member of the Commission shall, upon appointment and before entering upon the duties of his or her office, take and subscribe the oath of allegiance and the oath of office in the form set out in Schedule 4 of the Constitution.

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**4. Oath of officer of the Commission.**

The Secretary to the Commission and every other person appointed to the staff of the Commission shall, before entering upon the duties of his or her office, take and subscribe the oath set out in the Schedule to these regulations.

**5. Procedure and meetings.**

(1) The Commission shall meet as often as may be necessary for the purpose of performing its functions, and meetings shall be held at such times and places as the Commission shall determine.

(2) The proceedings of the Commission shall be held in private.

(3) Three members shall constitute a quorum.

(4) All decisions at a meeting of the Commission shall be by a majority of the votes of the members present and voting provided that any decision of the Commission shall require the concurrence of a majority of all its members.

(5) The Chairperson at any meeting of the Commission shall have an original vote and in the event of an equality of votes he or she shall have as well a casting vote.

**6. Decisions other than at a meeting.**

(1) Notwithstanding the provisions of regulation 5, decisions may also be made by the Commission without a meeting upon circulation of the relevant papers among the members or by informal discussion between any of them including the Chairperson.

(2) Members may notify their opinions on the matter or question in writing or by telephone or word of mouth, and if in any such case a difference of opinion arises among the members or any member so requires, the matter or question shall be reserved for discussion at a meeting.

(3) Decisions made under this Regulation shall be brought up for noting at the next meeting of the Commission.

**7. Record of meetings and decisions.**

(1) Minutes shall be taken of all decisions arrived at a meeting or noted under regulation 6 and shall be duly confirmed at a subsequent meeting.

(2) Any member who dissents from a decision may require that his or her dissent and reasons for dissenting be recorded in the minutes.

(3) The Commission shall furnish the Governor-General with copies of the Minutes of their meetings.

**8. Consultation with other persons.**

The Commission in considering any matter or question may consult with any such public officer or other person as the Commission may consider it proper and desirable so to do and may request any public officer to produce any official documents relating to that

matter or question, to provide relevant information or to attend and give evidence on oath or otherwise before it.

**9. Principles of selection for appointments.**

(1) For the purpose of exercising its functions in relation to appointments whether substantive or acting, the Commission shall (without prejudice to its right subject to section 78 of the Constitution to consider the application of every person whether or not in the public service) consider the claims of all public officers eligible for appointment or promotion and those of suitably qualified local candidates.

(2) The Commission may interview candidates or set up Selection Boards subject to the approval of the Prime Minister in accordance with section 77.(12) of the Constitution to advise on the acceptability of candidates or may receive reports from recognised Selection Boards on potential candidates for the public service, but the Commission shall not be bound to act in accordance with any advice or recommendation contained in the Reports submitted by these Boards.

(3) The Commission shall, in respect of each candidate for first appointment, consider amongst others, the following matters:

- (a) age
- (b) character
- (c) general fitness
- (d) nationality
- (e) qualifications
- (f) any previous employment of the candidate in the public service or elsewhere.

**PART II – APPOINTMENTS**

**10. Appointments on contract.**

(1) Where it becomes necessary to recruit a candidate from a territory other than St. Kitts and Nevis or where it is desirable to fill a vacancy for a limited period, the Commission may recommend that the appointment be made on contract for a specified time.

(2) Every candidate whom it is proposed to appoint on contract will be required to enter into an appropriate agreement if called upon to do so and to satisfy the Commission that he or she is likely to give regular and effective service for the period of years concerned.

**11. Temporary appointments.**

Without prejudice to the provisions of Regulations 9 and 12, the Commission may recommend that a temporary appointment be made whenever it is satisfied that, by reason of a shortage of qualified candidates, the admission of a candidate in a temporary capacity is justified by the needs of the public service and the candidate undertakes to do all he or she can to become qualified within a reasonable time.

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**12. Acting appointments.**

(1) When an acting appointment falls to be made otherwise than as a prelude to a substantive appointment, the Commission may, as a general rule, recommend the senior officer in the Ministry or Department eligible for that acting appointment but whoever is recommended will be required to assume and discharge the duties and responsibilities of the post to which he or she is appointed to act.

(2) Where an acting appointment falls to be made as a prelude to a substantive appointment the Commission shall, as a general rule, follow the same principles and procedure applicable to selection for promotion as stated in Regulation 13.

PART III – PROMOTION

**13. Consideration for promotion by the Commission.**

(1) In considering the eligibility of officers for promotion, the Commission shall take into account the seniority, experience, educational qualifications, merit and ability, together with the relative efficiency of the officers concerned, and, in the event of parity of assessments shall give consideration to their relative seniority in making the final recommendation for promotion to the vacancy.

(2) The Commission shall attach greater weight to

- (a) seniority when it reflects experience of value for the higher post and where promotion is to an office that involves work of a routine nature;
- (b) merit, ability and performance on the job where promotion is to an office that involves work of a progressively greater and higher responsibility and initiative than is required for an office specified in sub-paragraph (a).

(3) In the exercise of its functions under sub-regulations (1) and (2) the Commission shall take into account, with respect to each officer,

- (a) his or her general fitness;
- (b) the position of his or her name on the seniority list;
- (c) any special qualifications;
- (d) any special courses of training that he or she may have successfully completed (whether at the expense of Government or otherwise);
- (e) a description of the work he or she has done and an assessment of his or her performance in carrying it out;
- (f) any letters of commendation or special reports in respect of any special work done by the officer;
- (g) the duties of the office for which he or she is a candidate;
- (h) his or her annual confidential reports and any other documents for which the Commission may call;
- (i) his or her devotion to duty;

- (j) any specific recommendation of the Permanent Secretary for filling the particular office.

(4) In addition to the requirements prescribed in sub-regulations (1), (2) and (3), the Commission will consider any specifications that may be required for appointment to the particular office.

(5) The Commission may, at its discretion, summon for interview any of the candidates short-listed for promotion or alternatively the Commission may set up a promotion board subject to the approval of the Prime Minister in accordance with section 77(12) of the Constitution for the purpose but the Commission shall not be bound to act in accordance with any advice or recommendation contained in their report.

(6) A candidate's performance before the Commission or before a promotion board, as the case may be, shall not be the decisive factor in determining fitness for promotion, and the primary purpose of the interview shall be to produce a fair and uniform judgement of each candidate's promise and potentiality primarily based on their superior officers' assessments of their performance in their respective jobs.

(7) No appointment on promotion may be made before the Commission has determined the suitability of the candidates concerned.

#### **14. Transfers.**

(1) The Commission shall recommend the transfer of a public officer whenever it is in the best interest of the public service to do so and under the procedure for promotion where an increase in emoluments is involved and under the procedure for appointments where there is no immediate increase in emoluments.

(2) The underlying principle will be the effective deployment of staff to meet the needs of the Service and their unimpeded movement from one kind of work to another.

#### **15. Meaning of promotion.**

For purposes of this Part, promotion includes

- (a) a conferment upon a person in the public service of a public office to which is attached a higher salary;
- (b) a higher salary scale than that attached to the public office to which he or she was last substantively appointed;

#### **PART IV – PROBATIONARY SERVICE, RESIGNATIONS, RETIREMENTS AND TERMINATION OF APPOINTMENTS**

#### **16. Probationary service.**

(1) On first appointment to the public service or on promotion in the service from a non-pensionable to a pensionable office, an officer shall normally be required to serve a probationary period of two years without prejudice to the rights of the Commission to determine the period of probation to be served.

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(2) When the Commission is satisfied that the work and conduct of a public officer on probation have been of a standard to justify confirmation in a pensionable office, the Commission, at the expiration of that public officer's probationary appointment, shall recommend the confirmation of his or her appointment with effect from the date of his or her entering upon the duties of his or her post.

(3) If the Commission is not satisfied that the work and conduct of an officer on probation have been satisfactory, the Commission may extend the period of probation for a further term.

(4) Notwithstanding the provisions of these Regulations, the Commission may at any time before the appointment is confirmed and without any reason being given recommend that an appointment on probation be terminated.

(5) The Commission shall recommend in each case where the probationary appointment of an officer is terminated whether

- (a) due notice shall be given;
- (b) termination should be immediately effective with one month's salary paid in lieu of notice; or
- (c) termination should be immediately effective and without payment of salary in lieu of notice.

**17. Non-infringement of powers of the Commission.**

The Permanent Secretary or Head of Departments shall ensure that no payment shall be made out of public funds in respect of any matter requiring the approval of the Governor-General acting in accordance with the recommendation of the Commission.

**18. Resignations.**

(1) An officer who wishes to resign shall give the Commission notice in writing of his or her intention at least one month before the date on which he or she wishes to relinquish his or her appointment but the Commission may waive the requirement of notice in whole or in part if it thinks fit.

(2) Notwithstanding any regulation relating to the non-forfeiture of leave, an officer who fails, without reasonable cause, to comply with sub-regulation (1) may forfeit all leave and the benefits and privileges accruing to him or her in respect of leave.

(3) An officer is not entitled to withdraw his or her notice of resignation before the resignation becomes effective, but the Commission may accept the withdrawal of the resignation if requested in writing at any time before the effective date of the resignation.

**19. Abandonment.**

An officer who is absent from duty without leave for a period of seven days may be deemed by the Commission to have abandoned his or her office and thereupon the office becomes vacant and the officer ceases to be an officer.

**20. Reasons for termination of appointments.**

(1) The services of an officer may be terminated for the reasons stated in sub-regulations (2), (3) and (4).

- (2) Where the officer holds a pensionable appointment,
- (a) on dismissal or removal in consequence of disciplinary proceedings;
  - (b) on compulsory retirement;
  - (c) on voluntary retirement;
  - (d) on the exercise of the option by an officer to retire after 25 years pensionable service (this is a two-way option);
  - (e) on retirement for medical reasons;
  - (f) on retirement in the public interest;
  - (g) on resignation without benefits payable under any enactment providing for the grant of pensions, gratuities, or compensation;
  - (h) on marriage in the case of a female officer (this is a two-way option);
  - (i) on the abolition of office;
  - (j) on redundancy;
  - (k) for irregularity of attendance.
- (3) Where the officer holds a temporary appointment,
- (a) on the expiry or other termination of an appointment made for a specified period;
  - (b) where the office itself is of a temporary nature and is no longer necessary;
  - (c) on the termination of appointment in the case of an officer on probation;
  - (d) on the termination of an appointment in the case of an officer holding a non-pensionable office with no service in a pensionable office;
  - (e) on dismissal on removal in consequence of disciplinary proceedings;
  - (f) ill-health.

(4) Where the officer is on contract, his or her services shall be terminated in accordance with the terms of the contract.

**21. Rules of natural justice to guide Commission.**

(1) In exercising its functions under Regulation 20, the Commission shall be guided by the rules of natural justice and its recommendations will depend on the circumstances of each particular case.

(2) Any officer whose performance is falling below the standard which is required of his or her grade should be properly informed of his or her weakness in writing or otherwise and should be given time, opportunity and encouragement to put matters



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right, and, if his or her work remains below acceptable standards, a more formal warning should be given to the effect that the matter would be referred to the Commission, and the warning should be confirmed in writing.

(3) The Commission shall determine what procedure should be brought into operation.

(4) If the Commission recommends that the officer should be retired the Commission will consider what period of notice would be appropriate in each case and shall recommend accordingly.

(5) Any public officer under notice of dismissal or premature retirement, may appeal if he or she considers that he or she is being unfairly treated to the Public Service Board of Appeal within 28 days of receiving notice of the decision.

#### PART V – CONDUCT AND DISCIPLINE

#### 22. **Disciplinary penalties.**

The Commission may recommend that one or other of the following disciplinary penalties be imposed upon a public officer in respect of charges laid against him or her for misconduct

- (a) formal reprimand;
- (b) stoppage of future increment, or forfeiture of an increment or increments already earned;
- (c) monetary payments, either by way of fine, or by way of restitution (in whole or in part) of loss or damage caused by the offender;
- (d) compulsory resignation;
- (e) disciplinary transfer to another locality, in which case the offender may be required to meet his or her own removal expenses;
- (f) suspension with loss of pay;
- (g) down-grading, including removal from a post attracting additional pay or allowances;
- (h) dismissal without pension or gratuity.

#### 23. **Serious disciplinary cases.**

(1) Subject to the rights and powers of the Director of Public Prosecutions where charges are preferred against a public officer which although so serious that they may lead to the dismissal of the offender but are not of a criminal nature, the charges will be dealt with on a disciplinary basis.

(2) In these cases the Commission shall set up a Committee of Inquiry whose functions will be, amongst others, to ascertain the facts, sift the evidence and report its conclusions to the Commission, but the appropriate penalty will rest with the Commission.

(3) In exercising its functions the Committee of Inquiry will be, guided by the rules of natural justice.

(4) Where the Commission is satisfied that the officer concerned has been guilty of misconduct which is not sufficiently serious to warrant dismissal, the Commission may nonetheless refer the case to a Committee of Inquiry for investigation as in sub-regulations (1), (2) and (3) above, but the Commission will dispense with this procedure wherever it decides in its discretion to recommend a penalty no more severe than stoppage of increment.

(5) The Commission shall recommend in each case of dismissal whether

- (a) due notice should be given;
- (b) dismissal should be immediately effective with salary paid in lieu of notice; or
- (c) dismissal should be immediately effective without payment of salary in lieu of notice.

(6) For the purposes of this Part, 'misconduct' includes any conduct when an officer

- (a) is persistently unpunctual;
- (b) wilfully disobeys or disregards any lawful order made or given by any person having authority to make or give the order;
- (c) is drunk on duty;
- (d) is inefficient or incompetent through causes which appear to be within his or her own control;
- (e) is found guilty of any immoral or obscene or disorderly conduct in office;
- (f) performs his or her duties in negligent manner; or
- (g) having made or subscribed an oath or affirmation for the purposes of his or her office does or says anything in violation of that oath or affirmation;
- (h) uses, without the consent given personally, of the Permanent Secretary or Head of Department, any property or facilities provided for the purposes of the service of which he or she is a member for some purpose not connected with his or her official duties;
- (i) engages in any gainful occupation outside the service of which he or she is a member without the consent of the Commission;
- (j) is convicted of any criminal charge involving dishonesty, fraud, moral turpitude or is convicted of a criminal charge and sentenced to imprisonment without the option of a fine;
- (k) writes letters to the press, publishes books or articles or circulates leaflets setting forth his or her views on matters of national or local party political controversy;
- (l) speaks in public on matters of party political controversy or speaks at political meetings or heckles at such meetings;

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(m) participates in the meetings of any party political organisation while on duty, while on official business or while wearing official uniforms.

(7) An officer found guilty of misconduct shall be liable to such punishment as is prescribed by regulation 21 or by any other regulation.

**24. Suspension from duty.**

(1) Aside from suspension as a disciplinary penalty as listed in regulation 21 an officer may be interdicted or suspended from duty as a necessary precaution while inquiries are being made into an offence or while a prosecution is pending, and suspension will normally be imposed only where a serious charge is supported by strong “*prima facie*” evidence.

(2) Notwithstanding the provisions of sub-regulation (1), an officer may at any time be suspended from duty if, in the opinion of the Commission, that course is desirable in the public interest in consequence of the officer being arrested or having civil or criminal proceedings or charges of irregularity or misconduct brought or made against him or her.

(3) Where an officer is suspended his or her remuneration in respect of any period of suspension may, if the Commission shall so decide, be withheld wholly or in part so long as such suspension continues.

(4) On the termination of the period of suspension, whether by dismissal or reinstatement of the officer, his or her remuneration in respect of the period may, if the Commission shall so determine after consideration of the whole of the circumstances of the case, be forfeited wholly or in part.

PART VI – MISCELLANEOUS

**25. Re-employment of Public Officers.**

(1) Where, in the public interest, it is proposed to retain beyond the age of 55 an officer serving in an office to which promotions are made, the Commission may extend the service of the officer, subject to medical fitness, from year to year up to the maximum of sixty years.

(2) Subject to the provisions of sub-regulation (1), the Commission shall not recommend an officer who retires on pension from an office to which promotions are made for re-employment to the same office or grade unless the Commission is satisfied that there is a severe dearth of suitable persons to fill the vacancy.

**26. Discretionary powers of the Commission.**

Nothing in these regulations or recommendations contained therein shall have the effect of curtailing the discretionary powers conferred upon the Commission by section 77.(12) of the Constitution.

## SCHEDULE TO THE REGULATIONS

(Regulation 4)

### FORM 1

#### OATH OR AFFIRMATION OF SECRETARY AND OTHER OFFICERS OF THE COMMISSION

I ..... do swear (or solemnly affirm) that I will not directly reveal to any unauthorised person or persons or otherwise than in the course of duty any information in connection with the business of the Commission which may come to my knowledge in the course of my duties as ..... /...../ ..... to the Commission.

So help me God!

SWORN/DECLARED before me this ..... day of ....., 20 .....

## SCHEDULE 9 TO THE CONSTITUTION

(Section 87(5))

### PUBLIC SERVICE BOARD OF APPEAL REGULATIONS

**1. Citation.**

These Regulations may be cited as the Public Service Board of Appeal Regulations,

**2. Interpretation.**

In these Regulations,

“appellant” means the person bringing an appeal under subsection (2) of section 87 of the Constitution;

“Board” means the Public Service Board of Appeal established under subsection (1) of section 86 of the Constitution;

“respondent” means, as the case may be,

(a) the Public Service Commission established under subsection (1) of section 77 of the Constitution; or

(b) the Police Service Commission established under subsection (1) of section 84 of the Constitution,

and includes any person to whom their respective powers have been delegated;

“secretary” means the secretary to the Board.

**3. Meetings and procedure of Board.**

(1) The Board shall meet whenever it may be necessary for the performance of its functions.

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(2) A meeting shall be held on such day and at such time and place as the Chairperson may determine.

(3) The Chairperson shall preside at a meeting of the Board.

**4. Secretary.**

(1) The Board shall appoint a secretary.

(2) The secretary shall keep proper records of all proceedings before the Board.

(3) The secretary shall, not less than seven days before the date fixed for a meeting of the Board, inform the appellant and the respondent in writing.

**5. Notice of appeal.**

(1) Every appeal to the Board shall be brought by a notice signed by the appellant in the form set out in the Schedule to these Regulations.

(2) A notice under paragraph (1) shall

(a) set out the grounds of appeal concisely and under distinct heads and without any argument or narrative;

(b) state whether the appeal is against the whole or part only of the decision of the respondent and where it is against part only, specify which part; and

(c) state the nature of the relief sought.

(3) Particulars of any misdirection or error in law alleged in the grounds of appeal shall be clearly stated.

(4) A ground which is vague or general in terms or which discloses no reasonable grounds of appeal shall not be permitted, save the general ground that the decision was against the weight of the evidence.

**6. Time for appeal.**

A notice of appeal shall be filed with the secretary within fourteen days of the date when the decision of the respondent was communicated in writing to the appellant, or within such further time as the Board shall allow on application by the appellant within one month of such date.

**7. Service for notice of appeal.**

A copy of the notice of appeal shall be served upon the respondent by the secretary within seven days after it has been filed.

**8. Record to be filed with Secretary.**

Within three weeks of the service under regulation 7 of a copy of the notice of appeal by the appellant, the respondent shall file with the secretary three copies of the

record of the disciplinary proceedings brought against the appellant and shall send one copy thereof to the appellant.

**9. Procedure on withdrawing appeal.**

An appellant who desires to withdraw his or her appeal shall serve on the secretary and the respondent a notice of withdrawal.

**10. Entitlement to be represented.**

An appellant shall, with the approval of the Board, be entitled on an appeal to be represented by

- (a) a legal representative;
- (b) an officer of the service of which he or she is a member; or
- (c) a member of his or her staff association,

of his or her own choice.

**11. Hearing.**

(1) A ground of appeal not permitted under paragraph (4) of regulation 5 may be struck out by the Board at the hearing either on its own motion or on application by the respondent.

(2) An appellant shall not, without the leave of the Board, be heard at the hearing in support of any ground of appeal not included in the notice of appeal, but the Board may allow an appellant to amend his or her grounds of appeal upon such conditions as it considers the justice of the case demands.

(3) Notwithstanding the provisions of paragraph (2), the Board in deciding the appeal shall not be confined to the grounds of appeal:

Provided that it shall not make its decision on any such other ground without giving the respondent the opportunity of being heard.

**12. Board may require production of exhibit.**

The Board may at any time require the production of any document or thing which in its opinion is relevant to an appeal.

**13. Power of Board to dismiss an appeal.**

(1) The Board may dismiss an appeal where the appellant, having been invited to do so by the Board, fails to appear at the hearing.

(2) An appellant whose appeal is dismissed under paragraph (1) may in writing, not more than twenty-one days from the date of the dismissal of his or her appeal, apply for the restoration of his or her appeal.

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(3) Where an application is made under paragraph (2), the Board may, if it is satisfied that the justice of the case so demands, order that the appeal be restored on such terms as it thinks fit.

**14. Procedure where respondent fails to appear.**

(1) Where the respondent, having been invited to do so by the Board, fails to appear at the hearing of an appeal, the Board may proceed to hear the matter in its absence.

(2) Where an appeal is heard in its absence the respondent may, not more than twenty-one days from the date of the decision of his or her appeal, apply in writing to the Board to set aside its decision.

(3) Where an application is made under paragraph (2), the Board may, if it is satisfied that the justice of the case so demands, set aside its decision and hear the appeal de novo.

**15. Procedure on termination of appeal.**

On the termination of an appeal the Board shall transmit a copy of the proceedings together with its decision to the respondent.

**SCHEDULE TO THE REGULATIONS**

(Regulation 5)

**FORM OF NOTICE OF APPEAL**

**BEFORE THE PUBLIC SERVICE BOARD OF APPEAL**

**NOTICE OF APPEAL**

Appeal No. .... of 20 .....

BETWEEN ..... Appellant

..... Respondent

1. TAKE NOTICE that the appellant being dissatisfied with the decision or part thereof of the Governor-General/person to whom powers were delegated under this Constitution given on the ..... day of ....., 20 ..... and more particularly stated in paragraph 2 hereby appeals against such decision or part thereof to the Public Service Board of Appeal on the grounds set forth in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

2. ....  
.....  
.....  
.....

(insert here the decision or the part thereof against which the notice of appeal is filed).

3. My grounds of appeal are:

(a) .....  
.....

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(b) .....

(c) .....

4. ....

(insert here the relief sought from the Public Service Board of Appeal).

Dated this ..... day of ....., 20 .....

*Appellant*

Made this ..... day of ....., 20 .....

*Chairperson, Public Service Board of Appeal*

**SCHEDULE 10 TO THE CONSTITUTION**

(Section 110(3))

**SAINT CHRISTOPHER AND NEVIS (REVENUE ALLOCATION) RULES**

**1. Short title.**

These Rules may be cited as the Saint Christopher and Nevis (Revenue Allocation) Rules

**2. Allocation of Revenue.**

The proceeds of all taxes collected in Saint Christopher and Nevis under any law shall be shared between the Government of Saint Christopher and Nevis and the Administration of Nevis in the manner appearing hereunder and the following provisions shall apply in respect of common services and debt servicing.



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ANNUAL CALCULATION OF DISTRIBUTION OF REVENUE BETWEEN  
THE CENTRAL GOVERNMENT AND THE NEVIS ISLAND ADMINISTRATION

(a)	Gross Revenue collected in St. Kitts	\$	
(b)	Less Philatelic Bureau	\$	<u>                    </u>
			=
(c)	Gross Revenue collected in Nevis	\$	
(d)	Less Philatelic Bureau	\$	<u>                    </u>
			=
(e)	Total Gross Revenue		=
(f)	Gross Portion to Nevis Island Administration (Proportion of population percentage) of (f)		\$
(g)	Less Common Services payments on behalf of Nevis (Schedule I)	\$	
(h)	Less Debt service payments on behalf of Nevis (Schedule II)	\$	<u>                    </u> \$ <u>                    </u>
(i)	Net portion to Nevis Island Administration		= \$
(j)	Amount actually payable to Nevis Island Administration by Central Government = (k) – (c)		= \$

**Note:** if (c) is more than (k) then the Nevis Island Administration will pay the Central Government the difference.

## SCHEDULE I TO THE RULES

## COST OF COMMON SERVICES FOR NEVIS ISLAND ADMINISTRATION

ITEM	PERCENTAGE
<b>Governor-General</b>	10
<b>Parliament</b>	Proportion of population
<b>Defence</b>	Proportion of population
<b>Foreign Affairs</b>	Proportion of population
<b>Regional &amp; Foreign Contributions</b>	Proportion of population
<b>Telephone</b>	Proportion of population
<b>Radio and T.V.</b>	Proportion of population
<b>Government Printery</b>	Proportion of population
<b>Passenger Vessel</b>	Proportion of population
<b>Technical College</b>	10
<b>Teachers College</b>	30
Total	

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**SCHEDULE II TO THE RULES**

**COST OF SERVICING LOANS**

outstanding at 19th September, 1983 by Nevis Island Administration

NAME OF LOAN	PERCENTAGE
<b>J. N. France Hospital</b>	5
<b>Miscellaneous Development Project</b>	5
<b>Telephone Department</b>	Proportion of population
<b>20m Special Development 1990/95</b>	Proportion of population
<b>Golden Rock Airport</b>	5
<b>Deep Water Port</b>	5

**Note:** All other loans will be serviced according to where (that is on which island) the loan funds were or are spent.

**SCHEDULE 2 TO THE CONSTITUTION ORDER**

**TRANSITIONAL PROVISIONS**

**1. Discharge of Governor-General's functions.**

Until such time as a person has assumed office as Governor-General having been appointed as such in accordance with section 21 of the Constitution, the person who immediately before 19th September 1983 held office as Governor of Saint Christopher and Nevis (or, if there is no such person, the person who was then acting as Governor) shall discharge the functions of the office of Governor-General.

**2. Existing laws.**

(1) The existing laws shall, as from 19th September 1983, be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution and the Supreme Court Order.

(2) Any existing law enacted by any legislature with power to make laws at any time before 19th September 1983 shall have effect as from that date as if it were a law enacted by Parliament:

Provided that any such law, to the extent that it relates to a specified matter, shall have effect in the island of Nevis as from that date as if it were a law enacted by the Nevis Island Legislature.

(3) Any existing law made by the Council for Nevis shall have effect in the island of Nevis as from 19th September 1983 as if it were a law enacted by the Nevis Island Legislature.

(4) Where any matter that falls to be prescribed or otherwise provided for under the Constitution by the legislature or by any other authority or person is prescribed or provided for by or under an existing law (including any amendment to any such law made under this paragraph), that prescription or provision shall, as from 19th September 1983,

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have effect (with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with the Constitution and the Supreme Court Order) as if it has been made under the Constitution by the legislature or, as the case may require, by the other authority or person.

(5) The Governor-General may by order made at any time before 19th September 1984 make such alterations to any existing law as may appear to him or her to be necessary or expedient for bringing that law into conformity with the provisions of the Constitution and the Supreme Court Order or otherwise for giving effect or enabling effect to be given to those provisions.

(6) The provisions of this paragraph shall be without prejudice to any powers conferred by the Constitution or by any other law upon any person or authority to make provision for any matter, including the alteration of any existing law.

(7) For the purposes of this paragraph the expression “existing law” means any Act, Ordinance, rule, regulation, order or other instrument made in pursuance of or continued in force by or under the former Constitution and having effect as law immediately before 19th September 1983 and includes any Act of the Parliament of the United Kingdom or Order in Council or other instrument made under any such Act (except this Order and the Supreme Court Order) and any order made under section 4(2) of this Order to the extent that it so had effect on that date.

### 3. **Parliament.**

(1) Until the next dissolution of Parliament, the number of constituencies into which Saint Christopher and Nevis is divided, and their respective boundaries, shall, for the purpose of the election of Representatives, be the same as those of the constituencies into which Saint Christopher and Nevis was divided immediately before 19th September 1983 for the purpose of the election of members of the House of Assembly under the former Constitution; and that number and those boundaries shall be deemed to have been established under section 50 of the Constitution.

(2) The persons who immediately before 19th September 1983 were elected members of the House of Assembly under the former Constitution shall, as from that date, be deemed to have been elected as Representatives in pursuance of the provisions of section 29 of the Constitution in the respective constituencies corresponding to the constituencies by which they were returned to the House of Assembly and shall hold their seats in the National Assembly in accordance with the provisions of the Constitution.

(3) The persons who, immediately before 19th September 1983, were nominated members of the House of Assembly under the former Constitution, shall, as from that date, be deemed to have been appointed Senators in pursuance of section 30 of the Constitution and shall hold their seats in the National Assembly in accordance with the provisions of the Constitution.

(4) The persons who, immediately before 19th September 1983, were respectively the Speaker and Deputy Speaker of the House of Assembly shall as from that date, be deemed to have been elected as Speaker and Deputy in accordance with the provisions of the Constitution and shall hold office in accordance with those provisions.

(5) Until Parliament otherwise provides, any person who holds or acts in any office the holding of which would, immediately before 19th September 1983 have disqualified him or her for membership of the House of Assembly under the former Constitution shall be disqualified to be elected as a Representative or appointed as a Senator as though provision in that behalf had been made in pursuance of section 28 of the Constitution.

(6) The rules of procedure of the House of Assembly as in force immediately before 19th September 1983 under the former Constitution shall, until it is otherwise provided under section 44(1) of the Constitution, be the rules of procedure of the National Assembly, but they shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution.

(7) For the purposes of section 47 of the Constitution, the first sitting of Parliament shall be deemed to have taken place (after a dissolution) on 19th March 1980 (that is to say, the date on which the Legislature established by the former Constitution first sat after its most recent dissolution).

(8) Any person who, by virtue of this paragraph, is deemed as from 19th September 1983 to hold any seat or office in the National Assembly shall be deemed to have taken and subscribed any necessary oath under the Constitution.

(9) For the purposes of section 50 of the Constitution, the Constituencies Boundaries Commission shall be deemed to have carried out a review of the number and boundaries of the constituencies and to have submitted the relevant report thereon on 9th May 1979.

(10) For the purposes of section 27 of the Constitution (which prescribes the qualifications for Representatives and Senators) a person who was born in Anguilla before 19th December 1980 shall be regarded as having been born in Saint Christopher and Nevis.

#### **4. Ministers and Parliamentary Secretaries.**

(1) The person who immediately before 19th September 1983 held the office of Premier under the former Constitution shall, as from that date, hold office as Prime Minister as if he or she had been appointed thereto under section 52 of the Constitution.

(2) The persons who immediately before 19th September 1983 held office as Ministers (other than the Premier) or as Parliamentary Secretaries under the former Constitution shall, as from that date, hold the like offices as if they had been appointed thereto under section 52 or, as the case may be, section 59 of the Constitution.

(3) Any person holding the office of Prime Minister or other Minister by virtue of the provisions of sub-paragraphs (1) and (2) who immediately before 19th September 1983 was charged under the former Constitution with responsibility for any matter or any department of the Government, shall, as from that date, be deemed to have been assigned responsibility for that matter or department under section 54 of the Constitution.

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**5. Office of Attorney-General.**

Until Parliament or, subject to the provisions of any law enacted by Parliament, the Governor-General, acting in accordance with the advice of the Prime Minister, otherwise provides, the office of Attorney-General shall be a public office.

**6. Existing public officers.**

Subject to the provisions of the Constitution, every person who immediately before 19th September 1983 held or was acting in a public office under the former Constitution shall, as from that date, continue to hold or act in that office or the corresponding office established by the Constitution as if he or she had been appointed thereto in accordance with the provisions of the Constitution:

Provided that any person who under the former Constitution or any other law in force on that date would have been required to vacate his or her office at the expiration of any period shall vacate his or her office at the expiration of that period.

**7. Supreme Court Order.**

(1) The West Indies Associated States Supreme Court Order 1967<sup>(a)</sup>, so far as it has effect as a law, may be cited as the Supreme Court Order and for the purposes of the Order or any other law

- (a) the Supreme Court established by the Order shall, unless Parliament otherwise provides, be styled the Eastern Caribbean Supreme Court;
- (b) references in the Order to the Premier of Saint Christopher and Nevis or to the Premier of any other State shall be construed as references to the Prime Minister of Saint Christopher and Nevis or, as the case may be, to the Prime Minister of that other State; and
- (c) the Order shall have effect as if
  - (i) in sections 2(1) and 18(2) references to Antigua were references to Antigua and Barbuda, references to Grenada were deleted, references to Saint Christopher, Nevis and Anguilla were references to Saint Christopher and Nevis and references to Saint Vincent were references to Saint Vincent and the Grenadines; and
  - (ii) in sections 10 and 15 the word “Anguilla,” were inserted before the word “Montserrat” wherever it occurs.

(2) The powers conferred on the Governor-General by paragraph 2(5) shall include power to make alterations to the Supreme Court Order in order to give effect to any such agreement as is referred to in section 38(4)(b) of the Constitution.

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<sup>(a)</sup> S.I. 1967/223.

**8. Appeals Order.**

The West Indies Associated States (Appeals to Privy Council) Order 1967<sup>(b)</sup> may, in its application to Saint Christopher and Nevis, be cited as the Saint Christopher and Nevis Appeals to Privy Council Order and shall, to the extent that it has effect as a law, have effect as if the expression “Courts Order” included any law altering the Supreme Court Order and as if section 3 were revoked.

**9. Protection from inhuman treatment.**

Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of section 7 of the Constitution to the extent that the law in question authorises the infliction of any description of punishment that was lawful immediately before 27th February 1967 (being the date on which Saint Christopher, Nevis and Anguilla became an associated state).

**10. Protection from deprivation of property.**

(1) Nothing in section 8 of the Constitution (which deals with protection from deprivation of property) shall affect the operation of any property law that was in force immediately before 27th February 1967 or any law made on or after that date that alters a law that was in force immediately before that date and does not

- (a) add to the kinds of property that may be taken possession of or the rights over and interests in property that may be acquired;
- (b) make the conditions governing entitlement to compensation or the amount thereof less favourable to any person owning or having an interest in the property; or
- (c) deprive any person of such right as is mentioned in subsection (2) of that section.

(2) In section 8(6) of the Constitution the reference to moneys provided by Parliament includes a reference to moneys provided by any legislature having power to make laws at any time before 19th September 1983.

(3) Nothing in section 8 of the Constitution shall be deemed to apply in relation to anything done, or in relation to any compensation payable in respect of anything done, while section 6 of the former Constitution was in force, or to affect any right or liability that accrued to any person by virtue of section 6 of the former Constitution or any such law as is referred to in that section.

**11. Commonwealth citizen.**

Until such time as Parliament otherwise prescribes, the expression “Commonwealth citizen” shall have the meaning assigned to it by the British Nationality Act 1981.

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<sup>(b)</sup> S.I. 1967/224.

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## 12. **Nevis Island Assembly and Administration.**

(1) For the purposes of section 101(1) of the Constitution the island of Nevis shall initially be divided into five electoral districts, sections 49 and 50 of the Constitution shall apply in relation to the first delimitation of the boundaries of those electoral districts as they apply in relation to the alteration of the boundaries of electoral districts by virtue of subsection (1) of section 104 of the Constitution but without the modifications specified in paragraphs (a) and (d) of that subsection and the proclamation made for the purposes of the first delimitation of those boundaries shall come into force as soon as it is published.

(2) No person shall be disqualified for election as an elected member, or appointment as a nominated member, of the Nevis Island Assembly by reason only that he or she is a member of the Nevis Island Council at the date of his or her election or appointment.

(3) The first meeting of the Nevis Island Assembly shall be deemed, for the purposes of section 45, as applied with modifications by section 104, of the Constitution, to be its first meeting after a dissolution.

(4) The Council for Nevis shall continue in being until the Nevis Island Assembly first meets and shall then stand dissolved, whereupon all rights and liabilities of the Council shall vest in the Crown in right of the Nevis Island Administration.

(5) Such of the rights and liabilities of the Crown relating to the public debt of Saint Christopher and Nevis immediately before 19th September 1983 as may be prescribed by the Governor-General shall vest in the Crown in right of the Nevis Island Administration.

(6) Subject to paragraph (5), all rights and liabilities of the Crown in right of the Government of Saint Christopher and Nevis immediately before 19th September 1983 under the former Constitution relating to the specified matters shall vest in the Crown in right of the Nevis Island Administration; and any question whether any such right or liability has so vested may be determined by the Governor-General.

(7) The rules of procedure of the House of Assembly as in force immediately before 19th September 1983 under the former Constitution shall, until it is otherwise provided under section 44(1), as applied with modifications by section 104, of the Constitution, be the rules of procedure of the Nevis Island Assembly, but they shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution.

(8) The powers of the Governor-General under this paragraph shall be exercised by him or her on the advice of the Prime Minister but no such advice shall be given without the concurrence of the Premier.

## 13. **Interpretation.**

(1) In this schedule,

“the Constitution” means the Constitution set out in schedule 1 to this Order;

“the Council for Nevis” means the Council established for the island of Nevis by section 109(1) of the former Constitution;

“the former Constitution” means the Constitution of Saint Christopher and Nevis as in force immediately before 19th September, 1983.

(2) The provisions of section 119 of the Constitution shall apply for the purposes of interpreting this schedule and otherwise in relation thereto as they apply for the purposes of interpreting and in relation to the Constitution.

## **FIFTH SCHEDULE TO THE ACT**

(Section 6)

### **SUPREME COURT ORDER**

#### *Arrangement of Sections*

1. Citation
2. Interpretation
3. Application to Saint Vincent
4. Establishment of Supreme Court
5. Appointment of judges
6. Acting judges
7. Oaths
8. Tenure of office of judges
9. Jurisdiction in the States
10. Jurisdiction in other territories
11. Remuneration, etc. of judges
12. Chief Registrar and other officers
13. Pensions of judges, Chief Registrar and other officers
14. Resignations
15. Expenses of the Court
16. Posting of Judges
17. Rules of Court
18. Establishment of Commission
19. Functions and procedure of Commission
20. Staff
21. Expenses
22. Pending proceedings
23. Existing laws, etc
24. Interim Commission
25. Terms of service of judges

SCHEDULE 1

SCHEDULE 2

SCHEDULE 3

SCHEDULE 4

SCHEDULE 5

SCHEDULE 6

SCHEDULE 7

SCHEDULE 8

SCHEDULE 9

SCHEDULE 10



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Revision Date: 31 Dec 2009

### **Supreme Court Order, 1983**

S.I. No. 223 of 1967

At the Court at Buckingham Palace, the 22<sup>nd</sup> day of February, 1967

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers vested in Her in that behalf by section 6 of the West Indies Act 1967 (a), is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

#### **PART I – INTRODUCTORY**

##### **1. Citation.**

(1) This Order may be cited as the West Indies Associated States Supreme Court Order.

(2) The Windward Islands and Leeward Islands (Courts) Order in Council 1959, as amended, (hereinafter referred to as “the Order of 1959”) and the British Caribbean Court of Appeal Order in Council 1962, as amended, (hereinafter referred to as “the Order of 1962”) are revoked in so far as they have effect as part of the law of each State:

Provided that the provisions of sections 21(2) and 22(5) of the Order of 1959 and article 9 of the Order of 1962 shall continue in force as part of the law of each State as if those Orders had not been revoked.

##### **2. Interpretation.**

(1) In this Order, “State” means any of the following, that is to say,  
Antigua,  
Dominica,  
Grenada,  
Saint Christopher and Nevis,  
Saint Lucia, and  
Saint Vincent.

(2) In this Order, any reference to a State shall be construed as including a reference to its dependencies (if any).

(3) In this Order, unless the context otherwise requires, any reference to the holder of an office by the term designating his or her office shall be construed as including a reference to any person who, under and to the extent of any authority in that behalf, is for the time being performing the functions of that office.

(4) Where any person has vacated any office established by or under this Order he or she may, if qualified, again be appointed to hold that office from time to time.

(5) A person may be appointed to an office established by or under this Order notwithstanding that some other person may be holding that office when that other person is on leave of absence pending the relinquishment of the office, and where two or more persons are holding the same office by reason of an appointment made in pursuance of this subsection, then, for the purposes of any function conferred upon the holder of that office, the person last appointed shall be deemed to be the sole holder of the office.

(6) Any act done for the purposes of this Order by the Judicial and Legal Services Commission or the interim Commission established by section 24 of this Order shall be signified in writing under the hand of the Chairperson of the Commission.

(7) The Interpretation Act 1889 (1889 c.63) shall apply, with the necessary adaptations, for the purpose of interpreting this Order and otherwise in relation thereto as it applies for the purpose of interpreting, and in relation to, Acts of Parliament.

### **3. Application to Saint Vincent.**

Until such time as Saint Vincent assumes a status of association with the United Kingdom in accordance with the provisions of the West Indies Act, 1967, references in this Order to the Premier of a State shall, in their application to Saint Vincent, be construed as references to the Administrator of Saint Vincent, acting in his or her discretion.

## **PART II – THE SUPREME COURT**

### **4. Establishment of Supreme Court.**

(1) There shall be a Supreme Court for the States which shall be styled the West Indies Associated States Supreme Court and shall be a superior court of record.

(2) The Supreme Court shall consist of a Court of Appeal and a High Court of Justice.

(3) Subject to the provisions of subsection (5) of this section, the judges of the Court of Appeal shall be the Chief Justice, who shall be President of the Court, and four Justices of Appeal.

*[Amended by SRO 51 of 2008]*

(4) Subject to the provisions of subsection (5) of this section, the judges of the High Court shall be the Chief Justice and not more than nineteen Puisne Judges.

(5) The number of Justices of Appeal and of Puisne Judges of the High Court may be varied by order of the Chief Justice made with the concurrence of the Premiers of all the States:

Provided that no office of Justice of Appeal or Puisne Judge shall be abolished while there is a substantive holder thereof without the consent of the holder thereof.

(6) The Court of Appeal and the High Court shall be deemed to be duly constituted notwithstanding a vacancy in the office of any judge of the Court.

(7) The Court of Appeal and the High Court shall each have and use a seal bearing the style of the court and a device approved by the Chief Justice.

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**5. Appointment of judges.**

(1) The Chief Justice shall be appointed by Her Majesty by Letters Patent and the Justices of Appeal and the Puisne Judges shall be appointed on behalf of Her Majesty by the Judicial and Legal Services Commission.

(2) A person shall not be qualified to be appointed

(a) as Chief Justice or a Justice of Appeal unless

(i) he or she has been for a period or periods amounting in the aggregate to not less than five years a judge of a court of unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court; or

(ii) he or she is qualified to practise as an advocate in such a court, and has so practised, for a period of, or periods amounting in the aggregate to, not less than fifteen years;

(b) as a Puisne Judge unless

(i) he or she is or has been a judge of a court of unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court; or

(ii) he or she is qualified to practise as an advocate in such a court, and has so practised, for a period of or periods amounting in the aggregate to not less than ten years.

(3) For the purposes of subsection (2) of this section, references in that subsection to a period or periods during which a person has practised as an advocate in any such court as is mentioned in that subsection shall be construed as including a period or periods during which a person

(a) has been serving in the office of judge of any such court; or

(b) after having become qualified to practise as an advocate in any such court, has been serving in a public office in some part of the Commonwealth the functions of which include appearing as an advocate in any such court or in the office of magistrate, or registrar of a court, in some part of the Commonwealth.

**6. Acting judges.**

(1) The Judicial and Legal Services Commission may designate generally or for a specific occasion one of the Justices of Appeal to act as Chief Justice in the event that the office of the Chief Justice is vacant or that the Chief Justice is for any reason unable to perform the functions of his or her office.

(2) If one of the Justices of Appeal is acting as Chief Justice or if the office of a Justice of Appeal or a Puisne Judge is vacant or if a Justice of Appeal or a Puisne Judge is for any reason unable to perform the functions of his or her office, the Judicial and Legal Services Commission may appoint a person qualified for appointment as a Justice of Appeal or Puisne Judge to act as a Justice of Appeal or Puisne Judge, as the case may be.

(3) A person appointed under this section to act as Chief Justice, a Justice of Appeal or a Puisne Judge shall (unless he or she earlier resigns his or her appointment or is removed therefrom in pursuance of the provisions of section 8 of this Order) continue to act in that office for the period, if any, for which he or she was appointed or until a person has been appointed to and assumed, or has resumed, the functions of that office, as the case may be.

(4) Any person appointed to the office of, or to act as, Chief Justice, Justice of Appeal or Puisne Judge may, notwithstanding the vacation of his or her office or the termination of his or her appointment otherwise than in pursuance of the provisions of section 8 of this Order, sit as a judge for the purpose of giving judgment or otherwise in relation to any proceeding heard by him or her while he or she was holding the office of judge.

#### **7. Oaths.**

Every person appointed to be a judge of the Court of Appeal or the High Court shall, before entering upon his or her functions as such, take the oaths set out in schedule 1 to this Order.

#### **8. Tenure of office of judges.**

(1) Subject to the following provisions of this section, a judge of the Court of Appeal shall hold office until he or she attains the age of sixty-five years and a Puisne Judge shall hold office until he or she attains the age of sixty-two years:

Provided that the Judicial and Legal Services Commission acting with the concurrence of the Premiers of all the States may permit a judge to continue in his or her office after attaining the age prescribed in this subsection for a period or periods not exceeding in the aggregate three years.

(2) The provisions of subsection (1) of this section shall not apply to a person appointed to act as a judge of the Court of Appeal or the High Court in respect of his or her acting appointment.

(3) A judge may be removed from office only for inability to discharge the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and shall not be so removed except in accordance with the following provisions of this section.

(4) The Chief Justice may be removed from office by order of Her Majesty and other judges of the Supreme Court shall be removed from office by order of the Judicial and Legal Services Commission if the question of the removal from office has, in pursuance of the next following subsection, been referred to the Judicial Committee of Her Majesty's Privy Council under any enactment enabling Her Majesty in that behalf and the Judicial Committee has advised Her Majesty that the Chief Justice or the judge, as the case may be, ought to be removed from office for inability as aforesaid or misbehaviour.

(5) If, in the case of the Chief Justice, the Premier of one of the States to which this Order applies represents to the Lord High Chancellor of Great Britain or if, in the case of any other judge of the Supreme Court, the Judicial and Legal Services Commission

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represents to the Chief Justice that the question of removing the Chief Justice or other judge, as the case may be, for inability as aforesaid or for misbehaviour ought to be investigated then

- (a) the Lord Chancellor or the Chief Justice, as the case may be, shall appoint a tribunal which shall consist of a Chairperson and not less than two other members selected by the Lord Chancellor or the Chief Justice, as the case may be, from among persons who hold or have held office as a judge of a court of unlimited jurisdiction in criminal and civil matters in some part of the Commonwealth or as a judge of a court having jurisdiction in appeals from any such court; and
- (b) that tribunal shall enquire into the matter and report on the facts thereof to the Lord Chancellor or the Chief Justice, as the case may be, and recommend whether the question of the removal of the Chief Justice or other judge, as the case may be, should be referred by Her Majesty to the Judicial Committee.

(6) The provisions set out in schedule 2 to this Order shall apply in relation to tribunals appointed under the last foregoing subsection or to the members thereof.

(7) If the question of removing the Chief Justice or other judge of the Supreme Court has been referred to a tribunal under subsection (5) of this section the Lord Chancellor, in the case of the Chief Justice, or the Judicial and Legal Services Commission, in the case of any other judge of the court, may suspend the Chief Justice or other judge, as the case may be, from performing the functions of his or her office.

(8) Any such suspension may at any time be revoked by the Lord Chancellor or the Judicial and Legal Services Commission, as the case may be, and shall in any case cease to have effect

- (a) if the tribunal recommends that the question of the removal of the judge from office should not be referred by Her Majesty to the Judicial Committee; or
- (b) if the Judicial Committee advises that the judge ought not to be removed from office.

(9) Any expenses, in connection with proceedings under this section, authorised by the Lord Chancellor or the Chief Justice, as the case may be, shall be regarded as part of the expenses of the Supreme Court.

## **9. Jurisdiction in the States.**

(1) The High Court shall have, in relation to a State, such jurisdiction and powers as may be conferred on it by the Constitution or any other law of the State.

(2) The Court of Appeal shall have, in relation to a State, such jurisdiction to hear and determine appeals and to exercise such powers as may be conferred upon it by the Constitution or any other law of the State.

(3) The process of the Supreme Court shall run throughout the States and any judgment of the Court shall have full force and effect and may be executed and enforced in any of the States.

(4) The provisions of subsection (3) of this section shall be without prejudice to the provisions of the constitution of each State relating to fundamental rights and freedoms.

**10. Jurisdiction in other territories.**

The High Court and Court of Appeal may exercise such jurisdiction and powers, and any judge or the Chief Registrar of the Supreme Court may exercise such functions, as may be conferred upon them respectively in relation to Montserrat or the Virgin Islands by or under any law in force in Montserrat or the Virgin Islands, as the case may be.

PART III – GENERAL

**11. Remuneration, etc. of judges.**

(1) The Chief Justice, the Justices of Appeal and the Puisne Judges shall be paid the salaries specified in Schedule 3 to this Order, and shall be entitled to such allowances and shall have such terms and conditions of office as may from time to time be determined by the Judicial and Legal Services Commission with the concurrence of the Premiers of all the States:

Provided that

- (a) the salaries specified in schedule 3 to this Order may be altered by order made by the Judicial and Legal Services Commission with the concurrence of the Premiers of all the States;
- (b) the salary and allowances (other than allowances which are not taken into account in the computation of pensions) of a judge shall not be reduced and the terms and conditions of office applicable to a judge upon his or her appointment shall not be made less favourable to him or her during the currency of that appointment.

(2) Where a judge is entitled to exercise an option in relation to his or her salary or the other matters referred to in proviso (b) to subsection (1) of this section, the option as exercised by him or her shall be deemed for the purposes of that proviso to be in his or her favour.

**12. Chief Registrar and other officers.**

(1) There shall be, for all the States, an office of Chief Registrar and such other offices of the Supreme Court as the Chief Justice may from time to time prescribe by order made with the concurrence of the Premiers of all the States, and the holders of such offices shall be paid such salaries and allowances and shall have such terms and conditions of office as may from time to time be determined by the Chief Justice with the concurrence of the Premiers of all the States.

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(2) Power to make appointments to the office of Chief Registrar and to the other offices prescribed under this section and to exercise disciplinary control over persons holding or acting in such offices shall vest in the Judicial and Legal Services Commission.

(3) Power to make appointments to offices conferred by the provisions of this section shall be construed as including power to appoint a person to perform the functions of any such office during any period during which it is vacant or the holder thereof is unable for any reason to perform those functions.

(4) The power to constitute offices and make appointments thereto conferred by this section shall be in addition to any power conferred by the Constitution of any State to constitute the offices of and appoint for that State a registrar and other officers of the High Court.

### **13. Pensions of judges, Chief Registrar and other officers.**

(1) For the purposes of any laws, regulations and other instruments relating to the grant of pensions, gratuities and other like benefits the judges, Chief Registrar and the holders of the other offices of the Supreme Court referred to in section 12(1) of this Order shall be in the service of such State as the Chief Justice may, in each case, from time to time direct, and any such direction given by the Chief Justice shall take effect as from such date as may be specified by the Chief Justice and shall have effect as an appointment to a pensionable office in that service.

(2) Where by virtue of this section any payment is made out of the funds of a State the Governments of the other States shall pay to the Government of that State the proportions of that payment specified by or under section 15 of this Order, and the sums that are required by virtue of this subsection to be paid by the Government of any State are hereby charged on the Consolidated Fund of that State.

### **14. Resignations.**

(1) Any person who is appointed to any office established by or under this Order may resign from that office by writing under his or her hand addressed, in the case of the Chief Justice, to the Lord Chancellor and, in any other case, to the Chairperson of the Judicial and Legal Service Commission.

(2) The resignation of any person from any such office shall take effect when the writing signifying the resignation is received by the Lord Chancellor or the Chairperson, as the case may be.

### **15. Expenses of the Court.**

The expenses of the Supreme Court (including the remuneration and allowances referred to in section 11 of this Order but less any sums that may be paid towards the expenses by the Governments of Montserrat and the Virgin Islands) shall, except as otherwise provided by agreement between the Governments of all the States, be borne by the Governments of the States in equal proportions; and the sums that are required by virtue of this section or any such agreement to be paid by the Government of any State are hereby charged on the Consolidated Fund of that State.

**16. Posting of judges.**

The Chief Justice shall assign a Puisne Judge to each State who shall reside in the State to which he or she assigned.

**17. Rules of Court.**

(1) Subject to the provisions of this Order and any other law in force in any of the States, the Chief Justice and any other two judges of the Supreme Court selected by him or her may make rules of court for regulating the practice and procedure of the Court of Appeal and the High Court in relation to their respective jurisdiction and powers in respect of any of the States.

(2) Without prejudice to the generality of the foregoing subsection, such rules may be made for any of the following purposes :

- (a) for regulating the sittings of the Court of Appeal and the High Court, and the selection of judges for any purpose;
- (b) for prescribing forms and fees in respect of proceedings in the Supreme Court and relating to costs of and incidental to any such proceedings;
- (c) for prescribing the times in which any requirement of the rules is to be complied with;
- (d) for prescribing and regulating the powers and duties of the Chief, Registrar, registrars and officers of court;
- (e) for providing for summary determination of any appeal which appears to the court to be frivolous or vexatious or to be brought for the purposes of delay;
- (f) for prescribing cases in which, and conditions upon which, an appellant in a criminal appeal shall be entitled to be present at the hearing of the appeal;
- (g) for providing for a reference from a decision of a single judge of the Court of Appeal to the Court of Appeal;
- (h) for regulating the right of practising before the Supreme Court and the representation of persons concerned in any proceedings therein.

(3) Rules made under this section may fix the number of judges of the Court of Appeal who may sit for any purpose :

Provided that

- (a) an uneven number of judges shall sit, which for the purposes of any final determination by the court other than the summary dismissal of an appeal, shall not be less than three; and
- (b) any determination by the court on any matter (whether final or otherwise) shall, where more than one judge sits, be according to the opinion of the majority of the judges who sit for the purpose of determining that matter.



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(4) Rules made under this section may provide for and regulate the execution and enforcement in any State of the process of the Court of Appeal or the High Court in exercise of any powers and jurisdiction conferred upon it in pursuance of section 9 or 10 of this Order.

(5) No rule of court which may involve an increase in the expenses of the Supreme Court shall be made except with the concurrence of the Premiers of all the States, but the validity of a rule of court shall not in any proceedings in any court be called in question on the ground only that it was a rule to which the concurrence of the Premiers was necessary and that they did not concur or are not expressed to have concurred in the making thereof.

#### PART IV – JUDICIAL AND LEGAL SERVICES COMMISSION

##### 18. **Establishment of Commission.**

(1) There shall be a Judicial and Legal Services Commission (hereinafter referred to as the “Commission”) for the States which shall consist of the following persons, that is to say,

- (a) the Chief Justice, who shall be the Chairperson;
- (b) such Justice of Appeal or Puisne Judge as may from time to time be designated in that behalf by the Chief Justice;
- (c) a person, appointed by the Chief Justice with the concurrence of the Premiers of not less than four of the States, who has been a judge of a court of unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from any such court, not being a person who is practising as an advocate before the Supreme Court; and
- (d) two members selected in accordance with the provisions of subsection (2) of this section.

(2) The persons for the time discharging the functions of Chairperson of the Public Service Commissions of two States, being States for the time being designated in that behalf by the Chief Justice, shall be ex-officio members of the Commission :

Provided that

- (a) except as otherwise provided in any agreement between the Governments of all the States, the Chief Justice shall designate States in such manner that the Chairpersons of the Public Service Commissions of the States sit as members of the Commission in rotation for periods of three years, the order of rotation among the States to be as follows:
  - (i) Antigua and Dominica;
  - (ii) Grenada and Saint Christopher and Nevis;
  - (iii) Saint Lucia and Saint Vincent; and

- (b) where the Chairperson of the Public Service Commission of any designated State is in practice as an advocate before the Supreme Court, that Public Service Commission shall nominate another of its members, not being a person so in practice, to sit on the Commission in his or her stead.
- (3) The office of the appointed member of the Commission shall become vacant
  - (a) at the expiration of three years from the date of his or her appointment;
  - (b) if he or she practises as an advocate before the Supreme Court; or
  - (c) if the question of his or her ceasing to be a member of the Commission has been referred by the Chief Justice, acting on the recommendation of the Premiers of not less than four of the States, to a tribunal consisting of a Chairperson and two other persons appointed by the Chief Justice, and that tribunal has recommended that such person should cease to be a member of the Commission.
- (4) The Commission shall not be disqualified for the transaction of business by reason of any vacancy amongst its members.

**19. Functions and procedure of Commission.**

(1) The Commission shall perform such functions as are conferred on it by this Order or any other law for the time being in force in any State.

(2) The Commission may by regulation or otherwise regulate its own procedure and confer powers and impose duties on any officer or authority of the Government of a State for the purposes of the exercise of its functions:

Provided that, except in the case of an officer of the High Court, no such powers or duties shall be conferred upon any officer in the public service of a State without the consent of the Premier of the State.

**20. Staff.**

The Commission may employ such officers as are necessary for the purpose of the exercise of its functions as the Chairperson with the concurrence of the Premiers of all the States may appoint.

**21. Expenses.**

The members of the Commission other than the Chief Justice and the Justice of Appeal or Puisne Judge, shall be paid such remuneration as the Chief Justice may with the concurrence of the Premiers of all the States prescribe, and the Governments of the States shall, except as otherwise provided by agreement between the Governments of all the States, contribute in equal proportions to the expenses of the Commission, and the sums that are required by virtue of this section to be paid by the Government of any State are hereby charged on the Consolidated Fund of that State.

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PART V – TRANSITIONAL PROVISIONS

**22. Pending proceedings.**

(1) Any proceedings originating in any of the States and pending immediately before the prescribed date in the British Caribbean Court of appeal or in the Supreme Court or the Court of Appeal of the Windward Islands and Leeward Islands may be continued and concluded on or after that date,

- (a) in the case of proceedings pending in the British Caribbean Court of Appeal, in the Court of Appeal; and
- (b) in the case of proceedings pending in the Supreme Court or the Court of Appeal of the Windward Islands and Leeward Islands, in the High Court.

(2) An appeal shall lie to the Court of Appeal on and after the prescribed date from any judgment of the Supreme Court of the Windward Islands and Leeward Islands given before the prescribed date in any proceedings originating in any of the States as if it were a judgment of the High Court.

(3) Any judgment of the British Caribbean Court of Appeal that was given but not satisfied before the prescribed date in any proceedings originating in any of the States may be enforced on or after the prescribed date as if it were a judgment of the Court of Appeal and any such judgment of the Court of Appeal or the High Court of the Windward Islands and Leeward Islands may be so enforced as if it were a judgment of the High Court.

(4) Until such time as other provision is made in that behalf by any law in force in a State, an appeal shall lie to the High Court from the decision of a magistrate in that State in any case in which an appeal would have lain to the Court of Appeal of the Windward Islands and Leeward Islands if the Order of 1959 had not been revoked.

**23. Existing laws, etc.**

(1) Any rule of court made under or kept in force by the Order of 1959 or the Order of 1962 and having effect as part of the law of a State immediately before the prescribed date shall continue in force on and after that date notwithstanding the revocation of those Orders.

(2) Any law (including any rule of court) other than the Order of 1959 and the Order of 1962 having effect as part of the law of a State immediately before the prescribed date shall have effect on and after the prescribed date as if

- (a) references therein to the British Caribbean Court of Appeal were references to the Court of Appeal; and
- (b) references therein to the Supreme Court or the Court of Appeal of the Windward Islands and Leeward Islands were references to the High Court.

(3) The foregoing provisions of this section shall be without prejudice to any powers conferred by any law in force in a State upon any person or authority to make provision for any matter, including the amendment or revocation of any law (including any rule of court) having effect as part of the law of that State immediately before the prescribed date or the making on or after that date of rules of court so having effect.

**24. Interim Commission.**

(1) Until the prescribed date, the powers conferred on the Judicial and Legal Services Commission by sections 5 and 12 of this Order may be exercised by an interim Commission consisting of

- (a) the Chief Justice, who shall be the Chairperson;
- (b) one person, appointed by the Chief Justice, who is or has been a judge of a court of unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from any such court; and
- (c) three persons appointed by the Chief Justice with the concurrence of the Premiers or, as the case may be, Chief Ministers of not less than four of the States, one of whom has been a judge of such a court.

(2) A person who is in practice as an advocate before the Supreme Court established by the Order of 1959 shall not be appointed under subsection (1) of this section.

**25. Terms of service of judges.**

Until other provision is made under section 11(1) of this Order, the allowances of the judges of the Court of Appeal and of the High Court and their terms and conditions of service, other than their salaries, shall be those to which the judges of the Supreme Court established by the Order of 1959 were entitled or which were applicable to them immediately before the commencement of this Order.

**SCHEDULE 1 TO THE COURT ORDER**

(Section 7)

*Forms of Oaths and Affirmations*

1. Oath of Allegiance

I ..... do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law. So help me God.

2. Affirmation of Allegiance

I ..... do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law.

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3. Oath for due execution of office

I ..... do swear that I will well and truly serve Her Majesty Queen Elizabeth the Second in the office of (*here insert the description of the office*). So help me God.

4. Affirmation for due execution of office

I ..... do solemnly and sincerely affirm and declare that I will well and truly serve Her Majesty Queen Elizabeth the Second in the office of (*here insert the description of the office*).

## SCHEDULE 2 TO THE COURT ORDER

(Section 8(6))

*Provisions applying in relation to tribunals appointed under section 8(5)*

1. The members of a tribunal may make such rules for their own guidance, and the conduct and management of proceedings before them and the hours and times and places for their sittings, as they may, from time to time, think fit, and may, from time to time, adjourn for such time and to such place as they may think fit.

2. The members of a tribunal shall have the powers of a judge of the High Court to summon witnesses, and to call for the production of books and documents, and to examine witnesses on oath, and no member shall be liable to any action or suit for any matter or thing done by him or her as such.

3. Any person whose conduct is the subject of inquiry by a tribunal shall be entitled to, and any other person may by leave of the tribunal, be represented by counsel at the whole of the inquiry.

4. Any witness who shall wilfully give false evidence in any such inquiry, concerning the subject matter of such inquiry, shall be guilty of perjury, and be liable to be prosecuted and punished accordingly.

5. All persons summoned to attend and give evidence or to produce documents or any other matter at any sitting of a tribunal, shall be bound to obey the summons served upon them as fully, in all respects, as witnesses are bound to obey subpoenas issued from the High Court, and shall be entitled to the like expenses as if they had been summoned to attend the High Court on a criminal trial, if the same shall be allowed by the tribunal, but the tribunal may disallow the whole or any part of such expenses in any case, if they think fit. Orders for the payment of such witnesses shall be made, as nearly as may be, as orders are made for the payment of witnesses at the High Court. Every person refusing or omitting, without sufficient cause, to attend at the time and place mentioned in the summons served on him or her, and every person attending, but leaving the inquiry without the permission of the tribunal, or refusing to answer, or to answer fully and satisfactorily to the best of his or her knowledge and belief, all questions put to him or her by or with the concurrence of the tribunal, or refusing or omitting, without sufficient cause, to produce any documents or other matters in his or her possession or under his or her control and mentioned or referred to in the summons served on him or her, and every person who shall, at any sitting of a tribunal, wilfully insult any member or servant of the tribunal or wilfully

interrupt the proceedings of the tribunal, shall be liable, on summary conviction, to a penalty not exceeding one thousand dollars.

*[Amended by Act 9/1986]*

6. No statement made by any person who is called as a witness before a tribunal in answer to any question put by or with the concurrence of the tribunal shall, except in cases of indictments for perjury, be admissible in evidence in any civil or criminal proceeding.

### **SCHEDULE 3 TO THE COURT ORDER**

(Section 11(1))

#### *Supreme Court (Salaries, Allowances and Conditions of Service of Judges) Order*

1. **Short Title.**

This Order may be cited as the Supreme Court (Salaries, Allowances and Conditions of Service of Judges) Order.

2. **Interpretation.**

(1) In this Order,

“the Courts Order” means the Supreme Court Order;

“Judge” means any Puisne Judge appointed under the Courts Order and includes a Justice of Appeal and the Chief Justice;

(2) References in this Order to the Chief Justice, a Justice of Appeal, a Puisne Judge or a Judge shall be references to the Chief Justice, a Justice of Appeal, a Puisne Judge or a Judge, respectively, of the West Indies Associated States Supreme Court, in Grenada styled the Supreme Court of Grenada and the West Indies Associated States, and shall include references to a person acting in the office of Chief Justice, a Justice of Appeal, a Puisne Judge or a Judge, respectively, of that Court.

(3) References in this Order to a State shall include references to Grenada.

3. **The Salaries of judges of the Supreme Court shall be as follows:**

(a) Chief Justice \$235, 140 per year;

(b) Justice of Appeal \$196, 560 per year;

(c) High Court Judge \$163, 800 per year.

*[Amended by SROs 17 of 1995 & 52 of 2008]*

4. **Residence.**

(1) Each Judge is entitled to be provided with a fully furnished residence free of rent.

(2) The scale of furniture allotted to the Judge’s furnished residence shall be subject to the approval of the Chief Justice.

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**5. Travelling and duty allowance.**

(1) A Judge is entitled to reimbursement by Government in respect of the actual cost of travelling on duty between the State in which he or she resides and any place outside that State (including the cost of travelling, within any State, between his or her place of residence and the place of embarkation and disembarkation, as the case may be) by such means as may be approved by the Chief Justice.

(2) A Judge shall be paid a duty and travelling allowance at the rate of three hundred dollars a month.

**6. Board and lodging.**

A Judge shall be reimbursed in respect of the actual cost of board and lodging (including meals) while out of the State in which he or she resides on duty.

**7. Subsistence allowance.**

(1) A Judge resident in Saint Kitts shall be entitled to a subsistence allowance of five dollars for each day or part of a day spent on duty in Nevis.

(2) The Chief Justice shall be entitled to a subsistence allowance of one hundred and fifty dollars and a Justice of Appeal one hundred dollars for each day or part of a day spent on duty outside the headquarters State.

(3) Subject to the provisions of subsections (4) and (5) of this section, a Puisne Judge shall be entitled to a subsistence allowance of one hundred dollars for each day or part of a day spent on duty outside the State in which he or she resides.

(4) Where a Judge is assigned for duty to a state other than the State in which he or she resides for a period exceeding three months he or she shall not be entitled to the subsistence allowance under the last foregoing paragraph unless he or she is maintaining a home for himself or herself or his or her family in the State in which he or she resides.

(5) Where a Judge is assigned for duty to a State other than the State in which he or she resides for a period exceeding six months and is entitled to subsistence allowance under the provisions of subsections (3) and (4) of this section, the subsistence allowance payable to him or her from the beginning of the seventh month shall be at the reduced rate of five dollar for each day or part of a day.

**8. Entertainment allowance.** The Chief Justice shall be entitled to be paid an entertainment allowance at the rate of \$15,000 per annum, the Justices of Appeal \$12,000 and the High Court Judges at the rate of \$9, 000 per annum.

*[Sections 7 & 8 amended by SRO 53 of 2008]*

**9. Allowances free of Income Tax.**

All allowances paid to a Judge shall be free of income tax.

**10. Leave and leave passages.**

(1) A Judge is not entitled as of right to leave or leave passages.

(2) Leave is granted subject to the exigencies of the public service and the sums payable in respect of leave passages may be modified from time to time according to availability of public funds.

(3) The Chief Justice shall be entitled:

- (a) to forty-two days vacation leave annually and such leave may be accumulated up to a maximum of one hundred and sixty-eight days;
- (b) to twenty-four days departmental leave annually; and
- (c) to twenty-eight days sick leave annually.

(4) A Judge other than the Chief Justice is eligible for forty-two days vacation leave annually of which not less than fourteen days must be taken annually either in one period or in a series of periods according to the requirements of the Judicial and Legal Service Commission, and such leave may be accumulated up to a maximum of one hundred and twenty-six days.

(5) A Judge is eligible for leave passages every four years which may be

- (a) a return air passage, twice during the period he or she holds the office of a Judge, for himself or herself and his or her spouse and half the cost of one adult return air passage in respect of his or her children to the United Kingdom or to some other destination provided that the cost of the passages to that destination does not exceed the cost of passages to the United Kingdom; and
- (b) on other occasions an amount to be spent on air passages, equal to two and one half times the cost of a return air passage to any destination in the Caribbean specified for the purposes of this section by the Judicial and Legal Services Commission.

(6) A Judge is also eligible for passages on first appointment to the State to which he or she is assigned for duty and for passages on retirement to his or her country of origin or to another place of retirement provided that the cost involved does not exceed the cost of passages to his or her country of origin; and passages on retirement are normally only granted where a Judge has completed three years of service since his or her last overseas leave.

(7) Leave passages as prescribed by subsections (5) and (6) of this section are provided for the Judge, his or her spouse and children who are under the age of 18 years, unmarried, and dependent upon him or her, provided that:

- (a) the cost of passages is limited to the equivalent of first class air travel; and
- (b) the amount to be granted shall not exceed the cost of two and one half adult return passages, at the rate prescribed in subparagraph (a) above;
  - (i) to the place where the leave is to be taken if the leave is taken within the territories covered by the jurisdiction of the Court, Barbados, Jamaica and Trinidad;



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- (ii) to the United Kingdom if the leave is taken outside the territories covered by the jurisdiction of the Court, Barbados, Jamaica and Trinidad.

**11. Levy.**

(1) The salary of a Judge shall not attract or be liable to income tax but in lieu thereof from 1st January, 1975, shall be subject to a levy at the rate of 15 per centum.

(2) The increase of salary paid to a Judge as a result of this Order for the year 1974 shall not attract income tax but the income tax already paid during the year 1974 on the then existing salaries shall not be recoverable.

**12. Pensions.**

(1) In computing the pension of a Judge who on retirement from the service holds one of the offices mentioned in subsection (2) of this section the additions in subsection (2) mentioned shall be made to his or her period of service:

Provided that no addition shall be made which together with the number of years of his or her actual pensionable service shall amount to more than four hundred months.

(2) The offices and additions referred to in subsection (1) of this section are as follows:

Chief Justice	Ten years
Justice of Appeal	Seven years
Puisine Judge	Five years.

[NOTE: S.I. 1975, No. 2 and SRO 17/1995 have been consolidated into Schedule 3 to the Supreme Court Order]

**SCHEDULE 4 TO THE COURT ORDER**

(Section 12(1))

*Supreme Court (Prescribed Offices) Order*  
*Organisation of the Eastern Caribbean States Supreme Court*

**1. Citation.**

This Order may be cited as the Supreme Court (Prescribed Offices) Order.

**2. Prescribed Offices.**

(1) There shall be the following prescribed offices of the Supreme Court in accordance with section 12 of the Supreme Court Order:

- (a) Court Administrator;
- (b) Executive Assistant to the Chief Justice;
- (c) Information Technology Manager; and

- (d) Judiciary Human Resources Administrator.
- (2) The offices of the Court of Appeal shall be
  - (a) Registrar, which shall be deemed to be included in the office of Chief Registrar;
  - (b) a sufficient number of Deputy Registrars;
  - (c) a sufficient number of clerks; and
  - (d) a sufficient number of criers.

*[Note: SRO 30/1967 and SRO 14/2001 have been merged into one Order]*

## **SCHEDULE 5 TO THE COURT ORDER**

(Section 12)

### *Supreme Court Offices (Salary and Allowances of Chief Registrar and Secretary to the Chief Justice) Order*

#### **1. Short title.**

This Order may be cited as the Supreme Court Offices (Salary and Allowances of Chief Registrar and Secretary to the Chief Justice) Order.

#### **2. Interpretation.**

In this Order,

“Chief Registrar” means the person holding the office of the Chief Registrar of the Supreme Court established by section 12 of the Supreme Court Order and includes any person performing the functions thereof under subsection (3) of the said section;

“Secretary to the Chief Justice” means the person holding the office of Secretary to the Chief Justice of the Supreme Court established by section 12 of the Supreme Court Order and includes any person performing the functions thereof under subsection (3) of the said Order.

#### **3. Salary and Allowances of Chief Registrar.**

So long as the Office of the Chief Registrar is held by a person who also holds the Office of a Registrar of the High Court the holder shall be entitled to be paid an allowance as additional salary in respect of his or her services as Chief Registrar at the rate of six thousand six hundred dollars per annum over and above his or her salary as Registrar of the High Court.

#### **4. Salary and Allowances free of Income Tax.**

The allowance paid to the chief Registrar under section 3 of this Order and the salary paid to the Secretary to the Chief Justice in respect of his or her services in that office shall be free of income tax or any other charge.

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## SCHEDULE 6 TO THE COURTS ORDER

(Section 19(2))

### *Judicial and Legal Services Commission Regulations*

1. **Short title.**

These Regulations may be cited as the Judicial and Legal Services Commission Regulations.

2. **Interpretation.**

In these regulations, unless the context otherwise requires,

“Court of Appeal” means the Court of Appeal established by the Courts Order;

“the Commission” means the Judicial and Legal Services Commission established by section 18 of the Courts Order;

“Court Order” means the West Indies Associated States Supreme Court Order, 1967;

“member” means member of the Commission;

“High Court” means the High Court of Justice established under the Courts Order;

“public office” means any office of emolument in the public service;

“public officer” means the holder of any public office and includes any person appointed to act in any such office;

“the public service” means the service of the Crown in a civil capacity in respect of the Government of any of the States to which the Courts Order applies;

“regulation” means one of these regulations;

“State” has the meaning ascribed to it by section 2 of the Courts Order.

3. **Oath of Office.**

(1) The members of the Commission, other than the Chairperson, shall, upon appointment, take an oath or make an affirmation before the Chief Justice in the form set out in the Schedule to these regulations.

(2) The Secretary to the Commission shall take an oath or make an affirmation before the Chief Justice in a form approved by the Chief Justice.

4. **Procedure and Meetings.**

(1) The headquarters of the Commission shall be situated in Grenada.

(2) The Commission shall meet as often as may be necessary for the purpose of performing its functions and such meetings shall be held at such places and at such times as the Chairperson shall determine.

(3) The Chairperson if present shall preside at meetings of the Commission and in the absence of the Chairperson from any meeting the members present shall elect one of their members to preside at that meeting.

(4) All decisions at a meeting of the Commission shall be by a majority of the votes of the members present and voting.

(5) The Chairperson shall have an original vote, and in the event of an equality of votes he or she shall have as well a casting vote.

#### **5. Decisions other than at a Meeting.**

(1) Notwithstanding the provisions of regulation 4, decisions may also be made by the Commission without a meeting upon circulation of the relevant papers among the members.

(2) Members may notify their opinion on the matter or question in writing or by cable or by telephone.

(3) If in any such case a difference of opinion arises among the members or any member so requires, the matter or question shall be reserved for discussion at a meeting.

(4) Decisions made under this regulation shall be brought up for noting at the next meeting of the Commission.

#### **6. Record of Meetings and Decisions.**

(1) Minutes shall be taken of all decisions arrived at at a meeting or noted under regulation 5 and after circulation thereof shall be duly confirmed at the subsequent meeting.

(2) Any member who dissents from a decision may require that his or her dissent and reasons for dissenting be recorded in the minutes.

#### **7. Consultation with other persons.**

The Commission in considering any matter or question may consult with any such public officer or other person as the Commission may consider it proper and desirable so to do and may request any public officer to attend and give evidence on oath before it and to produce any official documents relating to such matter or question.

#### **8. Principles of Selection.**

For the purpose of exercising its functions in relation to appointments, whether substantive or acting, to any offices, the Commission shall (without prejudice to its right to consider the application of any person whether or not already in the public service) consider the claims of all public officers eligible for appointment or promotion, may interview candidates for such appointments, and shall in respect of each candidate consider, amongst others, the following matters:

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- (a) his or her qualifications;
- (b) his or her general fitness;
- (c) any previous employment of the candidate in the public service or in private practice;
- (d) previous public service or private practice in territories other than those to which the Courts Order applies.

### **SCHEDULE TO THE REGULATIONS**

(Regulation 3)

#### **Oath (or Affirmation) of Office**

I, ....., do swear/solemnly and sincerely declare and affirm that I will well and truly serve Her Majesty Queen Elizabeth the Second in the office of Member of the Judicial and Legal Services Commission established under the Supreme Court Order.

*Signature*

Sworn/Declared before me this            day of            20

*Chief Justice*

### **SCHEDULE 7 TO THE COURT ORDER**

(Section 21)

#### *Judicial and Legal Services Commission (Remuneration) Order*

1. **Short title.**

This Order may be cited as the Judicial and Legal Services Commission (Remuneration) Order.

2. **Interpretation.**

In this Order,

“Commission” means the Judicial and Legal Services Commission established by section 18 of the Courts Order;

“the Courts Order” means the Supreme Court Order.

3. **Remuneration of certain members of Commission.**

The members of the Commission, other than the Chief Justice and the Justice of Appeal or Puisne Judge, shall be paid the following remuneration, namely,

- (a) the person appointed under paragraph (c) of subsection (1) of section 18 of the Courts Order (that is to say, a retired judge), salary at the rate of two hundred dollars per month;

- (b) each of the persons selected in accordance with paragraph (d) of subsection (1) and section 2 of the Courts Order (that is to say, Chairpersons of Public Service Commissions of two States), salary at the rate of one hundred dollars per month;
- (c) the following expenses when incurred for the purpose of attending meetings, namely,
  - (i) the actual cost of passages not exceeding the cost of first class passages by air;
  - (ii) the cost of inland travelling;
  - (iii) hotel expenses;
  - (iv) the cost of flight insurance for a sum not exceeding fifty thousand dollars;
- (d) subsistence allowance of fifteen dollars a day.

### **SCHEDULE 8 TO THE COURT ORDER**

(Section 17)

#### *Eastern Caribbean Supreme Court Civil Procedure Rules*

**1. Citation.**

These rules may be cited as the Eastern Caribbean Supreme Court Civil Procedure Rules.

**2. Rules in the Schedule.**

The Rules in the Schedule hereto are the rules governing civil procedure in the Eastern Caribbean Supreme Court.

**3. Reference to Rules.**

It shall not be necessary to include the Schedule to these rules in the annual volume of the Laws of a Member State or Territory of the Eastern Caribbean Supreme Court, but a reference may be made thereto in such volume and shall be sufficient.

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- Form 23: Notice of Appeal
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## **PART 1 – THE OVERRIDING OBJECTIVE**

### **Contents of this Part**

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### **1.1 The overriding objective.**

(1) The overriding objective of these Rules is to enable the court to deal with cases justly.

(2) Dealing justly with the case includes

- (a) ensuring, so far as is practicable, that the parties are on an equal footing;
- (b) saving expense;
- (c) dealing with cases in ways which are proportionate to the
  - (i) amount of money involved;
  - (ii) importance of the case;
  - (iii) complexity of the issues; and
  - (iv) financial position of each party;
- (d) ensuring that it is dealt with expeditiously; and
- (e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

### **1.2 Application of overriding objective by the court.**

The court must seek to give effect to the overriding objective when it

- (a) exercises any discretion given to it by the Rules; or
- (b) interprets any rule.

**1.3 Duty of parties.**

It is the duty of the parties to help the court to further the overriding objective.

- Part 25 deals with the court's duty to forward the overriding objective by active case management.

**PART 2 – APPLICATION AND INTERPRETATION OF THESE RULES****Contents of this Part**

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**2.1 Citation.**

(1) These Rules may be cited as the Eastern Caribbean Supreme Court Civil Procedure Rules.

(2) A reference to a rule as CPR 2.7 or rule 2.7 is a reference to a rule so numbered in these Rules.

**2.2 Application of these Rules.**

(1) Subject to paragraph (3), these Rules apply to all civil proceedings in the Eastern Caribbean Supreme Court in any of the Member States or Territories.

(2) In these rules, “**civil proceedings**” include Judicial Review and applications to the court under the Constitution of any Member State or Territory under Part 56.

(3) These Rules do not apply to proceedings of the following kinds:

- (a) family proceedings;
- (b) insolvency (including winding up of companies);
- (c) non-contentious probate proceedings;
- (d) proceedings when the High Court is acting as a prize court; and
- (e) any other proceedings in the Supreme Court instituted under any enactment, in so far as rules made under that enactment regulate those proceedings.

(4) Notwithstanding paragraph (3) (d) these Rules apply to proceedings when the High Court is acting as a prize court in St. Vincent and The Grenadines.

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### 2.3 **Application of Interpretation Acts.**

The Interpretation Act of the Member State or Territory where a claim proceeds applies to the interpretation of these Rules in those proceedings.

### 2.4 **Definitions.**

In these Rules, unless otherwise provided for or the context otherwise requires,

“ADR procedure” means any procedure for alternative dispute resolution including, in particular, mediation;

“ancillary claim” has the meaning given in rule 18.1;

“ancillary claimant” has the meaning given in rule 18.1;

“ancillary defendant” and “second ancillary defendant” have the meanings given in rule 18.1;

“applicant” has the meaning given in rule 11.2;

“application” has the meaning given in rule 11.2;

“body corporate” means a company or other body corporate wherever or however incorporated, other than a corporation sole, and includes a limited company unless a rule otherwise provides;

“certificate of value” has the meaning given in rule 8.8;

“Chief Justice” includes, in relation to any period in which the office of Chief Justice is vacant, the person for the time being performing the functions of the Chief Justice;

“circuit” means

- (a) the Saint Christopher circuit; and
- (b) the Nevis circuit;

in the State of Saint Christopher and Nevis;

“claim” is to be construed in accordance with Part 8;

“claim form” is to be construed in accordance with Part 8;

“claim for a specified sum of money” means

- (a) a claim for a sum of money that is ascertained or capable of being ascertained as a matter of arithmetic and is recoverable under a contract; and
- (b) for the purposes of Parts 12 (default judgments) and 14 (judgment on admissions), a claim for
  - (i) the cost of repairs executed to a vehicle;
  - (ii) the cost of repairs executed to any property in, on or abutting a road; or

- (iii) any other actual financial loss other than loss of wages or other income;

claimed as a result of damage which is alleged to have been caused in an accident as a result of the defendant's negligence where the amount of each item in the claim is specified and copies of receipted bills for the amounts claimed are attached to the claim form or statement of claim;

"claim for personal injuries" means proceedings in which there is a claim for damages in respect of personal injuries to the claimant or any other person or in respect of a person's death;

"claimant" means a person who makes a claim and, in relation to any proceedings commenced before these Rules came into force, includes a plaintiff in an action or the petitioner or applicant in any proceedings commenced by petition, originating summons or motion;

"Constitution" means the Constitution of the relevant Member State or Territory;

"court" means the High Court and, where the context so admits and in Part 62, the Court of Appeal;

"court office" refers to

- (a) the place where documents are to be filed, etc. and includes a Registry of the High Court and of the Court of Appeal; and
- (b) members of the court staff who carry out work of a formal or administrative nature under rule 2.6(1);

"Crown" for the purpose of these Rules includes the Commonwealth of Dominica;

"defendant" means a person against whom a claim is made and, in relation to proceedings commenced before these Rules came into force, includes a respondent to any petition, originating summons or motion;

"external company" means any incorporated body of persons that is formed under the laws of a country other than a Member State or Territory;

"FAX" means the making of a facsimile copy of a document by the transmission of electronic signals;

"filing" is to be construed in accordance with rule 3.7;

"fixed date claim form" is a claim form in Form 2 upon which there is stated a date, time and place for the first hearing of the claim.

"Hague Convention" means the Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters signed at The Hague on November 15, 1965;



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“judge”

- (a) includes the Chief Justice and, in the case of Part 62, a judge of the Court of Appeal; but
- (b) does not include a master except where required by the context;

“judgment creditor” has the meaning given in rule 43.1;

“judgment debtor” has the meaning given in rule 43.1;

“jurisdiction” means the jurisdiction of the court as extending throughout the Member States and Territories and any part of their territorial waters;

“legal practitioner” includes a Queen’s or Senior Counsel, a barrister at law, a solicitor, an attorney at law and a notary royal;

“limited company” means a body corporate that is incorporated or continued under the relevant legislation relating to companies in each Member State or Territory;

“master” means a master of the Eastern Caribbean Supreme Court;

“Member States” means

- (a) Antigua and Barbuda;
- (b) Commonwealth of Dominica;
- (c) Grenada;
- (d) Saint Christopher and Nevis;
- (e) Saint Lucia; and
- (f) Saint Vincent and the Grenadines;

“minister with responsibility for foreign affairs” includes, in the case of a Territory, the person within the Territory who has responsibility for the service of foreign process;

“minor” means a person who has not attained the age of majority in accordance with the relevant enactment of the appropriate Member State or Territory;

“month” means a calendar month;

“next friend” has the meaning given by Part 23;

“order” includes an award, declaration, decree, direction, or judgement;

“overriding objective” means the objective set out in rule 1.1;

“party” includes both the party to the claim and any legal practitioner on record for that party unless any rule specifies or it is clear from the context that it relates to the client or to the legal practitioner only;

“patient” means a person who by reason of mental disorder within the meaning of the relevant mental health legislation in the Member State

or Territory where the proceedings are being conducted is incapable of managing his or her own affairs and in St. Lucia also includes a person to whom a curator has been given under the Civil Code (Cap. 242);

“period for filing a defence” has the meaning given by rule 10.3;

“personal injuries” includes any disease and any impairment of a person’s physical or mental condition;

“procedural appeal” has the meaning given in rule 62.1 (2);

“statement of case” means

- (a) a claim form, statement of claim, defence, counterclaim, ancillary claim form or defence and a reply; and
- (b) any further information given in relation to any statement of case under Part 34 either voluntarily or by order of the court;

“statutory rate of interest” means the rate of interest on judgment debts that may be prescribed for the time being under any relevant enactment of the appropriate Member State or Territory;

“summary appeal” is an appeal in accordance with rule 62.6;

“Supreme Court” means the Eastern Caribbean Supreme Court established under the West Indies Associated States Supreme Court Order 1967;

“Territories” means

- (a) Anguilla;
- (b) Montserrat; and
- (c) the British Virgin Islands.

## **2.5 Who may exercise the powers of the court.**

(1) Except where any enactment, rule or practice direction provides otherwise the functions of the High Court may be exercised by

- (a) a master;
- (b) a registrar;
- (c) a single judge of the court whether or not assigned to the Member State or Territory in which the proceedings are taking place;
- (d) the Chief Justice; or
- (e) the Chief Registrar;

in accordance with these Rules and any practice direction made by the Chief Justice.

(2) The functions of the Court of Appeal relating to

- (a) a procedural appeal;
- (b) an application for leave to appeal;
- (c) a summary appeal;

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(d) the case management of an appeal including the giving of directions relating to an appeal; and

(e) procedural applications (other than applications for leave to appeal);

may be carried out by any one judge of the Court of Appeal.

(3) The functions of the Court of Appeal relating to

- (a) applications for leave to appeal may also be carried out by the judge of the court below;
- (b) the case management of an appeal including the giving of directions relating to an appeal may, where the Chief Justice directs, be carried out by a master or the Chief Registrar; and
- (c) procedural applications (other than applications for leave to appeal) may, where the Chief Justice so directs, be carried out by a master, the Chief Registrar or the registrar of the court below.

(4) An appeal from a magistrate's court may be heard by any 2 judges of the Court of Appeal.

(5) All other functions of the Court of Appeal may be carried out by any 3 judges of the Court of Appeal.

(6) The Chief Justice may by direction allocate the work of the court between judges, masters, the Chief Registrar and registrars.

(7) The Chief Registrar may exercise any of the functions of a master.

(8) Where

- (a) a trial has been commenced but not completed by a judge; or
- (b) any enactment or rule requires an application to be made to, or jurisdiction exercised by, the judge by whom a claim was tried;

then if

- (i) the judge ceases to be a judge of the High Court;
- (ii) the judge dies or is incapacitated; or
- (iii) for any other reason it is impossible or inconvenient for the judge to act in the claim;

the Chief Justice may nominate some other judge to retry or complete the trial of the claim or to hear any application.

## 2.6 Court staff.

(1) Where these Rules refer to an act being done by the court office or require or permit the performance of an act of a formal or administrative character, that act may be performed by a member of the court staff authorised generally or individually in writing by the Chief Justice.

(2) Where these Rules expressly so provide, any other functions of the court may be carried out by a member of the court staff authorised in writing by the Chief Justice.

- (3) If a step may be taken by a member of the court staff
- (a) that person may consult a judge, master or registrar before taking the step; and
  - (b) that step may be taken by a judge, master or registrar instead of a member of the court staff.

### **2.7 Court's discretion as to where, when and how it deals with cases.**

(1) The court may deal with a case at any place and time that it considers appropriate.

(2) In considering what place or time may be appropriate the court must consider the convenience of such place to the parties and their legal practitioners and to any witnesses.

(3) The court may order that any hearing be conducted in whole or in part by means of a telephone conference call, video-conference or any other form of electronic communication.

(4) The court may give directions to facilitate the conduct of a hearing by the use of any electronic or digital means of communication or storage or retrieval of information, or any other technology it considers appropriate.

## **PART 3 – TIME, DOCUMENTS**

### **Contents of this Part**

Time – court to state calendar date	Rule 3.1
Time – computation	Rule 3.2
Vacations	Rule 3.3
Hearings in vacations	Rule 3.4
Time – vacations	Rule 3.5
Documents	Rule 3.6
Filing of documents	Rule 3.7
Filing and service by FAX	Rule 3.8
Sealing of documents issued by the court	Rule 3.9
Forms	Rule 3.10
Statement of case – address for service	Rule 3.11
Statement of case – certificate of truth	Rule 3.12
Failure to give certificate of truth	Rule 3.13
Right to inspect, etc. certain documents filed in court office	Rule 3.14

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**3.1 Time – court to state calendar date.**

When making any judgment, order or direction which imposes a time limit for doing any act the court must, wherever practicable, state

- (a) the calendar date; and
- (b) the time of day;

by which the act must be done.

**3.2 Time – computation.**

(1) This rule shows how to calculate any period of time for doing any act which is fixed by

- (a) any judgment or order of the court;
- (b) any practice direction; or
- (c) these Rules.

(2) All periods of time expressed as a number of days are to be computed as clear days.

(3) In this rule,

“clear days” means that in computing the number of days the day on which the period begins and the day on which the period ends are not included.

**(Examples:**

- (a) Documents served by post are deemed to be served 14 days after posting: A Document posted on 1st September is deemed to be served on 16th September.
- (b) Document must be filed at least 3 days before the hearing – application is to be heard on Friday 20<sup>th</sup> October:

The last date for filing the document is Monday 16th October.)

(4) When the specified period

- (a) is 7 days or less; and
- (b) includes
  - (i) a Saturday or Sunday; or
  - (ii) any other day on which the court office is closed;

that day does not count.

**(Example:**

Notice of application must be given not less than 7 days before a hearing – Hearing on Friday 20th October:

Notice must be given not later than Tuesday 10th October.)

(5) If the period specified for doing any act at the court office ends on a day on which the court is closed, the act is in time if done before close of business on the next day on which the court is open.

(6) If the period specified for doing any act which does not need to be done at court ends on

- (a) a Saturday or Sunday; or
- (b) any public holiday;

the act must be done before 4 p.m. on the next ordinary business day.

### **3.3 Vacations.**

There are 3 vacations in each year, that is to say, the

- (a) Christmas vacation which begins on 23rd December and ends on 10th January;
- (b) Easter vacation which begins on the Thursday before and ends on the Saturday after Easter Sunday; and
- (c) long vacation which begins on 1st August and ends on 15<sup>th</sup> September;

and the dates are inclusive.

### **3.4 Hearings in vacations.**

(1) During vacations the

- (a) Court of Appeal may sit to hear and determine appeals and applications as the Court of Appeal may direct; and
- (b) High Court may sit to hear and determine trials and applications as a judge of the court may direct.

(2) A party may apply to the Court of Appeal for any appeal or application to be heard in vacation.

(3) Any such application may be determined by a single judge of the Court of Appeal.

(4) A party may apply to the High Court for any trial to take place or application to be heard in vacation.

### **3.5 Time – vacations.**

(1) During the long vacation, time prescribed by these Rules for serving any statement of case other than the statement of claim does not run.

(2) This rule does not override any order of the court which specifies a date or service of a statement of case.

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### 3.6 Documents.

(1) So far as is practicable, every document prepared for use in the Supreme Court must be on “letter size” paper approximately 11 inches (28cm) long by 8.5 inches (21.5cm) wide. Margins of 1” (2.5 cm) must be left at the top and bottom and of 1.5” (3.5 cm) at each side.

- (2) The Chief Justice may, by practice direction,
- (a) require any document filed or to be used at court to be in the format that the Chief Justice prescribes to facilitate electronic recording or filing of that document; and
  - (b) prescribe the conditions under which documents may be served or filed electronically.
- (3) Every document to be filed at the court must
- (a) be headed with the
    - (i) full title of the proceedings; and
    - (ii) title of the document;
  - (b) state the
    - (i) name;
    - (ii) business address;
    - (iii) reference (if any);
    - (iv) telephone number; and
    - (v) FAX number (if any);of the person or persons filing it;
  - (c) contain its date;
  - (d) (except in the case of an affidavit) be signed by the person filing it; and
  - (e) state the name of the party on whose behalf it is filed.

(4) If a document is signed the full name of the signatory must be set out legibly below the signature.

### 3.7 Filing of documents.

- (1) A document may be filed by
- (a) delivering it;
  - (b) posting it; or
  - (c) sending it by FAX;

to the court office where the claim is proceeding or intended to proceed.

(2) A document is filed on the day when it is received at the court office or, if it is received at a time when the court office is closed, on the next day on which the court office is open.

- (3) If a fee is to be paid, a document is not to be treated as filed until
- (a) the fee is paid; or
  - (b) an undertaking to pay the fee acceptable to the registrar is received.

### **3.8 Filing and service by FAX.**

In addition to any condition contained in a practice direction, any document

- (a) filed; or
- (b) served;

by FAX, must include a cover page stating:

- (i) the name, address and telephone number of the sender;
- (ii) the date and time of transmission;
- (iii) the total number of pages transmitted, including the cover page;
- (iv) the number of the FAX machine at which documents may be received; and
- (v) the name and telephone number of a person to contact if problems occur in transmission.

### **3.9 Sealing of documents issued by the court.**

(1) The court must seal the following documents on issue:

- (a) the claim form;
- (b) all notices of appeal; and
- (c) all judgments, orders or directions of the court.

(2) The court may place the seal on any document by

- (a) hand; or
- (b) printing a facsimile of the seal on the document electronically or by any other means.

(3) All judgments and orders and directions of the court must also be signed by the registrar.

(4) A document purporting to bear the court's seal is admissible in evidence without further proof.

### **3.10 Forms.**

(1) The forms set out in the Appendix to these Rules and, where appropriate, practice forms must be used in the cases to which they apply.



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(2) A form may be varied if the variation is required by the circumstances of a particular case.

(3) A form must not be varied so as to leave out any information or guidance which the form set out in the Appendix or practice form gives to the intended recipient of the form.

(4) If these Rules require a party to send a blank form to any other party, the party must send it to the other party without variation except the insertion of the title of the case and the court's address to which that document is to be returned.

(5) A form marked with the word 'Seal' must bear the seal of the Supreme Court.

### 3.11 **Statement of case – address for service.**

(1) Every statement of case must contain an address within the jurisdiction at which the party filing the statement of case will accept service of documents.

(2) The address for service must also state

- (a) if given by a legal practitioner – the name or reference of the person who is dealing with the matter; and
- (b) the telephone number and (if applicable) the FAX number of the legal practitioner filing the document or of the party if in person.

(3) A party must notify the court and all other parties immediately if the address for service is changed, and any document sent to the original address before notice of such change is received by the party serving the document is regarded as validly served.

- Rule 2.4 defines "statement of case".

### 3.12 **Statement of case – certificate of truth.**

(1) Every statement of case must be verified by a certificate of truth.

(2) The certificate of truth should be signed by the party personally.

(3) If it is impracticable for the party personally to sign the certificate required by paragraph (1) it may be given by that person's legal practitioner.

(4) A certificate of truth given by the legal practitioner must also certify

- (a) that the certificate is given on the client's instructions; and
- (b) the reasons why it is impractical for the client to give the certificate.

(5) If a statement of case is changed under Part 20, the amended statement of case must be verified by a certificate of truth.

(6) Information given under Part 34 (whether voluntarily or following an order of the court) must be verified by a certificate of truth.

(7) A certificate of truth given by a party personally must be in the following form:

“I [*name*] certify that I believe that the facts stated in this [*name document*] are true.”.

(8) A certificate given by the legal practitioner for a party must be in the following form:

“I [*name of the individual legal practitioner giving the certificate*] certify that

- (a) the [*claimant or as the case may be*] believes that the facts stated in this [*name document*] are true; and
- (b) this certificate is given on the [*claimant's or as the case may be*] instructions.

The [*claimant or as the case may be*] cannot give the certificate because [*state reason*]”.

### **3.13 Failure to give certificate of truth.**

(1) The court may strike out any statement of case which has not been verified by a certificate of truth.

- (2) Any party may apply for an order under paragraph (1).

### **3.14 Right to inspect, etc. certain documents filed in court office.**

(1) On payment of the prescribed fee, any person is entitled, during office hours, to search for, inspect and take a copy of any of the following documents filed in the court office, namely,

- (a) a claim form;
- (b) a notice of appeal;
- (c) a judgment or order given or made in court; and
- (d) with the leave of the court, which may be granted on an application made without notice, any other document.

(2) Nothing in paragraph (1) prevents a party in any proceedings from searching for, inspecting and taking a copy of any affidavit or other document filed in the court office in those proceedings or filed before the commencement of those proceedings but with a view to its commencement.

(3) Any document filed in or in the custody of a court office must not be taken out of the court office without the leave of the court unless the document is to be sent to another court office or to a magistrate's court.

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## PART 4 – PRACTICE DIRECTIONS AND GUIDES

### Contents of this Part

Who may issue practice directions	Rule 4.1
Scope of practice directions	Rule 4.2
Publication of practice directions	Rule 4.3
Compliance with practice directions	Rule 4.4
Practice guides	Rule 4.5
Date from which practice directions and guides take effect	Rule 4.6

#### 4.1 Who may issue practice directions.

Practice directions may be issued only by the Chief Justice.

#### 4.2 Scope of practice directions.

(1) A practice direction may be issued in any case where provision for such a direction is made by these Rules.

(2) Where there is no express provision in these Rules for such a direction, the Chief Justice may give directions as to the practice and procedure to be followed in the Supreme Court.

#### 4.3 Publication of practice directions.

Practice directions and guides must forthwith be

- (a) published in the Official Gazette for each Member State and Territory; and
- (b) displayed and made available at each court office.

#### 4.4 Compliance with practice directions.

(1) A party must comply with any relevant practice direction unless there are good reasons for not doing so.

(2) The court may make an order under Part 26 (case management – the court’s powers) or Part 64 (costs – general) against a party who fails to comply with a practice direction.

#### 4.5 Practice guides.

(1) The Chief Justice may issue practice guides to assist parties in the conduct of litigation.

(2) Parties must have regard to any relevant practice guide.

(3) The court may take into account the failure of any party to comply with any practice guide when deciding whether or not to make an order under Part 26 (case management – the court’s powers) or Part 64 (costs – general).

**4.6 Date from which practice directions and guides take effect.**

A practice direction or guide takes effect from the date specified in the direction or guide.

**PART 5 – SERVICE OF CLAIM FORM WITHIN JURISDICTION****Contents of this Part**

Service of claim form – normal method	Rule 5.1
Statement of claim to be served with claim form	Rule 5.2
Method of personal service	Rule 5.3
Permitted place of service	Rule 5.4
Proof of personal service	Rule 5.5
Service on legal practitioner	Rule 5.6
Service on limited company	Rule 5.7
Service on firm or partnership	Rule 5.8
Service on body corporate	Rule 5.9
Service on minors and patients	Rule 5.10
Proof of postal service	Rule 5.11
Proof of service by FAX	Rule 5.12
Alternative methods of service	Rule 5.13
Power of Court to make order for service by specified method	Rule 5.14
Proof of service by specified method	Rule 5.15
Service of claim form by contractually agreed method	Rule 5.16
Service of claim form on agent of principal who is out of jurisdiction	Rule 5.17
Service of claim for possession of vacant land	Rule 5.18
Deemed date of service	Rule 5.19

**5.1 Service of claim form – normal method.**

(1) The general rule is that a claim form must be served personally on each defendant.

(2) The Chief Justice may, by practice direction, authorise the use of electronic means of communication (including FAX and e-mail) for service of a claim form.

- Part 6 deals with service of other documents.

**5.2 Statement of claim to be served with claim form.**

(1) The general rule is that the claimant's statement of claim must be served with the claim form.

(2) The claim form may be served without the statement of claim in accordance with rule 8.2.

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- (3) In this Part, reference to service of the claim form requires that
- (a) the statement of claim; or
  - (b) if these Rules so require, an affidavit or other document;
  - (c) a copy of any order that may have been made; and
  - (d) a copy of any order or application made under rule 8.2;

must be served with the claim form unless the statement of claim is contained in the claim form.

### 5.3 Method of personal service.

A claim form is served personally on an individual by handing it to or leaving it with the person to be served.

### 5.4 Permitted place of service.

Except as permitted by Part 7 (service out of the jurisdiction), a claim form must be served at a place within the jurisdiction.

### 5.5 Proof of personal service.

(1) Personal service of the claim form is proved by an affidavit sworn by the server stating:

- (a) the date and time of service;
- (b) the precise place or address at which it was served;
- (c) the precise manner by which the person on whom the claim form was served was identified; and
- (d) precisely how the claim form was served.

(2) If the person served was identified by another person, there must also be filed where practicable an affidavit by that person

- (a) proving the identification of the person served; and
- (b) stating how the maker of the affidavit was able to identify the person served.

(3) If the server identified the person to be served by means of a photograph or description there must also be filed an affidavit by a person

- (a) verifying the description or photograph as being of the person intended to be served; and
- (b) stating how the maker of the affidavit is able to verify the description or photograph as being of the person intended to be served.

**5.6 Service on legal practitioner.**

If a legal practitioner

- (a) is authorised to accept service of the claim form on behalf of a party; and
- (b) has notified the claimant in writing that he or she is so authorised; the claim form must be served on that legal practitioner.

**5.7 Service on limited company.**

Service on a limited company may be effected

- (a) by leaving the claim form at the registered office of the company;
- (b) by sending the claim form by telex, FAX or prepaid post or cable addressed to the registered office of the company;
- (c) by serving the claim form personally on an officer or manager of the company at any place of business of the company which has a real connection with the claim;
- (d) by serving the claim form personally on any director, officer, receiver, receiver-manager or liquidator of the company; or
- (e) in any other way allowed by any enactment.

**5.8 Service on a firm or partnership.**

(1) Service on a firm or partnership may be effected

- (a) by serving the claim form personally on a manager of the firm at any place of business of the firm or partnership which has a real connection with the claim;
- (b) by serving the claim form personally on any partner of the firm; or
- (c) in any other way allowed by any enactment.

(2) If the claimant knows that a partnership has been dissolved when the claim is issued, the claim form must be served personally on every person within the jurisdiction whom the claimant seeks to make liable.

**5.9 Service on body corporate.**

(1) Service on a body corporate (other than a limited company) may be effected

- (a) by sending the claim form by prepaid post to the principal office of the body corporate;
- (b) by serving the claim form personally on any principal officer of the body corporate; or
- (c) in any other way allowed by any enactment.

(2) In this rule, “principal officer” means the mayor, chairperson or president of the body, or the town clerk, chief executive officer, clerk, secretary, treasurer or other similar officer of the body.

- Rule 59.2 deals with service on the Crown.

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#### **5.10 Service on minors and patients.**

(1) Paragraphs (2) to (5) specify the persons on whom a claim form must be served if it would otherwise be served on a minor or patient.

(2) A claim form which would otherwise be served on a minor who is not also a patient must be served on

- (a) one of the minor's parents or guardians (including in Saint Lucia the curator appointed under the Civil Code (Cap 242)); or
- (b) the person with whom the minor resides or in whose care the minor is, if there is no parent or guardian.

(3) If a person is authorised under any relevant enactment to conduct the proceedings in the name of the patient or on the patient's behalf, a claim form must be served on that person.

(4) If there is no person so authorised, a claim form must be served on the person with whom the patient resides or in whose care the patient is.

(5) The court may make an order permitting the claim form to be served on the minor or patient, or on some person other than the person specified in paragraphs (2) to (4).

(6) The court may order that, although paragraphs (2) to (4) have not been complied with, the claim form is to be treated as properly served.

(7) An application for an order under paragraph (5) or (6) may be made without notice but must be supported by evidence on affidavit.

- Part 23 deals generally with parties who are minors or patients.

#### **5.11 Proof of postal service.**

(1) Service by post is proved by an affidavit of service by the person responsible for posting the claim form to the person to be served.

- (2) The affidavit must exhibit a copy of the claim form and state the
  - (a) address to which it was sent; and
  - (b) date and time of posting.

#### **5.12 Proof of service by FAX.**

(1) Service by FAX is proved by an affidavit of service by the person responsible for transmitting the claim form to the person to be served.

- (2) The affidavit must exhibit a copy of
  - (a) the document served;
  - (b) any cover sheet to that document; and
  - (c) the transmission record;

and must state the

- (i) date and time of transmission; and
- (ii) FAX number to which it was sent.

### 5.13 **Alternative methods of service.**

(1) Instead of personal service a party may choose an alternative method of service.

(2) Where a party

- (a) chooses an alternative method of service; and
- (b) the court is asked to take any step on the basis that the claim form has been served;

the party who served the claim form must file evidence on affidavit proving that the method of service was sufficient to enable the defendant to ascertain the contents of the claim form.

(3) An affidavit under paragraph (2) must

- (a) exhibit a copy of the documents served;
- (b) give details of the method of service used;
- (c) show that
  - (i) the person intended to be served was able to ascertain the contents of the documents; or
  - (ii) it is likely that he or she would have been able to do so; and
- (d) state the time when the person served was or was likely to have been in a position to ascertain the contents of the documents.

(4) The court office must immediately refer any affidavit filed under paragraph (2) to a judge, master or registrar who must

- (a) consider the evidence; and
- (b) endorse on the affidavit whether it satisfactorily proves service.

(5) If the court is not satisfied that the method of service chosen was sufficient to enable the defendant to ascertain the contents of the claim form, the court office must fix a date, time and place to consider making an order under rule 5.14 and give at least 7 days notice to the claimant.

### 5.14 **Power of court to make order for service by specified method.**

(1) The court may direct that a claim form served by a method specified in the court's order be deemed to be good service.

(2) An application for an order to serve by a specified method may be made without notice but must be supported by evidence on affidavit

- (a) specifying the method of service proposed; and
- (b) showing that that method of service is likely to enable the person to be served to ascertain the contents of the claim form and statement of claim.



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**5.15 Proof of service by specified method.**

Service is proved by an affidavit made by the person who served the document showing that the terms of the order have been carried out.

**5.16 Service of claim form by contractually agreed method.**

(1) This rule applies where a contract contains a term specifying how any proceedings under the contract should be served.

(2) A claim form containing a claim in respect of a contract may be served by any method permitted by that contract.

(3) If the claim form is served within the jurisdiction in accordance with the contract, it is to be treated as having been served on the defendant.

(4) If the claim form is served out of the jurisdiction in accordance with the contract, it is not to be treated as having been served on the defendant unless service out of the jurisdiction is permitted under Part 7.

**5.17 Service of claim form on agent of principal who is out of jurisdiction.**

(1) If the conditions specified in paragraph (2) are satisfied, the court may permit a claim form relating to a contract to be served on a defendant's agent.

(2) The court may not make an order under this rule unless it is satisfied that

- (a) at the time of the application,
  - (i) the agent's authority had not been terminated; or
  - (ii) the agent is still in business relations with the defendant;
- (b) the contract to which the claim relates was entered into within the jurisdiction with or through the defendant's agent; and
- (c) the defendant cannot be served within the jurisdiction.

(3) An application may be made without notice but must be supported by evidence on affidavit.

(4) An order under this rule must state the periods within which the defendant must file

- (a) an acknowledgment of service; and
- (b) a defence.

(5) When the court makes an order under this rule, the claimant must serve the agent with the

- (a) claim form;
- (b) order; and
- (c) statement of claim;

and at the same time send to the defendant at the defendant's address out of the jurisdiction a copy of each document.

**5.18 Service of claim form for possession of vacant land.**

(1) Paragraphs (2) to (3) deal with the service of a claim form for possession of land where

- (a) there is no person in occupation of the land; and
- (b) service cannot otherwise be effected on the defendant.

(2) The court may direct that a claim form and statement of claim be served by affixing a copy of the claim form to some conspicuous part of the land and by publishing a notice of the claim at least once in one or more newspapers of general circulation in the Member State or Territory in which the land is situated.

- (3) An application for an order under this rule
- (a) may be made without notice; but
  - (b) must be supported by evidence on affidavit that there is no
    - (i) other method of serving the defendant; and
    - (ii) person in occupation of the land.

**5.19 Deemed date of service.**

(1) A claim form that has been served within the jurisdiction by pre-paid post is deemed to be served, unless the contrary is shown, on the day shown in the table in rule 6.6.

(2) If a claim is sent to the legal practitioner of a party who certifies that he or she accepts service on behalf of the defendant, the claim is deemed to have been served on the date on which the legal practitioner certifies that he or she accepts service.

(3) If an acknowledgment of service is filed, whether or not the claim form has been duly served, the claimant may treat

- (a) the date of filing the acknowledgment of service; or
- (b) (if earlier) the date shown on the acknowledgment of service for receipt of the claim form;

as the date of service.

(4) A claimant may file evidence on affidavit to prove that service was in fact effected on a date earlier than the date on which it is deemed to be effected.

**PART 6 – SERVICE OF OTHER DOCUMENTS****Contents of this Part**

Who is to serve documents other than claim form	Rule 6.1
Method of service	Rule 6.2
Address for service	Rule 6.3
Serving documents where no address for service is given	Rule 6.4
Service of documents on person who is not a party	Rule 6.5
Deemed date of service	Rule 6.6
Proof of service	Rule 6.7
Power of court to dispense with service	Rule 6.8
Service of notices, etc. on Attorney General	Rule 6.9

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**6.1 Who is to serve documents other than claim form.**

(1) Subject to paragraph (2) any judgment or order which requires service must be served by the court, unless

- (a) a rule provides that a party must serve the document in question; or
- (b) the court orders otherwise.

(2) The following orders must be served by the party obtaining the order:

- (a) a freezing order under rule 17.1(f);
- (b) an injunction;
- (c) any order listed in rule 17.1 (c), (d), (k) or (l);
- (d) an order under rule 17.1 (g); and
- (e) a search order under rule 17.1 (h).

(3) Any other document must be served by a party, unless

- (a) a rule otherwise provides; or
- (b) the court orders otherwise.

**6.2 Method of service.**

If these Rules require a document other than a claim form to be served on any person it may be served by any of the following methods:

- (a) any means of service in accordance with Part 5;
- (b) leaving it at or sending it by prepaid post to any address for service in accordance with rule 6.3(1);
- (c) if rule 6.3(2) applies by FAX; or
- (d) other means of electronic communication if this is permitted by a relevant practice direction;

unless a rule otherwise provides or the court orders otherwise.

**6.3 Address for service.**

(1) Documents must be delivered or posted to a party at any address for service within the jurisdiction given by that party.

(2) If a party's address for service includes a FAX number, documents may be sent by FAX to that number.

(3) If a party to be served has not given an address within the jurisdiction at which documents for that party may be served, documents must be served at the address indicated in rule 6.4.

**6.4 Serving documents where no address for service is given.**

(1) If no address is given for service the document may be served by leaving it or posting it at or to

- (a) in the case of a firm or partnership, either
  - (i) the principal or last known address of the firm or partnership or any place where the firm or partnership carries on business and which has a real connection with the claim; or
  - (ii) the usual or last known place of residence of one of the partners;
- (b) in the case of an individual, that person's usual or last known place of residence;
- (c) in the case of a proprietor of a business, that person's
  - (i) usual or last known place of residence; or
  - (ii) place of business or last known place of business; or
- (d) the business address of any legal practitioner who purports to act for the party in the proceedings.

(2) The provisions of Part 5 may be applied to such a document as if it were a claim form.

#### 6.5 **Service of documents on person who is not a party.**

If the court or a party is to serve documents on a person who is not a party, such documents must be served by one of the methods specified in Part 5.

#### 6.6 **Deemed date of service.**

(1) A document which is served within the jurisdiction in accordance with these Rules is deemed to be served on the day shown in the following table:

<b>Method of Service</b>	<b>Deemed date of service</b>
Post	14 days after posting
Registered Post	10 days after the date indicated on the Post Office or courier receipt
Leaving document at a permitted address	The day after leaving the document
FAX	<ul style="list-style-type: none"> <li>(a) If it is transmitted on a business day before 4 p.m. – the day of transmission;</li> <li>(b) In any other case – the business day after the day of transmission.</li> </ul>
Other electronic method of service.	The business day after the day of transmission.

(2) Any document served after 4 p.m. on a business day or at any time on a day other than a business day is treated as having been served on the next business day.

- (3) In this rule, "business day" means any
  - (a) day other than a Saturday, Sunday or Bank Holiday; or
  - (b) other day on which the court office is closed;

and is to be determined by reference to the relevant enactment of the Member State or Territory in which the document is to be served.

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**6.7 Proof of service.**

If proof of service of any document is required, it may be proved by any method of proving service set out in Part 5.

**6.8 Power of court to dispense with service.**

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

**6.9 Service of notices, etc. on Attorney – General.**

(1) This rule applies where any document has to be served on the Attorney-General of any Member State or Territory in connection with any proceedings of which notice has to be given to the Attorney-General and where express provision as to service is not made by any enactment or rule.

- (2) Any such document must be served in accordance with rule 59.2.

**PART 7 – SERVICES OF COURT PROCESS OUT OF JURISDICTION**

**Contents of this Part**

Scope of this Part	Rule 7.1
General rule as to service of claim form out of jurisdiction	Rule 7.2
Service of claim form out of jurisdiction in specified proceedings	Rule 7.3
Proceedings which include other types of claim	Rule 7.4
Permission to serve claim form out of jurisdiction	Rule 7.5
Acknowledgment of service and defence where claim form served out of the jurisdiction	Rule 7.6
Application to set aside service under rule 7.3	Rule 7.7
Mode of service of claim form – general provisions	Rule 7.8
Service of claim form through foreign governments, or judicial or consular authorities	Rule 7.9
Procedure where claim form is to be served through foreign governments, etc.	Rule 7.10
Service of claim form on a State where court permits service out of jurisdiction	Rule 7.11
Translation of claim form	Rule 7.12
Undertaking to be responsible for expenses of Minister with responsibility for foreign affairs	Rule 7.13
Service of court process other than claim form	Rule 7.14

**7.1 Scope of this Part.**

- (1) This Part contains provisions about the
  - (a) circumstances in which court process may be served out of the jurisdiction; and
  - (b) procedure for serving court process out of the jurisdiction.
- (2) In this Part references to service or filing copies of the claim form include
  - (a) the statement of claim (unless contained in the claim form);
  - (b) an affidavit in support of the claim, if these Rules so require; and
  - (c) if permission has been given under rule 8.2 to serve the claim form without the statement of claim – a copy of the order giving permission.

**7.2 General rule as to service of claim form out of jurisdiction.**

A claim form may be served out of the jurisdiction only if

- (a) rule 7.3 allows; and
- (b) the court gives permission.

**7.3 Service of claim form out of jurisdiction in specified proceedings.**

- (1) The court may permit a claim form to be served out of the jurisdiction if the proceedings are listed in this rule.

***Features which may arise in any type of claim***

- (2) A claim form may be served out of the jurisdiction if a claim is made
  - (a) against someone on whom the claim form has been or will be served, and
    - (i) there is between the claimant and that person a real issue which it is reasonable for the court to try; and
    - (ii) the claimant now wishes to serve the claim form on another person who is outside the jurisdiction and who is a necessary and proper party to that claim;
  - (b) for an injunction ordering the defendant to do or refrain from doing some act within the jurisdiction; or
  - (c) for a remedy against a person domiciled or ordinarily resident within the jurisdiction.

***Claims about contracts***

- (3) A claim form may be served out of the jurisdiction if
  - (a) a claim is made in respect of a breach of contract committed within the jurisdiction;

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- (b) a claim is made to enforce, rescind, dissolve or otherwise affect a contract or to obtain any other remedy in respect of a breach of contract and (in either case) the contract
  - (i) contains a term to the effect that the court shall have jurisdiction to determine any claim in respect of the contract; or
  - (ii) is by its terms or by implication governed by the law of any Member State or Territory;
  - (iii) was made by or through an agent trading or residing within the jurisdiction; or
  - (iv) was made within the jurisdiction;
- (c) the claim is for a declaration that no contract exists.

#### *Claims in tort*

(4) A claim form may be served out of the jurisdiction if a claim in tort is made and the act causing the damage was committed within the jurisdiction or the damage was sustained within the jurisdiction.

#### *Enforcement*

(5) A claim form may be served out of the jurisdiction if a claim is made to enforce any judgment or arbitral award made within the jurisdiction.

#### *Claims about property within the jurisdiction*

- (6) A claim form may be served out of the jurisdiction if
  - (a) a claim is made
    - (i) for a debt secured on land;
    - (ii) to assert, declare or determine rights in or over land; or
    - (iii) to obtain authority to dispose of land; and (in any of these cases) the land is located within the jurisdiction;
  - (b) a claim is made in order to interpret, rectify, set aside or enforce a document, obligation or liability affecting land located within the jurisdiction; or
  - (c) the whole subject matter of the proceedings is
    - (i) land; or
    - (ii) the perpetuation of testimony relating to land;  
located within the jurisdiction.

#### *Claims about trusts, etc.*

- (7) A claim form may be served out of the jurisdiction if
  - (a) a claim is made for a remedy against the defendant as constructive trustee and the defendant's alleged liability arises out of acts committed within the jurisdiction;

- (b) a claim is made for
  - (i) any remedy which might be obtained in proceedings for the administration of the estate of; or
  - (ii) in probate proceedings as defined in Part 68 relating to; a person who died domiciled within the jurisdiction; or
- (c) a claim is made for any remedy which might be obtained in proceedings to execute the trusts of a written instrument and the
  - (i) trusts ought to be executed according to the law of any Member State or Territory; and
  - (ii) person on whom the claim form is to be served is a trustee of the trusts.

***Admiralty proceedings***

- (8) This rule does not apply to an Admiralty claim in rem.

***Miscellaneous statutory proceedings***

- (9) A claim form may be served out of the jurisdiction if the claim is brought under the
  - (i) Carriage by Air Act, 1961 (U.K.);
  - (ii) Schedule to the Carriage by Air (Supplementary Provisions) Act, 1962 (U.K.);
  - (iii) Schedule to the Carriage of Goods by Road Act, 1965 (U.K);
  - (iv) Nuclear Installations Act, 1965 (U.K); or any amendment or substitution for these Acts in so far as they form part of the law of any Member State or Territory.

**7.4 Proceedings which include other types of claim.**

If the claimant makes a claim which falls within

- (a) rule 7.3(3) (claims about contracts);
- (b) rule 7.3(4) (claims in tort); or
- (c) rule 7.3(7)(a) (claims against the defendant as a constructive trustee);

the court may grant any claim for a remedy which

- (i) does not fall within rule 7.3; but
- (ii) arises out of the same facts or substantially the same facts as the claim in respect of which the order is made.

**7.5 Permission to serve claim form out of jurisdiction.**

- (1) An application for permission to serve out of the jurisdiction may be made without notice but must be supported by evidence on affidavit stating:



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- (a) the grounds on which the application is made;
  - (b) that in the deponent's belief the claimant has a claim with a realistic prospect of success;
  - (c) in what place, within what country, the defendant may probably be found; and
  - (d) if the application is made under rule 7.3(2) (a), the grounds for the deponent's belief that the conditions are satisfied.
- (2) An order granting permission to serve the claim form out of the jurisdiction must state the periods within which the defendant must
- (a) file an acknowledgement of service in accordance with Part 9; and
  - (b) file a defence in accordance with Part 10.
- (3) The periods for filing a document under paragraph (2) are to be determined by reference to a relevant practice direction.

**7.6 Acknowledgment of service and defence where claim form served out of the jurisdiction.**

A claim form to be served out of the jurisdiction must be amended to state the period within which the

- (a) acknowledgement of service; and
- (b) defence;

must be filed.

**7.7 Application to set aside service under rule 7.3.**

- (1) Any person on whom a claim form has been served out of the jurisdiction under rule 7.3 may apply to set aside service of the claim form.
- (2) The court may set aside service under this rule if
- (a) service out of the jurisdiction is not permitted by the rules;
  - (b) the claimant does not have a good cause of action; or
  - (c) the case is not a proper one for the court's jurisdiction.
- (3) This rule does not limit the court's power to make an order under rule 9.7 (procedure for disputing the court's jurisdiction, etc.).

**7.8 Mode of service of claim form – general provisions.**

- (1) Subject to the following paragraphs of this rule, if a claim form is to be served out of the jurisdiction, it may be served
- (a) by a method provided for by
    - (i) rule 7.9 (service through foreign governments, etc.); or
    - (ii) rule 7.11 (service on a State);

- (b) in accordance with the law of the country in which it is to be served;  
or
- (c) personally by the claimant or the claimant's agent.

(2) Nothing in this Part or in any court order may authorise or require any person to do anything in the country where the claim form is to be served which is against the law of that country.

**7.9 Service of claim form through foreign governments, or judicial or consular authorities.**

- (1) This rule does not apply to service in
  - (a) any independent Commonwealth country;
  - (b) the Republic of Ireland; or
  - (c) the United Kingdom, the Isle of Man or the Channel Islands;

unless the claim form is to be served in accordance with paragraph (3).

(2) The methods of service permitted by this rule are in addition to any method of service permitted under rule 7.8(1)(b) or (c).

***Service under the Hague Convention***

(3) A claim form to be served on a defendant in any country which is a party to the Hague Convention may be served

- (a) through the authority designated under the Hague Convention in respect of that country; or
- (b) if the law of that country permits
  - (i) in the case of a claim form issued in a Member State, through its consular authority in that country;
  - (ii) in the case of a claim form issued in a Territory, through the British consular authority in that country; or
  - (iii) through the judicial authorities of that country.

***Service under other Conventions***

(4) A claim form to be served on a defendant in any country which is a party to a Civil Procedure Convention (to which the relevant Member State or Territory is also a party or which has been extended to the relevant Member State or Territory) other than the Hague Convention providing for service of court process in that country, may be served, if the law of that country permits,

- (a) in the case of a claim form issued in a Member State, through its consular authority in that country (subject to any provision of the convention as to the nationality of persons who may be so served);

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- (b) in the case of a claim form issued in a Territory, through the British consular authority in that country (subject to any provision of the convention as to the nationality of persons who may be so served); or
- (c) through the judicial authorities of that country.

***Service where there is no applicable Convention***

(5) A claim form to be served on a defendant in any country with respect to which there is no relevant Civil Procedure Convention providing for service of court process in that country may be served, if the law of that country so permits,

- (a) in the case of a claim form issued in a Member State, through its consular authority in that country;
- (b) in the case of a claim form issued in a Territory, through the British consular authority in that country; or
- (c) through the government of that country, if that government is willing to serve it.

**7.10 Procedure where claim form is to be served through foreign governments, etc.**

(1) This rule applies where the claimant wishes to serve the claim form through the

- (a) authority designated under the Hague Convention or any other relevant Civil Procedure Convention in respect of that country;
- (b) consular authority of a Member State or, in the case of a Territory, the British consular authority in that country;
- (c) government of that country; or
- (d) judicial authorities of the country where the claim form is to be served.

(2) If this rule applies, the claimant must file

- (a) a copy of the claim form;
- (b) an additional copy of the claim form for each person to be served;
- (c) a request for service of the claim form by the claimant's chosen method; and
- (d) any translation required by rule 7.12.

(3) When the claimant files the documents specified in paragraph (2) the court office must

- (a) seal the copy of the claim form; and
- (b) send the documents filed to the minister with responsibility for foreign affairs with a request that the minister arrange for the claim form to be served
  - (i) by the method indicated in the request for service filed under paragraph (2); or

- (ii) if the request indicates alternative methods, by the most convenient method.
- (4) An official certificate which
- (a) is made by
    - (i) a consular authority of a Member State or a British consular authority in the country where the claim form was served;
    - (ii) the government or judicial authorities in that country; or
    - (iii) any other authority designated in respect of that country under the Hague Convention or any other relevant Civil Procedure Convention;
  - (b) states that the claim form has been served in accordance with this rule either personally or in accordance with the law of the country in which service was effected; and
  - (c) specifies the date on which the claim form was served;

is evidence of the facts stated in the certificate.

(5) A document purporting to be an official certificate under paragraph (4) is to be treated as such a certificate, unless it is proved not to be.

#### **7.11 Service of claim form on a State where court permits service out of jurisdiction.**

- (1) This rule applies where a claimant wishes to serve a claim form on a State.
- (2) If the State has agreed to a method of service other than a method permitted by this Part, the claim form may be served either by the method agreed or in accordance with the other rules in this Part.
- (3) The claimant must file at the court office:
  - (a) a copy of the claim form;
  - (b) any translation required by virtue of rule; and
  - (c) a request for service to be arranged by the Minister with responsibility for foreign affairs.
- (4) The court office must send documents filed under this rule to the Minister with responsibility for foreign affairs with a request that the Minister arrange for the claim form to be served.
- (5) If a Member State or Territory has under any enactment relating to state immunity agreed to a method of service, the claim form may be served either by the method agreed or in accordance with this rule.
- (6) An official certificate by the Minister with responsibility for foreign affairs stating that a claim form has been duly served on a specified date in accordance with a request made under this rule is evidence of that fact.
- (7) A document purporting to be such a certificate is to be treated as such a certificate, unless it is proved not to be.

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**7.12 Translation of claim form.**

(1) Except where paragraph (4) or (5) applies, every copy of the claim form filed under rule 7.10 or rule 7.11 must be accompanied by a translation of the claim form.

(2) The translation must be

- (a) in the official language of the country in which it is to be served; or
- (b) if there is more than one official language of that country, in any official language which is appropriate to the place in the country where the claim form is to be served.

(3) Every translation filed under this rule must be certified by the person making it to be a correct translation, and the certificate must state

- (a) the name of the person making the translation; and
- (b) his or her
  - (i) address; and
  - (ii) qualifications for making the translation.

(4) If the claim form is to be served

- (a) in a country of which English is an official language; or
- (b) by a consular authority of a Member State or, in the case of a Territory, a British consular authority on a citizen of a Member State or Territory;

the claimant is not required to file a translation of a claim form filed under rule 7.9 (service through foreign governments, etc.) unless a relevant Civil Procedure Convention expressly requires a translation.

(5) The claimant is not required to file a translation of a claim form filed under rule 7.11 (service on a State) if English is an official language of the State where the claim form is to be served.

**7.13 Undertaking to be responsible for expenses of Minister with responsibility for foreign affairs.**

(1) A person filing a request for service under rule 7.9 (service through foreign governments, etc.) or rule 7.11 (service on a State) must undertake in the request

- (a) to be responsible for all expenses incurred by the Minister with responsibility for foreign affairs; and
- (b) on being informed of the amount of those expenses to
  - (i) pay that amount to the Accountant-General or other financial officer for the Member State or Territory concerned; and
  - (ii) produce a receipt for the payment to the court office.

(2) The claimant may take no further step in the proceedings until the claimant produces the receipt required by paragraph (1)(b)(ii).

**7.14 Service of court process other than claim form.**

(1) An application, order or notice issued, made or given in any proceedings may be served out of the jurisdiction without the court's permission if it is served in proceedings in which permission has been given to serve the claim form out of the jurisdiction.

(2) The procedure by which a document specified in paragraph (1) is to be served is the same as that applicable to the service of a claim form and accordingly rules 7.8 to 7.13 apply.

**PART 8 – HOW TO START PROCEEDINGS****Contents of this Part**

The claimant – how to start proceedings	Rule 8.1
Statement of claim, etc. to be issued and served with claim form	Rule 8.2
Where to start proceedings	Rule 8.3
Right to make claim which includes two or more claims	Rule 8.4
Claim not to fail by adding or failing to add parties	Rule 8.5
What must be included in claim form	Rule 8.6
Claimant's duty to set out case	Rule 8.7
Certificate of value (small claims)	Rule 8.8
Special requirements applying to claims for personal injuries	Rule 8.9
Relator claims	Rule 8.10
Service of claim form	Rule 8.11
Time within which claim form may be served	Rule 8.12
Extension of time for serving claim form	Rule 8.13
Defence form, etc. must be served with claim form	Rule 8.14

**8.1 The claimant – how to start proceedings.**

(1) A claimant starts proceedings by filing in the court office the original and one copy (for sealing) of

- (a) the claim form; and (subject to rule 8.2)
- (b) the statement of claim; or
- (c) if any rule or practice direction so requires, an affidavit or other document.

(2) A claim is issued on the date entered on the claim form by the court office.

(3) For the purpose of any enactment relating to the limitation of proceedings, a claim is brought on the day on which the claim form is filed at the court office.

- Rule 3.7(2) defines when a document is filed.

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(4) A claim form must be in Form 1 except in the circumstances set out in paragraph (5).

(5) Form 2 (fixed date claim form) must be used

- (a) in claims arising out of hire-purchase or credit sale agreements;
- (b) in proceedings for possession of land;
- (c) whenever its use is required by a rule or practice direction; and
- (d) where by any enactment proceedings are required to be commenced by originating summons or motion.
  - Rule 27.2 deals with the procedure under a fixed date claim.

(6) A person who seeks a remedy

- (a) before proceedings have been started; or
- (b) in relation to proceedings which are taking place, or will take place, in another jurisdiction;

must seek that remedy by an application under Part 11.

## 8.2 Statement of claim, etc. to be issued and served with claim form.

(1) A claim form may be issued and served without the statement of claim or affidavit or other document required by rule 8.1(1)(b) or (c) only if the

- (a) claimant has included in the claim form all the information required by rules 8.6, 8.7, 8.8 and 8.9; or
- (b) court gives permission.

(2) In a case of emergency when it is not practicable to obtain the permission of the court a claimant may issue and serve the claim form without a statement of claim or affidavit or other document required by rule 8.1(1)(b) or (c) provided that the claimant

- (a) certifies in writing that the issue and service of the claim form is a matter of emergency, stating why; and
- (b) serves a copy of the
  - (i) certificate; and
  - (ii) application for permission;

with the claim form.

(3) If a claim form is issued under paragraph (2), the claimant may take no further steps except to serve the claim form until permission is given.

(4) The court may give permission under paragraph (1) only if it is satisfied that

- (a) a relevant limitation period is about to expire and the claimant has obtained legal advice relating to the claim for the first time within the 28 days prior to the date that the claimant wishes to file the claim; or

- (b) the claim form must be issued as a matter of urgency and it is not practicable for the claimant to prepare a statement of claim or affidavit.

(5) An application for permission may be made without notice but must be supported by evidence on affidavit.

(6) Any order giving permission for the claim form to be served without a statement of claim or affidavit or other document required by rule 8.1 (1) (b) or (c) must state a date by which that document must be served.

(7) Such date must in no case be more than 56 days from the date of issue of the claim form.

(8) A copy of the order or the certificate and application under paragraph (2) must be served with the claim form.

(9) The claimant must file a copy of the statement of claim or affidavit or other document required by rule 8.1(1)(b) or (c), served in accordance with paragraph (6), endorsed with a certificate stating the date of service and the address at which and the manner in which it was served.

### **8.3 Where to start proceedings.**

(1) This rule identifies the court office at which a claim form may be issued.

(2) Where proceedings relate to land they may be commenced only in the court office for the Member State, Territory or circuit in which the land is situated.

(3) Any other proceedings may be commenced only in the court office for the Member State, Territory or circuit where either the

- (a) cause of action arose; or
- (b) defendant resides or carries on business.

### **8.4 Right to make claim which includes two or more claims.**

A claimant may use a single claim form to include all or any other claims which can be conveniently disposed of in the same proceedings.

### **8.5 Claim not to fail by adding or failing to add parties.**

(1) The general rule is that a claim will not fail because a person

- (a) who should have been made a party was not made a party to the proceedings; or
- (b) was added as a party to the proceedings who should not have been added.

(2) However,

- (a) where a claimant claims a remedy to which some other person is jointly entitled, all persons jointly entitled to the remedy must be parties to the proceedings, unless the court orders otherwise; and



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- (b) if any such person does not agree to be a claimant, that person must be made a defendant, unless the court orders otherwise.
- (3) This rule does not apply in probate or administration proceedings.
  - Rules 67.2 and 68.3 deal with parties in such proceedings.

#### 8.6 **What must be included in claim form.**

- (1) The claimant must, in the claim form,
  - (a) include a short description of the nature of the claim;
  - (b) specify any remedy that the claimant seeks; and
  - (c) give an address for service in accordance with rule 3.11.
- (2) Notwithstanding paragraph (1)(b), the court may grant any other remedy to which the claimant may be entitled.
- (3) A claimant who seeks aggravated damages and/or exemplary damages must say so in the claim form.
- (4) A claimant who is seeking interest must
  - (a) say so expressly in the claim form; and
  - (b) include, in the claim form or statement of claim, details of the
    - (i) basis of entitlement;
    - (ii) rate; and
    - (iii) period for which it is claimed.
- (5) If the claim is for a specified sum of money, the total amount of interest claimed to the date of the claim and the daily rate at which interest will accrue after the date of the claim must be expressly stated in the claim form.
- (6) A claimant who claims in a representative capacity under Part 21 must state what that capacity is.
- (7) A claimant suing a defendant in a representative capacity under Part 21 must state what that capacity is.
  - Rule 3.12 requires the claim form to include a certificate of truth.

#### 8.7 **Claimant's duty to set out case.**

- (1) The claimant must include in the claim form or in the statement of claim a statement of all the facts on which the claimant relies.
- (2) The statement must be as short as practicable.
- (3) The claim form or the statement of claim must identify or have annexed thereto a copy of any document which the claimant considers is necessary to his or her case.
- (4) If the claimant seeks recovery of any property, the claimant's estimate of the value of that property must be stated.

(5) The statement of claim must include a certificate of truth in accordance with rule 3.12.

#### **8.8 Certificate of value (small claims).**

In any case in which the quantum of damages alone determines in which court the claim is to be brought but the amount of any damages claimed is not specified, the claim form must include a certificate by the claimant that the damages claimed exceed the civil jurisdiction of the District or Magistrate's Court in the Member State or Territory in which the claim form is issued.

#### **8.9 Special requirements applying to claims for personal injuries.**

(1) This rule sets out additional requirements with which a claimant making a claim for personal injuries must comply.

(2) The claimant's date of birth or age must be stated in the claim form or statement of claim.

(3) If the claimant intends to rely at trial on the evidence of a medical practitioner, the claimant must attach to the claim form a report from the medical practitioner on the personal injuries alleged in the claim.

(4) Paragraph (3) does not restrict the right of the claimant to call other or additional medical evidence at the trial of the claim.

(5) The claimant must include in, or attach to, the claim form or statement of claim a schedule of any special damages claimed.

#### **8.10 Relator claims.**

A person's name may not be used in any claim as a relator unless that person has given written authority to that effect and the authority is filed at the court office before the claim is issued.

#### **8.11 Service of claim form.**

After the claim form has been issued it may be served on the defendant in accordance with Part 5 (service of claim form within jurisdiction) or Part 7 (service of court process out of the jurisdiction).

#### **8.12 Time within which claim form may be served.**

(1) The general rule is that a claim form must be served within 6 months after the date when the claim was issued.

(2) The period for

- (a) service of a claim form out of the jurisdiction; or
- (b) service of an Admiralty claim form in rem;

is 12 months.

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- Part 7 deals with service out of the jurisdiction.
- Part 70 deals with Admiralty proceedings.

### 8.13 Extension of time for serving a claim form.

(1) The claimant may apply for an order extending the period within which a claim form may be served.

(2) The period by which the time for serving a claim form is extended may not be longer than 6 months on any one application.

- (3) An application under paragraph (1)
- (a) must be made within the period
    - (i) for serving a claim form specified by rule 8.12; or
    - (ii) of any subsequent extension permitted by the court; and
  - (b) may be made without notice but must be supported by evidence on affidavit.
- (4) The court may make an order under paragraph (1) only if it is satisfied that
- (a) the claimant has taken all reasonable steps to
    - (i) trace the defendant; and
    - (ii) serve the claim form;but has been unable to do so; or
  - (b) there is some other special reason for extending the period.
- (5) If an order is made extending the validity of the claim form,
- (a) the claim form must be marked with an official stamp showing the period for which its validity has been extended; and
  - (b) a sealed copy of any order made must be served with the claim form.
- (6) No more than one extension may be allowed unless the court is satisfied that
- (a) the defendant is deliberately avoiding service; or
  - (b) there is some other compelling reason for so doing.

### 8.14 Defence form, etc. must be served with claim form.

- (1) When a claim form is served on a defendant, it must be accompanied by
- (a) a copy of any order made under rule 8.2 or 8.13;
  - (b) a defence form (Form 5);
  - (c) a form of acknowledgment of service (Form 4 or 4(A));
  - (d) an application to pay by instalments (Form 3), if the claim is for money; and
  - (e) the prescribed notes for defendants (Form 1A).

- (2) There must be inserted on each form the
- (a) address of the court office to which the defendant is to return the forms;
  - (b) reference number of the claim; and
  - (c) title of the claim.

(3) If there is a standard defence form appropriate to the particular case set out in a practice guide, the form sent to the defendant must be in a standard form of that type.

## **PART 9 – ACKNOWLEDGMENT OF SERVICE AND NOTICE OF INTENTION TO DEFEND**

### **Contents of this Part**

Scope of this Part	Rule 9.1
Filing acknowledgment of service and consequence of not doing so	Rule 9.2
The period for filing acknowledgment of service	Rule 9.3
Notice to claimant of filing of acknowledgment of service	Rule 9.4
Contents of acknowledgment of service	Rule 9.5
Right to dispute jurisdiction of court not taken away by acknowledgment of service	Rule 9.6
Procedure for disputing court's jurisdiction, etc.	Rule 9.7

### **9.1 Scope of this Part.**

(1) This Part deals with the procedure to be used by a defendant who wishes to contest proceedings and avoid a default judgment being entered.

- Part 12 deals with default judgments.

- (2) The defendant does so
- (a) by filing
    - (i) a defence in accordance with Part 10; and
    - (ii) an acknowledgment of service in Form 3 or 4 containing a notice of intention to defend within the time limit under rule 9.3; or
  - (b) by filing a defence in accordance with Part 10 within the time limit under rule 9.3.

(3) The filing of an acknowledgment of service is to be treated as the entry of an appearance for the purpose of any enactment referring to the entry of such an appearance.

- Part 14 deals with the case where the defendant wishes to admit all or part of the claim and enables the defendant to make an offer as to the time and rate of payment.

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## 9.2 Filing acknowledgment of service and consequence of not doing so.

- (1) A defendant who wishes to
  - (a) dispute the claim; or
  - (b) dispute the court's jurisdiction;

must file at the court office at which the claim form was issued an acknowledgment of service in Form 4 or 4(A) containing a notice of intention to defend.

(2) A defendant files an acknowledgment of service by completing the form of acknowledgment of service and handing it in at, or sending it by post or FAX to the court office.

(3) An acknowledgment of service has no effect until it is received at the court office.

(4) A defendant need not file an acknowledgment of service if a defence is filed within the period specified in rule 9.3.

(5) If a defendant fails to file an acknowledgement of service or a defence, judgment may be entered if Part 12 allows it.

## 9.3 The period for filing acknowledgment of service.

(1) The general rule is that the period for filing an acknowledgment of service is the period of 14 days after the date of service of the claim form.

(2) If a claim form is issued in one Member State, Territory or circuit and served in another the period is 28 days after the date of service of the claim form.

(3) If permission has been given under rule 8.2 for a claim form to be served without a statement of claim, the period for filing an acknowledgment of service is to be calculated from the date when the statement of claim is served.

(4) A defendant may file an acknowledgment of service at any time before a request for default judgment is received at the court office out of which the claim form was issued.

- (5) Paragraph (1) does not apply where the claim is served
  - (a) outside the jurisdiction in accordance with Part 7; or
  - (b) on an agent of an overseas principal under rule 5.17.
    - Rules 7.5(2) and 5.17(4) deal with the time for filing an acknowledgment of service in those cases.
    - Rule 59.3 makes special provision for extending the time for the Crown to acknowledge service.

## 9.4 Notice to claimant of filing of acknowledgment of service.

(1) The court office must forthwith notify the claimant in writing that an acknowledgment of service has been filed.

- (2) A copy of the acknowledgment of service must be annexed to the notice.

**9.5 Contents of acknowledgment of service.**

- (1) A defendant acknowledging service
  - (a) may state in the acknowledgment of service that all or part of the claim is admitted;
  - (b) must state in the acknowledgment of service the date on which the defendant received the claim form;
  - (c) who admits all or part of a claim for a specified sum of money, may file with the acknowledgment of service,
    - (i) details of the defendant's financial circumstances; and
    - (ii) proposals for payment of any sums admitted;
  - (d) who admits part of the claim under paragraph (a), must state the amount admitted.
    - Part 14 deals with the way in which proposals referred to in this paragraph are decided.

(2) A defendant who admits part of the claim must also file a defence as to the disputed part of the claim within the time for filing a defence.

- Rule 10.3 sets out the time for filing a defence.

(3) The defendant or the defendant's legal practitioner must sign the acknowledgment of service.

(4) The defendant must include in the acknowledgment of service an address for service within the jurisdiction to which documents may be sent.

**9.6 Right to dispute jurisdiction of court not taken away by acknowledgment of service.**

A defendant who files an acknowledgment of service does not by doing so lose any right to dispute the court's jurisdiction.

**9.7 Procedure for disputing court's jurisdiction, etc.**

- (1) A defendant who
  - (a) disputes the court's jurisdiction to try the claim; or
  - (b) argues that the court should not exercise its jurisdiction;

may apply to the court for a declaration to that effect.

(2) A defendant who wishes to make an application under paragraph (1) must first file an acknowledgment of service.

(3) An application under this rule must be made within the period for filing a defence.

- Rule 10.3 sets out the period for filing a defence.

- (4) An application under this rule must be supported by evidence on affidavit.

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- (5) A defendant who
- (a) files an acknowledgment of service; and
  - (b) does not make an application under this rule within the period for filing a defence;

is treated as having accepted that the court has jurisdiction to try the claim.

- (6) An order under this rule may also
- (a) discharge an order made before the claim was commenced or the claim form served;
  - (b) set aside service of the claim form; and
  - (c) strike out a statement of claim.
- (7) If, on application under this rule, the court does not make a declaration, it
- (a) may
    - (i) fix a date for a case management conference; or
    - (ii) treat the hearing of the application as a case management conference; and
  - (b) must make an order as to the period for filing a defence.
    - Part 26 sets out powers which the court may exercise on a case management conference.

(8) If a defendant makes an application under this rule, the period for filing a defence is extended until the time specified by the court under paragraph (7)(b) and such period may be extended only by an order of the court.

- Rule 10.3(4) deals with an application to stay proceedings where there is a binding agreement to arbitrate.

## **PART 10 – DEFENCE**

### **Contents of this Part**

Scope of this Part	Rule 10.1
The defendant – filing defence and consequences of not doing so	Rule 10.2
The period for filing defence	Rule 10.3
Service of copy of defence	Rule 10.4
Defendant’s duty to set out case	Rule 10.5
Special requirements applying to claims for personal injuries	Rule 10.6
Consequences of not setting out defence	Rule 10.7
Defence of tender	Rule 10.8
Reply to defence	Rule 10.9

### **10.1 Scope of this Part.**

The Rules in this Part set out the procedure for disputing the whole or part of a claim.

- Part 18 deals with the procedure for making a counterclaim.

**10.2 The defendant – filing defence and the consequences of not doing so.**

(1) A defendant who wishes to defend all or part of a claim must file a defence (which may be in Form 5).

(2) If

(a) a claim is commenced by a fixed date claim form in Form 2 and there is served with that claim form an affidavit instead of a statement of claim; or

(b) any rule requires the service of an affidavit;

the defendant may file an affidavit in answer instead of a defence.

(3) In this Part, the expression “**defence**” includes an affidavit filed under paragraph (2).

(4) A defendant who admits liability and wishes to be heard on the issue of quantum must file and serve a defence dealing with that issue.

(5) If a defendant fails to file a defence within the period for filing a defence, judgment for failure to defend maybe entered if Part 12 allows it.

- Part 14 deals with the procedure to admit all or part of the claim.

**10.3 The period for filing defence.**

(1) The general rule is that the period for filing a defence is the period of 28 days after the date of service of the claim form.

(2) If a claim form is issued in one Member State, Territory or circuit and served in another, the period is 42 days after the date of service of the claim form.

(3) If permission has been given under rule 8.2 for a claim form to be served without a statement of claim, the period for filing a defence is the period of 28 days after the service of the statement of claim.

(4) If the defendant within the period set out in paragraph (1), (2) or (3) makes an application under any relevant legislation relating to arbitration to stay the claim on the grounds that there is a binding agreement to arbitrate, the period for filing a defence is extended to 14 days after the determination of that application.

(5) The parties may agree to extend the period for filing a defence specified in paragraph (1), (2), (3) or (4).

(6) The parties may not make more than two agreements under paragraph (5).

(7) The maximum total extension of time that may be agreed is 56 days.

(8) The defendant must file details of such an agreement.

(9) A defendant may apply for an order extending the time for filing a defence.

(10) The general rule is subject to

(a) rule 5.17(4) (service of claim form on agent of overseas principal);

(b) rule 7.5(2) (service of claim form outside jurisdiction);



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- (c) rule 9.7 (procedure for disputing court's jurisdiction); and
- (d) rule 59.3 (claims against the Crown).

#### 10.4 **Service of copy of defence.**

On filing a defence, the defendant must also serve a copy on every other party.

#### 10.5 **Defendant's duty to set out case.**

(1) The defence must set out all the facts on which the defendant relies to dispute the claim.

(2) Such statement must be as short as practicable.

(3) In the defence the defendant must say which (if any) allegations in the claim form or statement of claim

- (a) are admitted;
- (b) are denied;
- (c) are neither admitted nor denied, because the defendant does not know whether they are true; and
- (d) the defendant wishes the claimant to prove.

(4) If the defendant denies any of the allegations in the claim form or statement of claim

- (a) the defendant must state the reasons for doing so; and
- (b) if the defendant intends to prove a different version of events from that given by the claimant, the defendant's own version must be set out in the defence.

(5) If, in relation to any allegation in the claim form or statement of claim, the defendant does not

- (a) admit it; or
- (b) deny it and put forward a different version of events;

the defendant must state the reasons for resisting the allegation.

(6) The defendant must identify in or annex to the defence any document which is considered to be necessary to the defence.

(7) A defendant who defends in a representative capacity must say

- (a) what that capacity is; and
- (b) whom the defendant represents.

(8) The defendant must verify the facts set out in the defence by a certificate of truth in accordance with rule 3.12.

**10.6 Special requirements applying to claims for personal injuries.**

(1) This rule sets out additional requirements with which a defendant to a claim for personal injuries must comply.

(2) If the claimant has attached to the claim form or statement of claim a report from a medical practitioner on the personal injuries which the claimant is alleged to have suffered, the defendant must state in the defence

- (a) whether all or any part of the medical report is agreed; and
- (b) if any part of the medical report is disputed, the nature of the dispute.

(3) If the defendant intends to rely on a report from a medical practitioner to dispute any part of the claimant's claim for personal injuries and the defendant has obtained such a report, the defendant must attach that report to the defence.

**10.7 Consequences of not setting out defence.**

(1) The defendant may not rely on any allegation or factual argument which is not set out in the defence, but which could have been set out there, unless the court gives permission.

(2) The court may give the defendant permission at the case management conference.

(3) The court may not give the defendant permission after the case management conference unless the defendant can satisfy the court that there has been a significant change in circumstances which became known only after the date of the case management conference.

**10.8 Defence of tender.**

- (1) The defence of tender is not available unless the defendant pays into
- (a) an interest bearing account with the agreement of the claimant or the permission of the court; or
  - (b) court;

the amount alleged to have been tendered within the period for filing a defence.

(2) If the claimant does not give notice accepting the payment into court within 28 days of service of the defence, the defendant may apply for payment out of the monies.

- Rule 10.3 states the period for filing a defence.
- Part 36 deals with payments into court.

**10.9 Reply to defence.**

- (1) A claimant may file or serve a reply to a defence
- (a) at any time not less than 14 days before the case management conference; or
  - (b) with the permission of the court given at the case conference.
    - Rule 18.9 deals with service of a defence to an ancillary claim.

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- (2) A reply must contain a certificate of truth in accordance with rule 3.12.
- (3) No further statement of case may be filed or served except in accordance with Part 18 or Part 34.

## **PART 11 – GENERAL RULES ABOUT APPLICATIONS FOR COURT ORDERS**

### **Contents of this Part**

Scope of this Part	Rule 11.1
Applicants and respondents	Rule 11.2
Applications to be dealt with at case management conference	Rule 11.3
Time when application is made	Rule 11.4
Where to make application	Rule 11.5
Application to be in writing	Rule 11.6
What application must include	Rule 11.7
Notice of application and evidence in support	Rule 11.8
Evidence in support of application	Rule 11.9
Contents of notice of application	Rule 11.10
Service of notice of application	Rule 11.11
Powers of court in relation to conduct of application	Rule 11.12
Consequence of not asking for order in application	Rule 11.13
Applications which may be dealt with without hearing	Rule 11.14
Service of application where order made on application made without notice	Rule 11.15
Applications to set aside or vary order made on application made without notice	Rule 11.16
Power of court to proceed in absence of party	Rule 11.17
Application to set aside order made in absence of party	Rule 11.18

#### **11.1 Scope of this Part.**

This Part deals with applications for court orders made before, during or after the course of proceedings.

#### **11.2 Applicants and respondents.**

In this Part,

“applicant” means a person who seeks a court order by making an application;

“respondent” means

- (a) the person against whom the order is sought and any other person on whom the applicant considers it just to serve the application; and
- (b) any other person whom the court directs is to be served with the application.

**11.3 Applications to be dealt with at case management conference.**

(1) So far as is practicable, all applications relating to pending proceedings must be listed for hearing at a case management conference or pre-trial review.

(2) If an application is made which could have been dealt with at a case management conference or pre-trial review the court must order the applicant to pay the costs of the application unless there are special circumstances.

**11.4 Time when application is made.**

If an application must be made within a specified period, it is so made if it is received by the court office or made orally to the court within that period.

**11.5 Where to make application.**

(1) The general rule is that an application must be made to the court office where the claim was issued.

(2) If the claim has been transferred to another court office the application must be made to that court office.

(3) An application made before a claim has been issued must be made to the court office where it is likely that the claim to which the application relates will be made.

**11.6 Application to be in writing.**

(1) The general rule is that an application must be in writing in Form 6.

(2) An application may be made orally if

(a) the court dispenses with the requirement for the application to be made in writing; or

(b) this is permitted by a rule or practice direction.

**11.7 What application must include.**

(1) An application must state

(a) briefly, the grounds on which the applicant is seeking the order; and

(b) what order the applicant is seeking.

(2) The applicant must file with the application or not less than 3 days before the hearing of the application a draft of the order sought and serve a copy on all respondents to whom notice is given.

(3) If the application is made without notice, the draft order must be filed with the application.

**11.8 Notice of application and evidence in support.**

(1) The general rule is that the applicant must give notice of the application to each respondent.

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(2) An applicant may make an application without giving notice if this is permitted by a

- (a) practice direction; or
- (b) rule.

(3) The applicant need not give evidence in support of an application unless it is required by a

- (a) court order;
- (b) practice direction; or
- (c) rule.

(4) Notice of the application must be included in the form used to make the application.

#### 11.9 Evidence in support of application.

Evidence in support of an application must be contained in an affidavit unless a

- (a) court order;
- (b) practice direction; or
- (c) rule;

otherwise provides.

- Part 30 deals with affidavit evidence.

#### 11.10 Contents of notice of application.

(1) The notice must state the date, time and place when the application is to be heard.

(2) If there is not going to be a hearing but notice of the application is required, the notice must state how the court will deal with the application.

- Rule 11.14 sets out the circumstances in which there may not be a hearing.

#### 11.11 Service of notice of application.

(1) The general rule is that a notice of an application must be served

- (a) as soon as practicable after the day on which it is issued; and
- (b) at least 7 days before the court is to deal with the application.

(2) The period in paragraph (1)(b) does not apply if any rule or practice direction specifies some other period for service.

(3) If notice of an application has been given, but the period of notice is shorter than the period required, the court may nevertheless direct that, in all the circumstances of the case, sufficient notice has been given and may accordingly deal with the application.

- (4) The notice must be accompanied by
  - (a) a copy of any draft order which the applicant has attached to the application; and
  - (b) any evidence in support.

(5) The notice must be served in accordance with Part 6 unless any respondent is not a party, in which case the notice must be served in accordance with Part 5.

#### **11.12 Powers of court in relation to conduct of application.**

- (1) The court may
  - (a) issue a witness summons requiring a party or other person to attend the court on the hearing of the application;
  - (b) question any party or witness at the hearing; and
  - (c) require a party to produce documents or things at the hearing.
- (2) The court may question a party or witness
  - (a) by putting written questions and asking the witness to give written answers; or
  - (b) orally.
- (3) Any party may then cross-examine the witness.

(4) The court may exercise any power which it might exercise at a case management conference.

#### **11.13 Consequence of not asking for order in application.**

An applicant may not ask at any hearing for an order which was not sought in the application unless the court gives permission.

#### **11.14 Applications which may be dealt with without hearing.**

The court may deal with an application without a hearing if

- (a) no notice of the application is required;
- (b) the court considers that the application can be dealt with over the telephone or by other means of communication;
- (c) the court does not consider that a hearing would be appropriate;
- (d) the parties agree; or
- (e) the parties have agreed to the terms of an order
  - (i) which does not come within rule 27.8(1); and
  - (ii) the application (or a copy of the application) is signed by the legal practitioners for all parties to the application.
    - Rules 2.7(3) and (4) contain powers to enable the court to deal with applications by electronic means.
    - Rule 42.7 deals with consent orders.

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**11.15 Service of application where order made on application made without notice.**

After the court has disposed of an application made without notice, the applicant must serve a copy of the application and any evidence in support on all other parties.

**11.16 Applications to set aside or vary order made on application made without notice.**

(1) A respondent to whom notice of an application was not given may apply to the court for any order made on the application to be set aside or varied and for the application to be dealt with again.

(2) A respondent must make such an application not more than 14 days after the date on which the order was served on the respondent.

(3) An order made on an application of which notice was not given must contain a statement telling the respondent of the right to make an application under this rule.

**11.17 Power of the court to proceed in absence of party.**

If the applicant or any person on whom the notice of application has been served fails to attend the hearing of the application, the court may proceed in the absence of that party.

**11.18 Application to set aside order made in absence of party.**

(1) A party who was not present when an order was made may apply to set aside or vary the order.

(2) The application must be made not more than 14 days after the date on which the order was served on the applicant.

(3) The application to set aside the order must be supported by evidence on affidavit showing

- (a) a good reason for failing to attend the hearing; and
- (b) that it is likely that had the applicant attended some other order might have been made.

**PART 12 – DEFAULT JUDGMENTS**

**Contents of this Part**

Scope of this Part	Rule 12.1
Claims in which default judgment may not be obtained	Rule 12.2
Cases in which permission is required	Rule 12.3
Conditions to be satisfied – judgment for failure to file acknowledgment of service	Rule 12.4
Conditions to be satisfied – judgment for failure to defend	Rule 12.5
Admission of part – request for time to pay	Rule 12.6
Procedure	Rule 12.7

**Contents of this Part**

Claim for specified sum of money	Rule 12.8
Claim against more than one defendant	Rule 12.9
Nature of default judgment	Rule 12.10
Interest	Rule 12.11
Costs	Rule 12.12
Defendant's rights following default judgment	Rule 12.13

**12.1 Scope of this Part.**

(1) This Part contains provisions under which a claimant may obtain judgment without trial where the defendant has failed to file

- (a) a defence in accordance with Part 10; or
- (b) an acknowledgment of service giving notice of intention to defend in accordance with Part 9.

(2) Such a judgment is called a “default judgment”.

**12.2 Claims in which default judgment may not be obtained.**

A claimant may not obtain default judgment if the claim is

- (a) a claim in probate proceedings;
- (b) a fixed date claim; or
- (c) an admiralty claim in rem.
  - Rule 68.6 deals with probate proceedings.
  - Rule 70.22 makes special provision for default judgment in admiralty cases for personal injury arising out of a collision between two ships.

**12.3 Cases in which permission is required.**

(1) A claimant who wishes to obtain a default judgment on any claim which is a claim against a

- (a) minor or patient as defined in rule 2.4; or
- (b) State as defined in any relevant enactment relating to state immunity;

must obtain the court's permission.

- Part 59 deals with proceedings against the Crown.
- Part 23 deals with proceedings involving a minor or patient.

(2) A claimant who wishes to obtain judgment in default of acknowledgment of service against a diplomatic agent who enjoys immunity from civil jurisdiction by virtue of any relevant enactment relating to diplomatic privileges must obtain the court's permission.



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(3) An application under paragraph (1) or (2) must be supported by evidence on affidavit.

- Rule 12.9(2) contains restrictions on a default judgment where it is sought against some but not all defendants.

**12.4 Conditions to be satisfied – judgment for failure to file acknowledgment of service.**

The court office, at the request of the claimant, must enter judgment for failure to file an acknowledgment of service if

- (a) the claimant proves service of the claim form and statement of claim;
- (b) the defendant has not filed
  - (i) an acknowledgment of service; or
  - (ii) a defence to the claim or any part of it;
- (c) the defendant has not satisfied in full the claim on which the claimant seeks judgment;
- (d) the only claim is for a specified sum of money, apart from costs and interest, and the defendant has not filed an admission of liability to pay all of the money claimed together with a request for time to pay it;
- (e) the period for filing an acknowledgment of service under rule 9.3 has expired; and
- (f) (if necessary) the claimant has the permission of the court to enter judgment.
  - Rules 5.5, 5.11, 5.12 and 5.15 deal with how to prove service of the claim form and statement of claim.

**12.5 Conditions to be satisfied – judgment for failure to defend.**

The court office, at the request of the claimant, must enter judgment for failure to defend if

- (a)
  - (i) the claimant proves service of the claim form and statement of claim; or
  - (ii) an acknowledgment of service has been filed by the defendant against whom judgment is sought;
- (b) the period for filing a defence and any extension agreed by the parties or ordered by the court has expired;
- (c) the defendant has not
  - (i) filed a defence to the claim or any part of it (or the defence has been struck out or is deemed to have been struck out under rule 22.1(6)); or

- (ii) (if the only claim is for a specified sum of money) filed or served on the claimant an admission of liability to pay all of the money claimed, together with a request for time to pay it; or
- (iii) satisfied the claim on which the claimant seeks judgment; and
- (d) (if necessary) the claimant has the permission of the court to enter judgment.

**12.6 Admission of part – request for time to pay.**

- (1) This rule deals with the situation where the
  - (a) defendant is an individual who has admitted liability to pay either
    - (i) a specified sum towards a claim for an unspecified sum of money; or
    - (ii) part only of a claim for a specified sum;
  - (b) defendant has not filed a defence; and
  - (c) claimant does not accept the sum admitted.
- (2) Subject to any restriction imposed by this Part, the claimant may apply for judgment to be entered for
  - (a) the whole amount of the claim for a specified sum together with interest and fixed costs under rule 65.4; or
  - (b) if the claim is for an unspecified sum, the payment of an amount to be decided by the court.
- (3) If the defendant has requested time to pay, that request must be dealt with, if the claim is for
  - (a) a specified sum, in accordance with rules 14.9 and 14.10 or 14.11;
  - (b) an unspecified sum, when damages are assessed in accordance with rule 16.3.

**12.7 Procedure.**

A claimant applies for default judgment by filing a request in Form 7.

- Rule 16.2 sets out additional information that must be provided where the claim is for an unspecified sum of money.

**12.8 Claim for specified sum of money.**

- (1) The fact that the claimant also claims costs and interest at a specified rate does not prevent a claim from being a claim for a specified sum of money.
- (2) A claimant who claims a specified sum of money together with interest at an unspecified rate may apply to have judgment entered for either the sum of money claimed
  - (a) and for interest to be assessed; or
  - (b) together with interest at the statutory rate from the date of the claim to the date of entering judgment.

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(3) If a claim is partly for a specified sum and partly for an unspecified sum the claimant may abandon the claim for the unspecified sum and enter default judgment for the specified sum.

- Rule 2.4 defines “claim for a specified sum of money”.

### 12.9 Claim against more than one defendant.

(1) A claimant may apply for default judgment on a claim for money or a claim for delivery of goods against one of two or more defendants and proceed with the claim against the other defendants.

(2) If a claimant applies for a default judgment against one of two or more defendants, then if the claim

- (a) can be dealt with separately from the claim against the other defendants
  - (i) the court may enter judgment against that defendant; and
  - (ii) the claimant may continue the proceedings against the other defendants;
- (b) cannot be dealt with separately from the claim against the other defendants, the court
  - (i) may not enter judgment against that defendant; and
  - (ii) must deal with the application at the same time as it disposes of the claim against the other defendants.

(3) If a claim for delivery of goods is made against more than one defendant (with or without any other claim), the claimant may not enforce any judgment for delivery entered under this Part against a defendant unless the

- (a) claimant has obtained a judgment for delivery (whether or not obtained under this Part) against all the defendants to the claim; or
- (b) court gives permission.

### 12.10 Nature of default judgment.

(1) Default judgment on a claim for

- (a) a specified sum of money, must be judgment for payment of that amount or, a part has been paid, the amount certified by the claimant as outstanding
  - (i) if the defendant has applied for time to pay under Part 14, at the time and rate ordered by the court; or
  - (ii) in all other cases, at the time and rate specified in the request for judgment;
    - Rule 2.4 defines “a claim for a specified sum of money” and sets out the circumstances under which a claim for the cost of repairing property damaged in a road accident can be treated as such a claim.
    - Part 65 deals with the quantification of costs.

- (b) an unspecified sum of money, must be judgment for the payment of an amount to be decided by the court;
  - Rule 16.2 deals with the procedure for assessment of damages where judgment is entered under this paragraph.
- (c) goods, must be
  - (i) judgment requiring the defendant either to deliver the goods or pay their value as assessed by the court;
  - (ii) judgment requiring the defendant to pay the value of the goods as assessed by the court; or
  - (iii) (if the court gives permission) a judgment requiring the defendant to deliver the goods without giving the defendant the alternative of paying their assessed value.

(2) An application for permission to enter a default judgment under paragraph (1)(c)(iii) must be supported by evidence on affidavit.

(3) A copy of the application and the evidence under paragraph (2) must be served on the defendant against whom judgment has been sought even though that defendant has failed to file an acknowledgment of service or a defence.

(4) Default judgment where the claim is for some other remedy shall be in such form as the court considers the claimant to be entitled to on the statement of claim.

(5) An application for the court to determine the terms of the judgment under paragraph (4) need not be on notice but must be supported by evidence on affidavit and rule 11.15 does not apply.

#### **12.11 Interest.**

(1) A default judgment must include judgment for interest for the period claimed if the

- (a) claim form includes a claim for interest;
- (b) claim form or statement of claim includes the details required by rule 8.6(4); and
- (c) request for default judgement states the amount of interest to the date it was filed.

(2) If the claim form includes any other claim for interest, the default judgment must include judgment for an amount of interest to be decided by the court.

#### **12.12 Costs.**

(1) A default judgment must include fixed costs under rule 65.4 unless the court assesses the costs.

- (2) An application to assess costs must be on notice to the defendant.
  - Rule 65.11 deals with the assessment of costs.

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### 12.13 Defendant's rights following default judgment.

Unless the defendant applies for and obtains an order for the judgment to be set aside, the only matters on which a defendant against whom a default judgment has been entered may be heard are:

- (a) an application under rule 12.10(4);
- (b) costs;
- (c) enforcement of the judgment; and
- (d) the time of payment of any judgment debt.
  - Part 13 deals with setting aside or varying default judgments.

## PART 13 – SETTING ASIDE OR VARYING DEFAULT JUDGMENT

### Contents of this Part

Scope of this Part	Rule 13.1
Cases where court must set aside default judgment	Rule 13.2
Cases where court may set aside or vary default judgment	Rule 13.3
Application to vary or set aside default judgment – procedure	Rule 13.4
Court to impose condition as to filing of defence	Rule 13.5
Hearing to be treated as case management conference	Rule 13.6
Abandoned claims to be restored if judgment set aside	Rule 13.7

### 13.1 Scope of this Part.

The Rules in this Part set out the procedure for setting aside or varying a default judgment entered under Part 12 (default judgments).

- Part 47 deals with variation of the terms of a judgment as to time and method of payment.

### 13.2 Cases where court must set aside default judgment.

(1) The court must set aside a judgment entered under Part 12 if judgment was wrongly entered because in the case of

- (a) a failure to file an acknowledgment of service, any of the conditions in rule 12.4 was not satisfied; or
- (b) judgment for failure to defend, any of the conditions in rule 12.5 was not satisfied.

(2) The court may set aside judgment under this rule on or without an application.

**13.3 Cases where court may set aside or vary default judgment.**

(1) If rule 13.2 does not apply, the court may set aside a judgment entered under Part 12 only if the defendant

- (a) applies to the court as soon as reasonably practicable after finding out that judgment had been entered;
- (b) gives a good explanation for the failure to file an acknowledgment of service or a defence as the case may be; and
- (c) has a real prospect of successfully defending the claim.

(2) If this rule gives the court power to set aside a judgment, the court may instead vary it.

- Rule 26.1(3) enables the court to attach conditions to any order.

**13.4 Applications to vary or set aside judgment – procedure.**

(1) An application to vary or set aside judgment may be made by any person who is directly affected by the entry of judgment.

- (2) The application must be supported by evidence on affidavit.
- (3) The affidavit must exhibit a draft of the proposed defence.

**13.5 Court to impose condition as to filing of defence.**

If judgment is set aside under rule 13.3, the general rule is that the order must be conditional upon the defendant filing and serving a defence by a specified date.

**13.6 Hearing to be treated as case management conference.**

(1) If judgment is set aside under rule 13.3, the court must treat the hearing as a case management conference unless it is not possible to deal with the matter justly at that time.

(2) If it is not possible to deal with the matter justly at that time, the court office must fix a date, time and place for a case management conference and give notice to the parties.

- Part 26 deals with the powers of the court on a case management conference.
- Part 27 deals with the procedure for case management conferences.

**13.7 Abandoned claims to be restored if judgment set aside.**

If the claimant has abandoned any remedy sought in the claim form in order to enter a default judgment, the abandoned claim is restored if judgment is set aside.

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## PART 14 – JUDGMENT ON ADMISSIONS

### Contents of this Part

Making an admission	Rule 14.1
Satisfaction	Rule 14.2
Admissions where party a minor or patient	Rule 14.3
Admission by notice in writing – application for judgment	Rule 14.4
Admission in whole or in part of money claim	Rule 14.5
Admission of whole of claim for specified sum of money	Rule 14.6
Admission of part of claim for money only	Rule 14.7
Admission of liability to pay whole of claim for unspecified sum of money	Rule 14.8
Requests for time to pay	Rule 14.9
Requests for time to pay – procedure where time and rate agreed	Rule 14.10
Requests for time to pay – procedure where time and rate not agreed	Rule 14.11
Right of redetermination	Rule 14.12
Variation of order	Rule 14.13

### 14.1 Making an admission.

- (1) A party may admit the truth of the whole or any part of any other party's case.
- (2) A party may do this by giving notice in writing (such as in a statement of case or by letter) before or after the issue of proceedings.
- (3) A defendant may admit the whole or part of a claim for money by filing an acknowledgment of service containing the admission.
- (4) The defendant may do this in accordance with the following rules:
  - (a) rule 14.6 (admission of whole of claim for specified sum of money);
  - (b) rule 14.7 (admission of part of claim for money only); or
  - (c) rule 14.8 (admission of liability to pay whole of claim for unspecified sum of money).
- (5) A defendant may file an admission under paragraph (4) at any time before a default judgement is entered, but the claimant may apply for assessed costs if the admission is filed after the time for filing an acknowledgement of service has expired.
  - Rule 9.3 specifies the time for filing an acknowledgment of service.
  - Rules 65.11 and .12 deal with assessed costs.

### 14.2 Satisfaction.

- (1) If the defendant pays the claimant the sum claimed, together with interest at the statutory rate (if claimed), and the fixed costs as set out on the claim form, within the period for filing an acknowledgment of service under rule 9.3, the
  - (a) claim is stayed; and
  - (b) claimant must forthwith file and serve a notice of discontinuance.

(2) Rule 37.6 (liability for costs) does not apply to a notice of discontinuance served under this rule.

(3) If the claimant does not file and serve a notice of discontinuance in accordance with paragraph (1) within 7 days of payment, the defendant may apply in writing to the court for the claim to be recorded as satisfied.

(4) The court office must serve a copy of the application on the claimant with a notice requiring the claimant to notify the court within 14 days whether the claimant disputes that the claim has been satisfied.

(5) If there is no dispute the court office must record that the claim has been satisfied.

(6) If the claimant disputes satisfaction, the court office must fix a hearing to consider the application and give not less than 7 days notice of the hearing to the claimant and defendant.

#### **14.3 Admissions where party a minor or patient.**

Judgment may not be entered on an admission if the

- (a) defendant is a minor or patient; or
- (b) claimant is a minor or patient and the admission is made under rule 14.7 or 14.8.
  - Rule 23.12 deals with compromise of claims made by or against a minor or patient.

#### **14.4 Admission by notice in writing – application for judgment.**

(1) If a party makes an admission under rule 14.1(2) (admission by notice in writing), any other party may apply for judgment on the admission.

(2) The terms of the judgment must be such as it appears to the court the applicant is entitled to on the admission.

#### **14.5 Admission in whole or in part of money claim.**

On receipt of an admission of the whole or part of a claim for money under rule 14.1(3), the court office must send a copy of the admission and any request for time to pay under rule 14.9 to the claimant.

#### **14.6 Admission of whole of claim for specified sum of money.**

- (1) This rule applies where the
  - (a) defendant admits the whole of the claim in the acknowledgment of service;
  - (b) defendant has not requested time to pay; and
  - (c) only remedy which the claimant is seeking is payment of a specified sum of money.



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- (2) The claimant may file a request for judgment in Form 8 for the amount claimed, interest and fixed costs under rule 65.4 and may specify the
  - (a) date on which the judgment debt is to be paid; or
  - (b) time and rate at which it is to be paid if by instalments.
- (3) The court office must enter judgment in accordance with the request.
  - Rule 2.4 defines “a claim for a specified sum of money” and sets out the circumstances under which a claim for the cost of repairing property damaged in a road accident can be treated as such a claim.

#### 14.7 Admission of part of claim for money only.

- (1) This rule applies where the
  - (a) only remedy which the claimant is seeking is payment of money;
  - (b) defendant admits a specified
    - (i) sum of money; or
    - (ii) proportion of a claim for an unspecified sum of money;in the acknowledgment of service or defence; and
  - (c) defendant has filed a defence as to the amount not admitted.
    - If the defendant does not file a defence the claimant will be entitled to default judgment in accordance with Rule 12.5.
- (2) The court office must serve a notice on the claimant requiring the claimant to file a notice stating that the
  - (a) amount or proportion admitted in satisfaction of the claim is accepted; or
  - (b) proceedings are to continue.
- (3) The claimant must
  - (a) file the notice under paragraph (2); and
  - (b) serve a copy on the defendant;within 14 days after service of the court’s notice.
- (4) If the claimant does not file the notice within 14 days after service of the court’s notice,
  - (a) the claim is stayed until the notice is filed; and
  - (b) any party may apply for the stay to be lifted.
- (5) If the defendant has not requested time to pay under rule 14.9, the claimant may file a request for judgment in Form 7 for the amount admitted, interest and fixed costs and may specify the
  - (a) date on which the judgment debt is to be paid; or
  - (b) time and rate at which it is to be paid by instalments.

(6) The court office must enter judgment in accordance with the request.

(7) If the claimant gives notice of acceptance of the defendant's admission of a specified proportion of a claim for an unspecified sum of money, the court must enter judgment for that proportion of an amount to be decided by the court and costs.

(8) If the claimant files notice under paragraph (2) that the claim is to continue, the court office must fix a date, time and place for a case management conference.

- Part 27 sets out the procedure relating to a case management conference.
- Rule 65.4 deals with fixed costs.

#### **14.8 Admission of liability to pay whole of claim for unspecified sum of money.**

(1) This rule applies where the

- (a) amount of the claim is not specified;
- (b) defendant admits liability in the acknowledgment of service to pay the whole of the claim and does not offer to pay a specified sum of money or proportion of the claim in satisfaction of the claim;
- (c) defendant has not requested time to pay under rule 14.9; and
- (d) only remedy the claimant seeks is the payment of money.

(2) The claimant may file a request for judgment in Form 7.

(3) The court office must enter judgment in accordance with the request.

(4) Judgment will be for an amount to be decided by the court and costs.

- Rule 16.3 deals with how the court decides the amount of the judgment.
- Part 65 deals with the quantification of costs.

#### **14.9 Requests for time to pay.**

(1) A defendant who

- (a) makes an admission under rules 14.6, 14.7 or 14.8; and
- (b) is an individual;

may make a request for time to pay.

(2) A request for time to pay is a proposal

- (a) about the date of payment; or
- (b) to pay by instalments at a rate specified in the request.

(3) The defendant's request for time to pay must be

- (a) accompanied by a statement of his or her financial position in the appropriate practice form; and
- (b) filed with the admission.

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(4) The statement under paragraph (3) (a) must be certified by the defendant as being correct and may be used as evidence of the defendant's financial position at the date it was signed in any subsequent proceedings with regard to enforcement of the judgment.

(5) If the

- (a) request for time to pay relates to a claim for an unspecified sum of money; and
- (b) court must assess damages under rule 14.8(4);

the court must deal with the request for time to pay when it assesses damages.

#### **14.10 Requests for time to pay – procedure where time and rate agreed.**

(1) This rule applies where the

- (a) only remedy which the claimant seeks is the payment of a sum of money together with interest and costs;
- (b) defendant
  - (i) admits the whole of a claim for a specified sum of money; or
  - (ii) offers to pay a specified sum; and
  - (iii) requests time to pay or makes an offer to pay by instalments; and
- (c) claimant in the request for judgment on the admission in Form 7 accepts the defendant's offer as to the amount, time and rate of payment.

(2) If this rule applies, judgment on the admission must be judgment for the specified sum of money admitted (less any payments made), interest and fixed costs under rule 65.4, to be paid at the agreed time and rate.

#### **14.11 Requests for time to pay – procedure where time and rate not agreed.**

(1) This rule applies where

- (a) the only remedy which the claimant seeks is the payment of a sum of money together with interest and costs;
- (b) the defendant
  - (i) admits the whole of a claim for a specified sum of money; or
  - (ii) offers to pay a specified sum; and
  - (iii) requests time to pay or makes an offer to pay by instalments; and
- (c) the claimant accepts the sum admitted but does not accept the defendant's offer as to the amount, time and rate of payment.

(2) If this rule applies, the claimant must state in the request for judgment in Form 7 the reasons for objecting to the defendant's proposals as to payment.

(3) The court must consider the defendant's request and the claimant's objections and enter judgment for the amount of the claim, interest and fixed costs under rule 65.4 on such terms as it sees fit.

(4) The general rule is that the court should enter judgment under paragraph (3) without a hearing.

(5) If the court decides to deal with the matter at a hearing, it must give the parties at least 7 days' notice of the hearing.

(6) If there is a hearing, the court must determine whether to make an order for the costs of the application and by whom the costs should be paid and assess such costs under rule 65.11.

- The claimant is entitled to fixed costs on the judgment in accordance with Part 65, Appendix A.

#### **14.12 Right of redetermination.**

(1) If the court has determined the time and rate of payment under rule 14.11 without a hearing, either party may apply for the decision to be redetermined by the court at a hearing.

(2) An application for redetermination must be made within 14 days after service of the judgment on the applicant.

(3) At the hearing the court may confirm the judgment or make such other order as to the time and rate of payments as it considers just.

(4) The court must determine whether to make an order for costs and by whom the costs should be paid and assess such costs under rule 65.11.

#### **14.13 Variation of order.**

(1) Either a claimant or a defendant may apply to vary an order made under this Part.

(2) An application by a defendant must be made in accordance with Part 47.

### **PART 15 – SUMMARY JUDGMENT**

#### **Contents of this Part**

Scope of this Part	Rule 15.1
Grounds for summary judgment	Rule 15.2
Types of proceedings for which summary judgment is not available	Rule 15.3
Procedure	Rule 15.4
Evidence for purpose of summary judgment hearing	Rule 15.5
Powers of court on application for summary judgment	Rule 15.6

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### 15.1 **Scope of this Part.**

This Part sets out a procedure by which the court may decide a claim or a particular issue without a trial.

### 15.2 **Grounds for summary judgment.**

The court may give summary judgment on the claim or on a particular issue if it considers that the

- (a) claimant has no real prospect of succeeding on the claim or the issue;  
or
- (b) defendant has no real prospect of successfully defending the claim or the issue.
  - Rule 26.3 gives the court power to strike out the whole or part of a statement of case if it discloses no reasonable ground for bringing or defending the claim.

### 15.3 **Types of proceedings for which summary judgment is not available.**

The court may give summary judgment in any type of proceedings except

- (a) admiralty proceedings in rem;
- (b) probate proceedings;
- (c) proceedings by way of fixed date claim;
- (d) proceedings for
  - (i) claims against the Crown;
  - (ii) defamation;
  - (iii) false imprisonment;
  - (iv) malicious imprisonment; and
  - (v) redress under the Constitution of any Member State or Territory.

### 15.4 **Procedure.**

(1) Notice of an application for summary judgment must be served not less than 14 days before the date fixed for hearing the application.

(2) The notice under paragraph (1) must identify the issues which it is proposed that the court should deal with at the hearing.

(3) The court may exercise its powers without such notice at any case management conference.

- Part 11 contains general rules about applications.

### 15.5 **Evidence for purpose of summary judgment hearing.**

(1) The applicant must

- (a) file affidavit evidence in support with the application; and
- (b) serve copies of the application and the affidavit evidence on each party against whom summary judgment is sought;

not less than 14 days before the date fixed for hearing the application.

- (2) A respondent who wishes to rely on evidence must
  - (a) file affidavit evidence; and
  - (b) serve copies on the applicant and any other respondent to the application;

at least 7 days before the summary judgment hearing.

### 15.6 Powers of court on application for summary judgment.

(1) The court may give summary judgment on any issue of fact or law whether or not the judgment will bring the proceedings to an end.

(2) If the proceedings are not brought to an end the court must also treat the hearing as a case management conference.

## **PART 16 – ASSESSMENT OF DAMAGES**

### **Contents of this Part**

Scope of this Part	Rule 16.1
Assessment of damages after default judgment	Rule 16.2
Assessment of damages after admission of liability on claim for unspecified sum of money	Rule 16.3
Assessment of damages after direction for trial of issue of quantum	Rule 16.4

### 16.1 Scope of this Part.

This Part deals with the procedure by which a hearing to assess damages is fixed.

### 16.2 Assessment of damages after default judgment.

(1) An application for a default judgment to be entered under rule 12.10(1) (b) must state

- (a) whether the claimant is in a position to prove the amount of the damages; and, if so
- (b) the claimant's estimate of the time required to deal with the assessment; or
- (c) that the claimant is not yet in a position to prove the amount of the damages.

(2) Unless the application states that the claimant is not in a position to prove the amount of damages, the court office must fix a date for the assessment of damages and give the claimant at least 14 days notice of the date, time and place fixed for the hearing.

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(3) A claimant who is not in a position to prove damages must state the period of time that will elapse before this can be done.

(4) The court office must then fix a period within which the assessment of damages will take place and a date on which a listing questionnaire is to be sent to the claimant.

- Rules 27.9 and 27.10 deal with listing questionnaires and the fixing of a date for a trial.

### **16.3 Assessment of damages after admission of liability on claim for unspecified sum of money.**

(1) This rule applies where the defendant has admitted liability for the whole or a specified proportion of a claim for an unspecified sum of money.

(2) An application for judgment to be entered for damages to be assessed on an admission under Part 14 must

- (a) state whether the claimant is in a position to prove the amount of damages; and, if so
- (b) give an estimate of the time required to deal with the assessment; or
- (c) state that the claimant is not yet in a position to prove the amount of damages.

(3) Unless the application states that the claimant is not in a position to prove the amount of damages, the court office must fix a date for the assessment of damages and give the parties at least 14 days notice of the date, time and place fixed for the hearing.

(4) A claimant who is not in a position to prove damages must state the period of time that will elapse before this can be done.

(5) The court office must then fix either

- (a) a case management conference and give notice to the parties; or
- (b) a period within which the assessment of damages will take place and a date on which a listing questionnaire is to be sent to the claimant.
  - Rules 27.9 and 27.10 deal with listing questionnaires and the fixing of a date for trial.

(6) The defendant is entitled to cross examine any witness called on behalf of the claimant and to make submissions to the court but is not entitled to call any evidence unless the defendant has filed a defence setting out the facts the defendant seeks to prove.

(7) The court must also deal with any request under Part 14 for time to pay.

### **16.4 Assessment of damages after direction for trial of issue of quantum.**

(1) This rule applies where the court makes a direction for the trial of an issue of quantum.

- (2) The direction may be given at
- (a) a case management conference;
  - (b) the hearing of an application for summary judgment; or
  - (c) the trial of the claim or of an issue, including the issue of liability.
- (3) On making such a direction, the court must exercise the powers of a case management conference and, in particular, may give directions about
- (a) disclosure under Part 28;
  - (b) service of witness statements under Part 29; and
  - (c) service of expert reports under Part 32.
- (4) The court must also fix
- (a) a date on which the court office is to send a listing questionnaire to the parties; and
  - (b) a period within which the assessment of damages is to commence.
    - Rules 27.9 and 27.10 deal with listing questionnaires and the fixing of a date for trial.

## PART 17 – INTERIM REMEDIES

### Contents of this Part

Orders for interim remedies	Rule 17.1
Time when an order for interim remedy may be made	Rule 17.2
How to apply for interim remedy	Rule 17.3
Interim injunctions and similar orders	Rule 17.4
Interim payments – general procedure	Rule 17.5
Interim payments – conditions to be satisfied and matters to be taken into account	Rule 17.6
Powers of court where it has made order for interim payment	Rule 17.7
Power of court to order early trial	Rule 17.8

### 17.1 Orders for interim remedies.

- (1) The court may grant interim remedies including
- (a) an interim declaration;
  - (b) an interim injunction;
  - (c) an order authorising a person to enter any land or building in the possession of a party to the proceedings for the purposes of carrying out an order under sub-paragraph (h);
  - (d) an order directing a party to prepare and file accounts relating to the dispute;



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- (e) an order directing a party to provide information about the location of relevant property or assets or to provide information about relevant property or assets which are or may be the subject of an application for a freezing order;
- (f) an order for a specified fund to be paid into court or otherwise secured where there is a dispute over a party's right to the fund;
- (g) an order for interim costs;
- (h) an order for the
  - (i) carrying out of an experiment on or with relevant property;
  - (ii) detention, custody or preservation of relevant property;
  - (iii) inspection of relevant property;
  - (iv) payment of income from relevant property until a claim is decided;
  - (v) sale of relevant property (including land) which is of a perishable nature or which for any other good reason it is desirable to sell quickly;
  - (vi) taking of a sample of relevant property;
- (i) an order permitting a party seeking to recover personal property to pay a specified sum of money into court pending the outcome of the proceedings and directing that, if the party does so, the property must be given up to the party;
- (j) an order (referred to as a “**freezing order**”) restraining a party from
  - (i) dealing with any asset whether located within the jurisdiction or not;
  - (ii) removing from the jurisdiction assets located there;
- (k) an order to deliver up goods;
- (l) an order (referred to as a “**search order**”) requiring a party to admit another party to premises for the purpose of preserving evidence, etc.;
- (m) an order (referred to as an “**order for interim payment**”) under rules 17.5 and 17.6 for payment by a defendant on account of any damages, debt or other sum which the Court may find the defendant liable to pay.

(2) In paragraph (1)(e) and (h), “**relevant property**” means property which is the subject of a claim or in relation to which any question may arise on a claim.

(3) The fact that a particular type of interim remedy is not listed in paragraph (1) does not affect any power that the court may have to grant that remedy.

(4) The court may grant an interim remedy whether or not there has been a claim for a final remedy of that kind.

(5) The Chief Justice may issue a practice direction as to the procedure for applying for an interim order including, in particular, interim injunctions, search orders and freezing orders.

### **17.2 Time when an order for interim remedy may be made.**

- (1) An order for an interim remedy may be made at any time, including
  - (a) after judgment has been given; or
  - (b) before a claim has been made.
- (2) Paragraph (1) is subject to any rule which provides otherwise.
- (3) The court may grant an interim remedy before a claim has been made only if
  - (a) the matter is urgent; or
  - (b) it is otherwise necessary to do so in the interests of justice.

(4) Unless the court otherwise orders, a defendant may not apply for any of the orders listed in rule 17.1(1) before filing an acknowledgment of service under Part 9.

(5) If the court grants an interim remedy before a claim has been issued, it must require an undertaking from the claimant to issue and serve a claim form by a specified date.

(6) If no claim has been issued the application must be made in accordance with the general rules about applications contained in Part 11.

### **17.3 How to apply for interim remedy.**

(1) An application for an interim remedy must be supported by evidence on affidavit unless the court otherwise orders.

(2) The court may grant an interim remedy on an application made without notice if it appears to the court that there are good reasons for not giving notice.

(3) The evidence in support of an application made without giving notice must state the reasons why notice has not been given.

### **17.4 Interim injunctions and similar orders.**

- (1) This rule deals with applications for
  - (a) a freezing order under rule 17.1(1)(j);
  - (b) a search order under rule 17.1(1)(l);
  - (c) an interim injunction under rule 17.1(1)(b);
  - (d) an order authorising a person to enter any land or building for the purpose of carrying out an order under paragraph (e); and
  - (e) an order for the detention, custody or preservation of relevant property under rule 17.1(1)(h)(ii).

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(2) Unless the court otherwise directs, a party applying for an interim order under this rule must undertake to abide by any order as to damages caused by the granting or extension of the order.

(3) An application for an interim order under this rule may, in the first instance, be made on 3 days notice to the respondent.

(4) The court may grant an interim order under this rule on an application made without notice for a period of not more than 28 days (unless any of these Rules permits a longer period) if it is satisfied that

- (a) in a case of urgency no notice is possible; or
- (b) to give notice would defeat the purpose of the application.

(5) On granting an order under paragraph (4) the court must

- (a) fix a date for further consideration of the application; and
- (b) fix a date (which may be later than the date under paragraph (a)) on which the injunction will terminate unless a further order is made on the further consideration of the application.

(6) When an order is made under paragraph (4), the applicant must, not less than 7 days before the date fixed for further consideration of the application, serve the respondent personally with

- (a) the application for an interim order;
- (b) the evidence on affidavit in support of the application;
- (c) any interim order made without notice; and
- (d) notice of the date and time on which the court will further consider the application.

(7) An application to extend an interim order under this rule must be made on notice to the respondent unless the court otherwise orders.

#### **17.5 Interim payments – general procedure.**

(1) The claimant may not apply for an order for an interim payment before the end of the period for entering an acknowledgment of service applicable to the defendant against whom the application is made.

- Rule 9.3 sets out the period for filing an acknowledgment of service.

(2) The claimant may make more than one application for an order for an interim payment even though an earlier application has been refused.

(3) Notice of an application for an order must be

- (a) served at least 14 days before the hearing of the application; and
- (b) supported by evidence on affidavit.

(4) The affidavit must

- (a) exhibit any documentary evidence relied on by the claimant in support of the application;

- (b) set out the grounds of the application;
- (c) state the claimant's assessment of the amount of damages or other monetary judgment that are likely to be awarded; and
- (d) if the claim is made under any relevant enactment in respect of injury resulting in death, contain full particulars of the
  - (i) nature of the claim in respect of which the damages are sought to be recovered; and
  - (ii) person or persons for whom and on whose behalf the claim is brought.

(5) If the respondent to an application for an interim payment wishes to rely on evidence or the claimant wishes to rely on evidence in reply, that party must

- (a) file the evidence on affidavit; and
- (b) serve copies on every other party to the application;

at least 7 days before the hearing of the application.

(6) The court may order an interim payment to be made in one sum or by instalments.

#### **17.6 Interim payments – conditions to be satisfied and matters to be taken into account.**

- (1) The court may make an order for an interim payment only if
  - (a) the defendant against whom the order is sought has admitted liability to pay damages or some other sum of money to the claimant;
  - (b) the claimant has obtained an order for an account to be taken as between the claimant and the defendant and for judgment for any amount certified due on taking the account;
  - (c) the claimant has obtained judgment against that defendant for damages to be assessed or for a sum of money (including costs) to be assessed;
  - (d) (except where paragraph (3) applies), it is satisfied that, if the claim went to trial, the claimant would obtain judgment against the defendant from whom an order for interim payment is sought for a substantial amount of money or for costs; or
  - (e) the following conditions are satisfied:
    - (i) the claimant is seeking an order for possession of land (whether or not any other order is also being sought); and
    - (ii) the court is satisfied that, if the case went to trial, the defendant would be held liable (even if the claim for possession fails) to pay the claimant a sum of money for rent or for the defendant's use and occupation of the land while the claim for possession was pending.

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(2) In addition, in a claim for personal injuries the court may make an order for the interim payment of damages only if the defendant is

- (a) a person whose means and resources are such as to enable that person to make the interim payment;
- (b) insured in respect of the claim; or
- (c) a public authority.

(3) In a claim for damages for personal injuries where there are two or more defendants, the court may make an order for the interim payment of damages against any defendant if

- (a) it is satisfied that, if the claim went to trial, the claimant would obtain judgment for substantial damages against at least one of the defendants (even if the court has not yet determined which of them is liable); and
- (b) paragraph (2) is satisfied in relation to each defendant.

(4) The court must not order an interim payment of more than a reasonable proportion of the likely amount of the final judgment.

(5) The court must take into account

- (a) contributory negligence (where applicable); and
- (b) any relevant set-off or counterclaim.

#### **17.7 Powers of court where it has made order for interim payment.**

(1) If a defendant has been ordered to make an interim payment, or has voluntarily made an interim payment, the court may make an order to adjust the interim payment.

(2) The court may, in particular,

- (a) order a defendant to reimburse, either in whole or in part, another defendant who has made an interim payment;
- (b) order all or part of the interim payment to be repaid; and
- (c) vary or discharge the order for interim payment.

(3) The court may make an order under this rule

- (a) on an application by a party made at any time; or
- (b) without an application by a party if it makes the order when it disposes of the claim or any part of it.

#### **17.8 Power of court to order early trial.**

On hearing any application under this Part, the court may exercise any of its case management powers under Parts 26 and 27 and may, in particular, give directions for an early trial of the claim or any part of the claim.

## PART 18 – ANCILLARY CLAIMS

### Contents of this Part

Meaning of ancillary claim	Rule 18.1
Ancillary claim to be treated as claim for purposes of these Rules	Rule 18.2
Defendant’s claim for contribution or indemnity from co-defendant	Rule 18.3
Procedure for making ancillary claim	Rule 18.4
Service of ancillary claim form	Rule 18.5
Counterclaim may survive claim	Rule 18.6
Restrictions on right to make counterclaim or set-off in proceedings by or against Crown	Rule 18.7
Adding other defendants to counterclaim	Rule 18.8
Defence to ancillary claim	Rule 18.9
Matters relevant to whether ancillary claim should be dealt with separately from main claim	Rule 18.10
Effect of service of ancillary claim form	Rule 18.11
Special provisions relating to judgment on failure to file defence to ancillary claim	Rule 18.12
Procedural steps on service of ancillary claim form on person who is not party	Rule 18.13
Case management where there is defence to ancillary claim	Rule 18.14

### 18.1 Meaning of ancillary claim.

(1) An “**ancillary claim**” is any claim other than a claim by a claimant against a defendant or a claim for a set off contained in a defence and includes

- (a) a claim by a defendant against any person (whether or not already a party) for contribution or indemnity or some other remedy;
- (b) a claim by an ancillary defendant against any other person (whether or not already a party); and
- (c) a counterclaim by a defendant against the claimant or against the claimant and some other person.

(2) In this Part,

“ancillary claimant” means a person who makes an ancillary claim; and

“ancillary defendant” means the defendant to that claim.

(3) If an ancillary defendant makes an ancillary claim against a further person that person is to be called the “**second** (or as the case may be) **ancillary defendant**”.

### 18.2 Ancillary claim to be treated as claim for purposes of these Rules.

(1) An ancillary claim is to be treated as if it were a claim for the purposes of these Rules except as provided by this rule.

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(2) Particulars of an ancillary claim must be contained in or served with the ancillary claim form in Form 9.

(3) An ancillary claim form must include

- (a) the ancillary claimant's address for service in accordance with rule 3.11; and
- (b) a certificate of truth in accordance with rule 3.12.

(4) The following rules do not apply to ancillary claims:

- (a) rules 8.12 and 8.13 (time within which a claim may be served);
- (b) Part 12 (default judgments); and
- (c) Part 14 (admissions) other than rule 14.1(1) and (2), 14.3 and 14.4.

(5) If the ancillary claim is a counterclaim by the defendant against a claimant (with or without any other person) the claimant is not required to file an acknowledgment of service and therefore Part 9 (acknowledgment of service) does not apply to the claimant.

### **18.3 Defendant's claim for contribution or indemnity from co-defendant.**

(1) A defendant who has filed an acknowledgment of service or a defence may make an ancillary claim for contribution or indemnity against another defendant by

- (a) filing a notice containing a statement of the nature and grounds of the claim; and
- (b) serving the notice on the other defendants.

(2) Rule 18.4 does not apply to an ancillary claim under this rule.

- Part 9 deals with filing an acknowledgment of service.
- Part 10 deals with filing a defence.

### **18.4 Procedure for making ancillary claim.**

(1) A defendant may make an ancillary claim (other than a claim falling within rule 18.3) without the court's permission if,

- (a) in the case of a counterclaim, it is filed with the defence; or
- (b) in any other case, the ancillary claim form is filed before the case management conference.

(2) Where paragraph (1) does not apply an ancillary claim may be made only if the court gives permission.

(3) An application for permission under paragraph (2) may be made without notice unless the court directs otherwise.

(4) The applicant must attach to the application a draft of the proposed ancillary claim form and ancillary statement of claim.

(5) The court may give permission at the case management conference.

(6) The court may not give permission after the first case management conference to any person who was a party at the time of that conference unless it is satisfied that there has been a significant change in circumstances which became known after the case management conference.

(7) The ancillary claim is made,

- (a) in the case of a counterclaim, when it is filed; and
- (b) in any other case, when the court issues the ancillary claim form.

### **18.5 Service of ancillary claim form.**

(1) An ancillary claim which may be made without the court's permission must be served on the person against whom it is made within 14 days after the date the defendant files a defence.

(2) If the court gives permission to make an ancillary claim it must at the same time give directions as to the service of the ancillary claim form.

(3) A copy of the ancillary claim form and ancillary statement of claim (if any) must be served on all other parties.

### **18.6 Counterclaim may survive claim.**

The defendant may continue a counterclaim if the

- (a) court gives judgment on the claim for the claimant and does not dismiss the counterclaim; or
- (b) claim is stayed, discontinued or dismissed.

### **18.7 Restrictions on right to make counterclaim or set-off in proceedings by or against the Crown.**

(1) A counterclaim may not be made or set-off pleaded in proceedings by the Crown if the

- (a) proceedings are for the recovery of; or
- (b) counterclaim or set-off arises out of;

a right or claim to repayment in respect of any tax, duty or penalty.

(2) A counterclaim may not be made or set-off pleaded in any other proceedings by or against the Crown without the permission of the court or the consent of the Attorney-General.

### **18.8 Adding other defendants to counterclaim.**

(1) The defendant who alleges that another person as well as the claimant is liable on the counterclaim may add that other person as a defendant to the counterclaim.

(2) If a person so added is not already a party, the defendant must add the person's name to the title of the claim as "defendant to the counterclaim".

- Rule 18.13 deals with the documents to be served on a defendant who is not already a party.



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### 18.9 Defence to ancillary claim.

- (1) A person against whom an ancillary claim is made may file a defence.
- (2) The period for filing a defence is the period of 28 days after the date of service of the ancillary claim.
- (3) The Rules relating to a defence to a claim apply to a defence to an ancillary claim except Part 12 (default judgments).
- (4) An ancillary defence must include
  - (a) a certificate of truth in accordance with rule 3.12; and
  - (b) the ancillary defendant's address for service in accordance with rule 3.11.

### 18.10 Matters relevant to question whether ancillary claim should be dealt with separately from main claim.

- (1) This rule applies when the court is considering whether to
  - (a) dismiss an ancillary claim;
  - (b) permit an ancillary claim to be made; or
  - (c) require the ancillary claim to be dealt with separately from the claim.
    - Rules 26.1 (d) and (e) deal with the court's power to decide the order in which issues are to be tried or to order that part of the proceedings be dealt with separately.
- (2) The court must have regard to all the circumstances of the case including
  - (a) the connection between the ancillary claim and the claim;
  - (b) whether the ancillary claimant is seeking substantially the same remedy which some other party is claiming from the ancillary claimant;
  - (c) whether the ancillary claimant wants the court to decide any question connected with the subject matter of the proceedings
    - (i) not only between the existing parties but also between existing parties and the proposed ancillary claim defendant; or
    - (ii) to which the proposed ancillary defendant is already a party but also in some further capacity; and
  - (d) whether the facts in the ancillary claim are substantially the same, or closely connected with, the facts in the claim.

### 18.11 Effect of service of ancillary claim form.

- (1) A person on whom an ancillary claim form (other than a counterclaim) is served becomes a party to the proceedings if that person is not already a party.

(2) When an ancillary claim form is served on an existing party for the purpose of requiring the court to decide a question against that party in a further capacity, that party also becomes a party in the further capacity specified in the notice.

**18.12 Special provisions relating to judgment on failure to file defence to ancillary claim.**

(1) This rule applies if the party against whom an ancillary claim is made fails to file a defence in respect of the ancillary claim within the permitted time.

- Rule 18.9(2) deals with the time for filing a defence to an ancillary claim.

(2) The party against whom the ancillary claim is made

- (a) is deemed to admit the ancillary claim, and is bound by any judgment or decision in the main proceedings in so far as it is relevant to any matter arising in the ancillary claim;
- (b) subject to paragraph (5), if judgment under Part 12 is given against the ancillary claimant, may apply to enter judgment in respect of the ancillary claim.

(3) Paragraph (2) does not apply in ancillary proceedings against the Crown unless the court gives permission.

(4) An application for the court's permission under paragraph (3) may be made without notice unless the court directs otherwise.

(5) The ancillary claimant may not enter judgment under paragraph (2)(b) if the ancillary claimant wishes to obtain judgment for any remedy other than a contribution or indemnity for a sum not exceeding that for which judgment has been entered against the ancillary claimant.

(6) The court may at any time set aside or vary a judgment entered under paragraph (2) if it is satisfied that the ancillary defendant

- (a) applied to set aside or vary the judgment as soon as reasonably practicable after finding out that judgment had been entered;
- (b) gives a good explanation for the failure to file a defence; and
- (c) has a real prospect of successfully defending the ancillary claim.

**18.13 Procedural steps on service of ancillary claim form on person who is not a party.**

An ancillary claimant who serves an ancillary claim form on a person who is not already a party must also serve on that person a copy of

- (a) every statement of case which has already been served in the proceedings; and
- (b) such other documents as the court may direct.

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#### 18.14 Case management where there is defence to ancillary claim.

(1) If a defence is filed to an ancillary claim the court must consider the future conduct of the proceedings and give appropriate directions.

(2) The court must fix a case management conference for all parties unless it is satisfied that such further directions as are required can be given in written form.

(3) In giving directions under this rule the court must ensure that, so far as is practicable, the ancillary claim and the main claim are managed together.

### PART 19 – ADDITION AND SUBSTITUTION OF PARTIES

#### Contents of this Part

Scope of this Part	Rule 19.1
Change of parties – general	Rule 19.2
Procedure for adding and substituting parties	Rule 19.3
Special provisions about adding or substituting parties after end of relevant limitation period	Rule 19.4

#### 19.1 Scope of this Part.

This Part deals with the addition or substitution of parties after proceedings have been commenced.

#### 19.2 Change of parties – general.

(1) A claimant may add a new defendant to proceedings without permission at any time before the case management conference.

(2) The claimant does so by filing at the court office an amended claim form and statement of claim, and Parts 5 (service of claim within jurisdiction), 7 (service of court process out of jurisdiction), 9 (acknowledgment of service and notice of intention to defend), 10 (defence) and 12 (default judgments) apply to the amended claim form as they do to a claim form.

- Part 18 deals with counterclaims and the adding of additional parties by a defendant.

- (3) The court may add a new party to proceedings without an application if
- (a) it is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings; or
  - (b) there is an issue involving the new party which is connected to the matters in dispute in the proceedings and it is desirable to add the new party so that the court can resolve that issue.

(4) The court may order any person to cease to be a party if it considers that it is not desirable for that person to be a party to the proceedings.

- (5) The court may order a new party to be substituted for an existing one if the
  - (a) court can resolve the matters in dispute more effectively by substituting the new party for the existing party; or
  - (b) existing party's interest or liability has passed to the new party.
- (6) The court may add, remove or substitute a party at the case management conference.
- (7) The court may not add a party (except by substitution) after the case management conference on the application of an existing party unless that party can satisfy the court that the addition is necessary because of some change in circumstances which became known after the case management conference.

### **19.3 Procedure for adding and substituting parties.**

- (1) The court may add, substitute or remove a party on or without an application.
- (2) An application for permission to add, substitute or remove a party may be made by
  - (a) an existing party; or
  - (b) a person who wishes to become a party.
- (3) An application for an order under rule 19.2(5) (substitution of new party where existing party's interest or liability has passed) may be made without notice but must be supported by evidence on affidavit.
- (4) A person may not be added or substituted as a claimant unless that person's written consent is filed with the court office.
- (5) An order for the addition, substitution or removal of a party must be served on
  - (a) all parties to the proceedings;
  - (b) any party added or substituted; and
  - (c) any other person affected by the order.
- (6) If the court makes an order for the removal, addition or substitution of a party, it must consider whether to give consequential directions about
  - (a) filing and serving the claim form and any statements of case on any new defendant;
  - (b) serving relevant documents on the new party; and
  - (c) the management of the proceedings; andsubject to such directions, rule 19.2(2) applies.
- (7) If the
  - (a) court makes an order for the addition or substitution of a new defendant; and
  - (b) claim form is served on the new defendant;

these Rules apply to the new defendant as they apply to any other defendant.

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**19.4 Special provisions about adding or substituting parties after end of relevant limitation period.**

- (1) This rule applies to a change of parties after the end of a relevant limitation period.
- (2) The court may add or substitute a party only if the
  - (a) addition or substitution is necessary; and
  - (b) relevant limitation period was current when the proceedings were started.
- (3) The addition or substitution of a party is necessary only if the court is satisfied that the
  - (a) claim cannot properly be carried on by or against an existing party unless the new party is added or substituted as claimant or defendant;
  - (b) interest or liability of the former party has passed to the new party; or
  - (c) new party is to be substituted for a party who was named in the claim form in mistake for the new party.

**PART 20 – CHANGES TO STATEMENTS OF CASE**

**Contents of this Part**

Changes to statements of case	Rule 20.1
Changes to statements of case after end of relevant limitation period	Rule 20.2

**20.1 Changes to statements of case.**

- (1) A party may change a statement of case at any time before the case management conference without the court's permission unless the change is one to which
  - (a) rule 19.4 (special provisions about changing parties after the end of a relevant limitation period); or
  - (b) rule 20.2 (changes to statements of case after the end of a relevant limitation period);applies.
- (2) An application for permission to change a statement of case may be made at the case management conference.
- (3) The court may not give permission to change a statement of case after the first case management conference unless the party wishing to make the change can satisfy the court that the change is necessary because of some change in the circumstances which became known after the date of that case management conference.
- (4) The party amending a statement of case must forthwith
  - (a) file at the court office the amended statement of case endorsed with a certificate of service; and
  - (b) serve a copy on all other parties.

(5) An amended statement of case must include a certificate of truth in accordance with rule 3.12.

## **20.2 Changes to statements of case after end of relevant limitation period.**

(1) This rule applies to a change in a statement of case after the end of a relevant limitation period.

(2) The court may allow an amendment the effect of which will be to add or substitute a new claim but only if the new claim arises out of the same or substantially the same facts as a claim in respect of which the party wishing to change the statement of case has already claimed a remedy in the proceedings.

(3) The court may allow an amendment to correct a mistake as to the name of a party but only where the mistake was

- (a) genuine; and
- (b) not one which would in all the circumstances cause reasonable doubt as to the identity of the party in question.

(4) The court may allow an amendment to alter the capacity in which a party claims.

- Rule 19.4 specifies the circumstances in which the court may allow a new party to be added or substituted after the end of a relevant limitation period.

## **PART 21 – REPRESENTATIVE PARTIES**

### **Contents of this Part**

Representative claimants and defendants – general	Rule 21.1
Appointment of representative claimant or defendant – procedure	Rule 21.2
Consequence of order appointing representative party	Rule 21.3
Representation of persons who cannot be ascertained, etc. in proceedings about estates, trusts and construction of written instruments	Rule 21.4
Compromise in proceedings to which rule 21.4 applies	Rule 21.5
Representation of beneficiaries by trustees	Rule 21.6
Proceedings against estate of deceased person	Rule 21.7
Power of court to give directions to enable proceedings to be carried on after party's death	Rule 21.8
Power of court to strike out claim after death of claimant	Rule 21.9

### **21.1 Representative claimants and defendants – general.**

(1) This rule applies to any proceedings, other than proceedings falling within rule 21.4, in which 5 or more persons have the same or a similar interest.

(2) The court may appoint

- (a) a body having a sufficient interest in the proceedings; or
- (b) one or more of those persons;

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to represent all or some of the persons with the same or similar interest.

- (3) A representative under this rule may be either a claimant or a defendant.

**21.2 Appointment of representative claimant or defendant – procedure.**

(1) An application for an order appointing a representative party may be made at any time, including a time before proceedings have been started.

- (2) An application for such an order may be made by any

- (a) party;
- (b) person or body who wishes to be appointed as a representative party;  
or
- (c) person who is likely to be a party to proceedings.

- (3) An application for such an order must

- (a) be supported by affidavit evidence; and
- (b) identify every person to be represented, either
  - (i) individually; or
  - (ii) by description, if it is not practicable to identify a person individually.

(4) An application to appoint a representative defendant must be on notice to the claimant.

(5) An application to appoint a representative claimant may be made without notice.

(6) The court may direct that notice of an application be given to such other persons as it thinks fit.

(7) If the court directs that a person not already a party is to be a representative defendant, it must make an order adding that person as a defendant.

**21.3 Consequence of order appointing representative party.**

(1) If there is a representative claimant or defendant, an order of the court binds everyone whom that party represents.

(2) It may not however be enforced against a person not a party to the proceedings unless the person wishing to enforce it obtains permission from the court.

(3) An application for permission must be supported by evidence on affidavit and must be served on the person against whom it is wished to enforce the judgment.

**21.4 Representation of persons who cannot be ascertained, etc. in proceedings about estates, trusts and construction of written instruments.**

- (1) This rule applies only to proceedings about

- (a) the construction of a written instrument;
- (b) the estate of someone who is deceased; or
- (c) property subject to a trust.

(2) The court may appoint one or more persons to represent any person or class of persons (including an unborn person or persons) who is or may be interested in or affected by the proceedings (whether presently or for any future, contingent or unascertained interest) where

- (a) the person, or the class or some member of it, cannot be ascertained or cannot readily be ascertained;
- (b) the person, or the class or some member of it, though ascertained cannot be found; or
- (c) it is expedient to do so for any other reason.

(3) An application for an order to appoint a representative party under this rule may be made by any

- (a) party; or
- (b) person who wishes to be appointed as a representative party.

(4) A representative appointed under this rule may be either a claimant or a defendant.

(5) A decision of the court binds everyone whom a representative claimant or representative defendant represents.

#### **21.5 Compromise in proceedings to which rule 21.4 applies.**

- (1) If
  - (a) a compromise is proposed in proceedings to which rule 21.4 applies;
  - (b) some of the persons who are interested in, or who may be affected by the compromise are not parties to the proceedings;
  - (c) those persons are represented by a representative appointed under rule 21.4 when the court considers the proposed compromise; and
  - (d) the court is satisfied that the compromise will be for the benefit of the absent persons;

the court may approve the compromise.

(2) The persons for whose benefit the court may approve a compromise may be unborn or unascertained.

(3) The court's order approving the compromise binds the absent persons unless it has been obtained by fraud or non-disclosure of material facts.

#### **21.6 Representation of beneficiaries by trustees.**

(1) A claim may be made by or against a person in that person's capacity as a trustee, executor or administrator.

(2) If a claim is so made, there is no need for a beneficiary also to be a party.

(3) The court may direct that notice of the proceedings be given to any beneficiary.



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(4) A decision of the court in such proceedings binds a beneficiary unless the court otherwise orders.

(5) The only grounds for an order that a decision is not binding on a beneficiary is that the trustee, executor or administrator

- (a) could not or, did not in fact, represent the interest of the beneficiary; or
- (b) has acted fraudulently.

#### **21.7 Proceedings against estate of deceased person.**

(1) If in any proceedings it appears that a deceased person was interested in the proceedings but the deceased person has no personal representatives, the court may make an order appointing someone to represent the deceased person's estate for the purpose of the proceedings.

(2) A person may be appointed as a representative if that person

- (a) can fairly and competently conduct proceedings on behalf of the estate; and
- (b) has no interest adverse to that of the estate;

of the deceased person.

(3) The court may make such an order on or without an application.

(4) Until the court has appointed someone to represent the deceased person's estate, the claimant may take no step in the proceedings apart from applying for an order to have a representative appointed under this rule.

(5) A decision in proceedings in which the court has appointed a representative under this rule binds the estate to the same extent as if the person appointed were an executor or administrator of the deceased person's estate.

#### **21.8 Power of court to give directions to enable proceedings to be carried on after party's death.**

(1) If a party to proceedings dies, the court may give directions to enable the proceedings to be carried on.

(2) An order under this rule may be made on or without an application.

#### **21.9 Power of court to strike out claim after death of claimant.**

(1) If a claimant dies and the claimant's personal representatives do not apply for an order under rule 19.3 to be substituted as claimants, the defendant may apply for the claim to be struck out.

(2) Notice of the application must be given to the personal representatives of the claimant (if any) and such other persons as the court directs.

(3) The general rule is that if the court makes an order on an application under this rule it will be that unless the personal representatives or some other persons on behalf

of the estate apply to be substituted under rule 19.3 or for directions under rule 21.8 by a specified date, the claim is to be struck out.

(4) The court may give directions under rule 21.8 at the hearing of an application under this rule.

## **PART 22 – MISCELLANEOUS RULES ABOUT PARTIES**

### **Contents of this Part**

Partners	Rule 22.1
Person carrying on business in another name	Rule 22.2
Bodies corporate	Rule 22.3

### **22.1 Partners.**

(1) Persons claiming to be entitled, or alleged to be liable as partners may sue or be sued in the firm's name if

- (a) the firm's name is the name of the firm in which they were partners; and
- (b) they carried on business in that name within the jurisdiction, when the right to claim arose.

(2) If partners sue or are sued in the firm's name, they must, if any other party so demands in writing, immediately

- (a) deliver to that party; and
- (b) file;

a statement of the names and residential addresses of all the persons who were partners in the firm when the right to claim arose.

(3) If they do not comply, the court, on application by any other party, may order them to provide such a statement and to certify it to the court.

- (4) An application under paragraph (3) may be made without notice.
- (5) The party making the application must

- (a) certify that the other party has not complied;
- (b) certify that the party has made a demand in writing; and
- (c) state the date of the demand.

(6) If the partners do not comply within 21 days after service of the order any claim or defence brought by them is deemed to be struck out.

- Rule 26.5 deals with the procedure for striking out a statement of case.

(7) A duly authorised employee of a partnership or firm may

- (a) conduct proceedings on behalf of the partnership or firm; or
- (b) represent it in court with the court's permission.

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(8) Permission under paragraph (7) (b) is to be given or refused at a case management conference.

- Rule 43.9 deals with enforcement of a judgment against a partnership or by a firm against one of its members.

## 22.2 Person carrying on business in another name.

(1) A claim may be made by or against a person

- carrying on business within the jurisdiction; or
- who was carrying on business within the jurisdiction when the right to claim arose
  - in that person's own name;
  - in that person's own name, followed by the words "trading as X.Y.";
  - as "X.Y." followed by the words "a trading name"; or
  - as "X.Y." followed by the words "a firm".

(2) If a claim is made by or against a person in his or her business name, the Rules about claims by or against partners apply as if that person had been a partner in a firm when the right to claim arose and the business name were the firm's name.

## 22.3 Bodies corporate.

(1) Subject to any statutory provision to the contrary, a duly authorised director or other officer of a body corporate may conduct proceedings on its behalf.

(2) A body corporate must be represented by a legal practitioner at any hearing in open court unless the court permits it to be represented by a duly authorised director or other officer.

(3) Permission to represent the body corporate at the trial should, wherever practicable, be sought at a case management conference or pre-trial review.

(4) In considering whether to give permission the court must take into account all the circumstances including the complexity of the case.

(5) In paragraphs (1) and (2), "duly authorised" means authorised by the body corporate to conduct the proceedings on its behalf.

## PART 23 – MINORS AND PATIENTS

### Contents of this Part

Scope of this Part	Rule 23.1
Requirement of next friend in proceedings by or against minors or patients	Rule 23.2
Stage of proceedings at which next friend becomes necessary	Rule 23.3
Who may be minor's next friend	Rule 23.4
Who may be patient's next friend	Rule 23.5

**Contents of this Part**

Conditions for being next friend	Rule 23.6
How person becomes next friend without court order	Rule 23.7
How person becomes next friend by court order	Rule 23.8
Court's power to terminate appointment of and substitute next friend	Rule 23.9
Appointment of next friend by court order – supplementary	Rule 23.10
Procedure where appointment as next friend ceases	Rule 23.11
Compromise, etc. on behalf of minor or patient	Rule 23.12
Control of money recovered by or on behalf of minor or patient	Rule 23.13

**23.1 Scope of this Part.**

## (1) This Part

- (a) contains special provisions which apply in proceedings involving minors and patients; and
- (b) sets out how a person becomes a minor's or patient's next friend.
  - Rule 5.10 contains provisions about the service of documents on minors and patients.
  - Rule 14.3 contains restrictions on entering judgment on an admission where a party is a minor or patient.

(2) In this Part, "Act" means any relevant enactment relating to Mental Health and in St. Lucia includes the relevant provisions of the Civil Code (Cap. 242).

**23.2 Requirement of next friend in proceedings by or against minors or patients.**

(1) The general rule is that a minor or patient must have a next friend to conduct proceedings on his or her behalf.

(2) The court may, on the application of a minor, make an order permitting the minor to conduct proceedings without a next friend.

## (3) An application for an order under paragraph (2)

- (a) may be made by the minor;
- (b) if the minor has a next friend, must be on notice to that next friend; and
- (c) if there is no next friend, may be made without notice.

## (4) If

- (a) the court has made an order under paragraph (2); and
- (b) it subsequently appears to the court that it is desirable for a next friend to conduct the proceedings on behalf of the minor;

the court may appoint a person to be the minor's next friend.

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(5) A next friend must act by a legal practitioner unless the court otherwise orders.

(6) The next friend must sign any certificate of truth under rule 3.12 on behalf of the minor or patient.

### **23.3 Stage of proceedings at which next friend becomes necessary.**

(1) A minor or patient must have a next friend in order to issue a claim except where the court has made an order under rule 23.2(2).

(2) A person may not

(a) make any application against a minor or patient before proceedings have started; or

(b) take any step in proceedings except

(i) applying for the appointment of a next friend under rule 23.8, until the minor or patient has a next friend; or

(ii) issuing and serving a claim form against a minor or patient.

(3) If a person other than a minor becomes a patient during proceedings, any party may not take any step in the proceedings apart from applying to the court for the appointment of a next friend until the patient has a next friend.

(4) Any step other than an application under

(a) rule 23.2(2); or

(b) paragraph (2)(b);

taken before a minor or patient has a next friend is of no effect unless the court otherwise orders.

### **23.4 Who may be minor's next friend.**

(1) A person who satisfies the conditions set out in rule 23.6 may act as a minor's next friend without a court order, unless the court

(a) has already appointed a next friend; or

(b) makes or has made an order under rule 23.9 (court's power to terminate appointment of and substitute next friend).

(2) In Saint Lucia the curator appointed under the Civil Code (Cap. 242) is to act as the next friend of a minor unless the court otherwise orders.

### **23.5 Who may be patient's next friend.**

(1) Unless the court appoints some other person, a person authorised under the Act to conduct legal proceedings in the name of the patient or on the patient's behalf is entitled to be the next friend of the patient in any proceedings to which the authority extends.

(2) Where nobody has been appointed by the court or authorised under the Act, a person who satisfies the conditions set out in rule 23.6 may be a patient's next friend without a court order.

(3) In Saint Lucia the curator appointed under the Civil Code (Cap. 242) is to act as the next friend of a patient unless the court otherwise orders.

### **23.6 Conditions for being next friend.**

A person may act as a next friend if that person

- (a) can fairly and competently conduct proceedings on behalf of the minor or patient; and
- (b) has no interest adverse to that of the minor or patient.

### **23.7 How person becomes next friend without court order.**

(1) Where the court has not appointed a next friend, a person who wishes to act as next friend must follow the procedure set out in this rule.

(2) A person authorised under the Act must file an official copy of the order or other document which constitutes that person's authorisation to act.

(3) Any other person must file a certificate that that person satisfies the conditions specified in rule 23.6.

- (4) A person who is to act as a next friend for a claimant must file the
- (a) authorisation; or
  - (b) certificate under paragraph (3);

at the time when the claim is made.

- (5) A person who is to act as a next friend for a defendant must file the
- (a) authorisation; or
  - (b) certificate under paragraph (3);

at the time when the next friend first takes a step in the proceedings on behalf of the defendant.

- (6) The next friend must
- (a) serve a copy of the certificate under paragraph (3) on every person on whom in accordance with rule 5.10 (service on minors and patients) the claim form should be served; and
  - (b) file an affidavit of service.

### **23.8 How person becomes next friend by court order.**

(1) The court may make an order appointing a next friend with or without an application.

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- (2) An application for an order appointing a next friend may be made by a
- (a) party; or
  - (b) person;

who wishes to be a next friend.

- (3) If
- (a) a person makes a claim against a minor or patient;
  - (b) the minor or patient has no next friend; and
  - (c) either
    - (i) someone who is not entitled to be a next friend files a defence; or
    - (ii) the claimant wishes to take some step in the proceedings;

the claimant must apply to the court for an order appointing a next friend for the minor or patient.

(4) An application for an order appointing a next friend must be supported by evidence on affidavit.

(5) The court may not appoint a next friend under this rule unless it is satisfied that the person to be appointed complies with the conditions specified in rule 23.6.

### **23.9 Court's power to terminate appointment of and substitute next friend.**

- (1) The court may
- (a) appoint a new next friend in substitution for an existing one;
  - (b) direct that a person may not act as a next friend; or
  - (c) terminate a next friend's authority to act.

(2) The court may make an order under paragraph (1) with or without an application.

(3) An application for an order under paragraph (1) must be supported by evidence on affidavit.

(4) The court may not appoint a next friend under this rule unless it is satisfied that the person to be appointed complies with the conditions specified in rule 23.6.

### **23.10 Appointment of next friend by court order – supplementary.**

(1) An application for an order under rule 23.8 or 23.9 must be served on every person on whom, in accordance with rule 5.10 (service on minors or patients) the claim form should have been served.

(2) An application for an order under rule 23.9 (courts power to terminate appointment of and substitute next friend) must also be served on the person who

- (a) is or purports to act as next friend; and
- (b) it is proposed should act as next friend if that person is not the applicant.

(3) On an application for an order under rule 23.8 or 23.9, the court may appoint the person proposed or any other person.

### **23.11 Procedure where appointment as next friend ceases.**

(1) The appointment of a minor's next friend ceases when a minor who is not a patient reaches the age of majority.

(2) When a party, other than a minor, ceases to be a patient during the course of proceedings, the next friend's appointment continues until it is ended by court order.

(3) An application for an order under paragraph (2) may be made by

- (a) a party; and
- (b) the former patient; or
- (c) the next friend; and

must be supported by evidence on affidavit.

(4) The minor or patient in respect of whom the appointment to act has ceased must serve notice on the other parties

- (a) giving an address for service;
- (b) stating that the appointment of the next friend has ceased; and
- (c) stating whether or not he or she chooses to carry on the proceedings.

(5) If the notice is not served within 28 days after the appointment of the next friend ceases the court may, on application, strike out any claim or defence brought or filed by the minor or patient.

(6) The liability of a next friend for costs continues until the

- (a) minor or patient serves the notice referred to in paragraph (4); or
- (b) next friend serves notice on the other parties that the appointment has ceased.

### **23.12 Compromise, etc. by or on behalf of minor or patient.**

(1) If a claim is made

- (a) against a minor or patient; or
- (b) by or on behalf of a minor or patient;

any settlement, compromise or payment and any acceptance of money is not valid, so far as it relates to the claim by, on behalf of, or against the minor or patient, without the approval of the court.

(2) If

- (a) before proceedings in which a claim is to be made by or on behalf of a minor or patient (whether alone or with any other person) are begun, an agreement is reached for the settlement of the claim; and



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- (b) the sole purpose of proceedings on that claim is to obtain the approval of the court to a settlement or compromise of the claim;
- the claim may be made by a fixed date claim form (Form 2) which may
- (i) be issued jointly by the claimant and defendant; and
  - (ii) include a request to the court for approval of the settlement.

### 23.13 Control of money recovered by or on behalf of minor or patient.

- (1) If, in any proceedings, money
  - (a) is recovered by or on behalf of or for the benefit of a minor or patient;  
or
  - (b) paid into court is accepted by or on behalf of a minor or patient;that money must be dealt with in accordance with directions given by the court under this rule and not otherwise.
- (2) Directions given under this rule may provide that the money must be wholly or partly paid into court and invested or otherwise dealt with.

## PART 24 – SECURITY FOR COSTS

### Contents of this Part

Scope of this Part	Rule 24.1
Application for order for security for costs	Rule 24.2
Conditions to be satisfied	Rule 24.3
Security for costs against counter-claiming defendant	Rule 24.4
Enforcing order for security for costs	Rule 24.5

### 24.1 Scope of this Part.

This Part deals with the power of the court to require a claimant to give security for the costs of the defendant.

- Additional provision is made in relevant enactments relating to limited companies for security to be ordered against an insolvent claimant company.

### 24.2 Application for order for security for costs.

- (1) A defendant in any proceedings may apply for an order requiring the claimant to give security for the defendant's costs of the proceedings.
- (2) Where practicable such an application must be made at a case management conference or pre-trial review.
- (3) An application for security for costs must be supported by evidence on affidavit.
- (4) The amount and nature of the security shall be such as the court thinks fit.

**24.3 Conditions to be satisfied.**

The court may make an order for security for costs under rule 24.2 against a claimant only if it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order, and that

- (a) some person other than the claimant has contributed or agreed to contribute to the claimant's costs in return for a share of any money or property which the claimant may recover;
- (b) the claimant
  - (i) failed to give his or her address in the claim form;
  - (ii) gave an incorrect address in the claim form; or
  - (iii) has changed his or her address since the claim was commenced; with a view to evading the consequences of the litigation;
- (c) the claimant has taken steps with a view to placing the claimant's assets beyond the jurisdiction of the court;
- (d) the claimant is acting as a nominal claimant, other than as a representative claimant under Part 21, and there is reason to believe that the claimant will be unable to pay the defendant's costs if ordered to do so;
- (e) the claimant is an assignee of the right to claim and the assignment has been made with a view to avoiding the possibility of a costs order against the assignor;
- (f) the claimant is an external company; or
- (g) the claimant is ordinarily resident out of the jurisdiction.

**24.4 Security for costs against counter-claiming defendant.**

Rules 24.2 and 24.3 apply where a defendant makes a counterclaim as if references in those rules

- (a) to a claimant, were references to a defendant making a counterclaim;
- (b) to a defendant, were references to a claimant defending a counterclaim.

**24.5 Enforcing order for security for costs.**

On making an order for security for costs the court must also order that

- (a) the claim (or counterclaim) be stayed until such time as security for costs is provided in accordance with the terms of the order;
- (b) if security is not provided in accordance with the terms of the order by a specified date, the claim (or counterclaim) be struck out.

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## PART 25 – CASE MANAGEMENT – THE OBJECTIVE

### Contents of this Part

Court's duty to actively manage cases Rule 25.1

#### 25.1 Court's duty to actively manage cases.

The court must further the overriding objective by actively managing cases, and this may include

- (a) actively encouraging and assisting parties to settle the whole or part of their case on terms that are fair to each party;
- (b) considering whether the likely benefits of taking a particular step will justify the cost of taking it;
- (c) dealing with as many aspects of the case as is practicable on the same occasion;
- (d) dealing with as many aspects of the case, as it appears appropriate to do, without requiring the parties to attend court;
- (e) deciding promptly which issues need full investigation and trial and accordingly disposing summarily of the others;
- (f) deciding the order in which issues are to be resolved;
- (g) encouraging the parties to co-operate with each other in the conduct of proceedings;
- (h) encouraging the parties to use any appropriate form of dispute resolution including, in particular, mediation, if the court considers it appropriate and facilitating the use of such procedures;
- (i) ensuring that no party gains an unfair advantage by reason of that party's failure to give full disclosure of all relevant facts prior to the trial or the hearing of any application;
- (j) fixing timetables or otherwise controlling the progress of the case;
- (k) giving directions to ensure that the trial of the case proceeds quickly and efficiently;
- (l) identifying the issues at an early stage; and
- (m) making appropriate use of technology.
  - Part 1 sets out the overriding objective.

## PART 26 – CASE MANAGEMENT – THE COURT'S POWERS

### Contents of this Part

Court's general powers of management Rule 26.1  
Court's power to make orders of its own initiative Rule 26.2  
Sanctions – striking out statement of case Rule 26.3  
Court's general power to strike out statement of case Rule 26.4

**Contents of this Part**

Judgment without trial after striking out	Rule 26.5
Setting aside judgment after striking out	Rule 26.6
Court's powers in cases of failure to comply with rules, etc.	Rule 26.7
Relief from sanctions	Rule 26.8
General power of court to rectify matters where there has been a procedural error	Rule 26.9

**26.1 Court's general powers of management.**

(1) The list of powers in this rule is in addition to any powers given to the court by any other rule, practice directions or any enactment.

- (2) Except where these rules provide otherwise, the court may
- (a) adjourn or bring forward a hearing to a specific date;
  - (b) consolidate proceedings;
  - (c) deal with a matter without the attendance of any of the parties;
  - (d) decide the order in which issues are to be tried;
  - (e) direct a separate trial of any issue;
  - (f) direct that any evidence be given in written form;
  - (g) direct that notice of any proceedings or application be given to any person;
  - (h) direct that part of any proceedings (such as a counterclaim or other ancillary claim) be dealt with as separate proceedings;
  - (i) dismiss or give judgment on a claim after a decision on a preliminary issue;
  - (j) exclude an issue from determination if the court can do substantive justice between the parties on the other issues and determines it would therefore serve no worthwhile purpose;
  - (k) extend or shorten the time for compliance with any rule, practice direction, order or direction of the court even if the application for an extension is made after the time for compliance has passed;
  - (l) give the conduct of any matter to any person it thinks fit and make any appropriate consequential order about costs;
  - (m) hold a hearing and receive evidence by telephone or use any other method of direct oral communication;
  - (n) instead of holding an oral hearing deal with a matter on written representations submitted by the parties;
  - (o) require any party or a party's legal practitioner to attend the court;
  - (p) require the maker of an affidavit or witness statement to attend for cross-examination;

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- (q) stay the whole or part of any proceedings generally or until a specified date or event;
  - (r) transfer proceedings to the Family Court or the District or Magistrate's Court;
  - (s) transfer the whole or any part of any proceedings to another court office from the court office of one Member State, Territory or circuit;
  - (t) try two or more claims on the same occasion;
  - (u) where there is a substantial inequality in the proven financial position of each party, order any party having the greater financial resources who applies for an order to pay the other party's costs of complying with the order in any event;
  - (v) where two or more parties are represented by the same legal practitioner,
    - (i) direct that they be separately represented;
    - (ii) if necessary, adjourn any hearing to a fixed date to enable separate representation to be arranged; and
    - (iii) make any consequential order as to costs thrown away; and
  - (w) take any other step, give any other direction, or make any other order for the purpose of managing the case and furthering the overriding objective.
- (3) When the court makes an order or gives a direction, it may make the order or direction subject to conditions.
- (4) The conditions which the court may impose include a condition
- (a) requiring a party to give an undertaking;
  - (b) requiring a party to give security;
  - (c) requiring a party to pay all or part of the costs of the proceedings;
  - (d) requiring the payment of money into court or as the court may direct; and
  - (e) that a party permit entry to property owned or occupied by that party to another party or someone acting on behalf of another party.
- (5) In considering whether to make an order, the court may take into account whether a party is prepared to give an undertaking.
- (6) In special circumstances on the application of a party the court may dispense with compliance with any of these rules.

## 26.2 Court's power to make orders of its own initiative.

- (1) Except where a rule or other enactment provides otherwise, the court may exercise its powers on an application or of its own initiative.

(2) If the court proposes to make an order of its own initiative, it must give any party likely to be affected a reasonable opportunity to make representations.

(3) The opportunity may be to make representations orally, in writing, telephonically or by any other means as the court considers reasonable.

(4) If the court proposes to

- (a) make an order of its own initiative; and
- (b) hold a hearing to decide whether to do so;

the court office must give each party likely to be affected by the order at least 7 days' notice of the date, time and place of the hearing.

### **26.3 Sanctions – striking out statement of case.**

(1) In addition to any other power under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court that

- (a) there has been a failure to comply with a rule, practice direction, order or direction given by the court in the proceedings;
- (b) the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim;
- (c) the statement of case or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings; or
- (d) the statement of case or the part to be struck out is prolix or does not comply with the requirements of Part 8 or 10.

(2) If

- (a) the court has struck out a claimant's statement of case;
- (b) the claimant is ordered to pay costs to the defendant; and
- (c) before those costs are paid, the claimant starts a similar claim against the same defendant based on substantially the same facts;

the court may, on the application of the defendant, stay the subsequent claim until the costs of the first claim have been paid.

### **26.4 Court's general power to strike out statement of case.**

(1) If a party has failed to comply with any of these rules or any court order in respect of which no sanction for non-compliance has been imposed, any other party may apply to the court for an "unless order".

(2) Such an application may be made without notice but must be supported by evidence on affidavit which

- (a) contains a certificate that the other party is in default;
- (b) identifies the rule or order which has not been complied with; and
- (c) states the nature of the breach.

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(3) The court office must refer any such application immediately to a judge, master or registrar who may

- (a) grant the application;
- (b) direct that an appointment be fixed to consider the application and that the court office give to all parties notice of the date, time and place for such appointment; or
- (c) seek the views of the other party.

(4) If an appointment is fixed, the court must give 7 days notice of the date, time and place of the appointment to all parties.

(5) An “unless order” must identify the breach and require the party in default to remedy the default by a specified date.

(6) The general rule is that the respondent should be ordered to pay the assessed costs of such an application.

(7) If the defaulting party fails to comply with the terms of any “unless order” made by the court that party’s statement of case shall be struck out.

(8) Rule 26.9 (general power of the court to rectify matters where there has been a procedural error) shall not apply.

- Rule 11.16 deals with applications to set aside any order made on an application made without notice.

#### **26.5 Judgment without trial after striking out.**

(1) This rule applies where the court makes an order which includes a term that the statement of case of a party be struck out if the party does not comply with the “unless order” by the specified date.

(2) If the party against whom the order was made does not comply with the order, any other party may ask for judgment to be entered and for prescribed costs appropriate to the stage that the proceedings have reached.

(3) A party may obtain judgment under this rule by filing a request for judgment.

(4) The request must

- (a) certify that the right to enter judgment has arisen because the court’s order was not complied with;
- (b) prove service of the “unless order”; and
- (c) state the facts which entitle the party to judgment.

(5) If the party wishing to obtain judgment is the claimant and the claim is for

- (a) an amount of money to be decided by the court;
- (b) a specified sum of money;
- (c) delivery of goods and the claim form gives the defendant the alternative of paying their value; or
- (d) any combination of these remedies;

judgment must be in accordance with the terms of the statement of claim plus any interest and costs after giving credit for any payment that may have been made.

(6) If the party wishing to obtain judgment is the claimant and the claim is for some other remedy, the judgment must be such as the court considers that the claimant is entitled to.

(7) If the party wishing to obtain judgment is a defendant, judgment must be for assessed costs.

(8) If a decision of the court is necessary in order to decide the terms of the judgment, the party making the request must apply for directions.

- Part 65 deals with the quantification of costs.

#### **26.6 Setting aside judgment entered after striking out.**

(1) A party against whom the court has entered judgment under rule 26.5 when the right to enter judgment had not arisen may apply to the court to set it aside.

(2) If the right to enter judgment had not arisen at the time when judgment was entered, the court must set aside judgment.

(3) If the application to set aside is made for any other reason, rule 26.8 (relief from sanctions) applies.

#### **26.7 Court's powers in cases of failure to comply with rules, etc.**

(1) If the court makes an order or gives directions, the court must, whenever practicable, also specify the consequences of failure to comply.

(2) If a party has failed to comply with any of these rules, a direction or any order, any sanction for non-compliance imposed by the rule, direction or the order has effect unless the party in default applies for and obtains relief from the sanction, and rule 26.9 does not apply.

(3) If a rule, practice direction or order

- (a) requires a party to do something by a specified date; and
- (b) specifies the consequences of failure to comply;

the time for doing the act in question may not be extended by agreement between the parties.

#### **26.8 Relief from sanctions.**

(1) An application for relief from any sanction imposed for a failure to comply with any rule, order or direction must be

- (a) made promptly; and
- (b) supported by evidence on affidavit.



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- (2) The court may grant relief only if it is satisfied that
  - (a) the failure to comply was not intentional;
  - (b) there is a good explanation for the failure; and
  - (c) the party in default has generally complied with all other relevant rules, practice directions, orders and directions.
- (3) In considering whether to grant relief, the court must have regard to
  - (a) the effect which the granting of relief or not would have on each party;
  - (b) the interests of the administration of justice;
  - (c) whether the failure to comply has been or can be remedied within a reasonable time;
  - (d) whether the failure to comply was due to the party or the party's legal practitioner; and
  - (e) whether the trial date or any likely trial date can still be met if relief is granted.
- (4) The court may not order the respondent to pay the applicant's costs in relation to any application for relief unless exceptional circumstances are shown.

**26.9 General power of court to rectify matters where there has been a procedural error.**

- (1) This rule applies only where the consequence of failure to comply with a rule, practice direction, court order or direction has not been specified by any rule, practice direction or court order.
- (2) An error of procedure or failure to comply with a rule, practice direction, court order or direction does not invalidate any step taken in the proceedings, unless the court so orders.
- (3) If there has been an error of procedure or failure to comply with a rule, practice direction, court order or direction, the court may make an order to put matters right.
- (4) The court may make such an order on or without an application by a party.

**PART 27 – CASE MANAGEMENT CONFERENCES – PROCEDURE**

**Contents of this Part**

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Case management conference	Rule 27.3
Attendance at case management conference or pre-trial review	Rule 27.4
Orders to be made at case management conference	Rule 27.5

**Contents of this Part**

Dispensing with case management conference in simple and urgent proceedings	Rule 27.6
Adjournment of case management conference	Rule 27.7
Variation of case management timetable	Rule 27.8
Listing questionnaire	Rule 27.9
Fixing trial date	Rule 27.10

**27.1 Scope of this Part.**

This Part deals with the procedures by which the court will manage cases.

**27.2 Fixed date claims – first hearing.**

(1) When a fixed date claim is issued the court must fix a date for the first hearing of the claim.

(2) On that hearing, in addition to any other powers that the court may have, the court shall have all the powers of a case management conference.

(3) The court may, however, treat the first hearing as the trial of the claim if it is not defended or it considers that the claim can be dealt with summarily.

(4) The general rule is that the court must give at least 14 days notice of any first hearing.

(5) The general rule is subject to any rule or statutory provision which specifies a different period.

(6) The court may on or without an application direct that shorter notice be given

(a) if the parties agree; or

(b) in urgent cases.

(7) Unless the defendant files an acknowledgement of service the claimant must file evidence on affidavit of service of the claim form and the relevant documents specified in rule 5.2(3) at least 7 days before the first hearing.

**27.3 Case management conference.**

(1) The general rule is that the court office must fix a case management conference immediately upon the filing of a defence to a claim other than a fixed date claim.

(2) If the defendant files a defence and also an admission of a specified sum of money, the case management conference is not to be fixed until the claimant gives notice under rule 14.7(3) that the claim is to continue.

(3) The case management conference must take place not less than 4 weeks nor more than 8 weeks after the defence is filed (or notice is given under rule 14.7(3)) unless any rule or practice direction prescribes a shorter or longer period or the case is urgent.

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(4) Notwithstanding paragraph (3) a party may apply to the court to fix a case management conference before a defence is filed.

(5) The application may be without notice but must state the reasons for the application.

(6) The court office must give all parties not less than 14 days notice of the date, time and place of the case management conference.

(7) The court may with or without an application direct that shorter notice be given

- (a) if the parties agree; or
- (b) in urgent cases.

#### **27.4 Attendance at case management conference or pre-trial review.**

(1) If a party is represented by a legal practitioner, that legal practitioner or another legal practitioner who is authorised to negotiate on behalf of the client and competent to deal with the case must attend the case management conference and any pre-trial review.

(2) The general rule is that the party or a person who is in a position to represent the interests of the party (other than the legal practitioner) must attend the case management conference or pre-trial review.

(3) The court may dispense with the attendance of a party or representative (other than a legal practitioner).

(4) If the case management conference or pre-trial review is not attended by the legal practitioner and the party or a representative, the court may adjourn the case management conference or pre-trial review to a fixed date and may exercise any of its powers under Part 26 (case management – the court’s powers) or Part 64 (costs – general).

#### **27.5 Orders to be made at case management conference.**

(1) The general rule is that at a case management conference the court must consider whether to give directions for

- (a) service of experts’ reports (if any);
- (b) service of witness statements; and
- (c) standard disclosure and inspection;

by dates fixed by the court.

(2) The court may also give directions for the preparation of an agreed statement

- (a) as to any relevant specialist area of law;
- (b) of facts;
- (c) of issues; and
- (d) of the basic technical, scientific or medical matters in issue;

which statement does not bind the trial judge.

(3) The court must fix a date for a pre-trial review unless it is satisfied that having regard to the value, importance and complexity of the case it may be dealt with justly without a pre-trial review.

(4) The court must in any event fix the

- (a) date on which a listing questionnaire is to be sent by the court office to the parties; and
- (b) period within which the trial is to commence; or
- (c) trial date.

(5) The court office must serve an order containing the directions made on all parties and give notice of the

- (a) date of any pre-trial review;
- (b) date on which the listing questionnaire is to be sent out by the court office; and
- (c) trial date or trial period.

#### **27.6 Dispensing with case management conference in simple or urgent proceedings.**

(1) The court may, of its own volition or on the application of a party, make an order dispensing with a case management conference if it is satisfied that the

- (a) case can be dealt with justly without a case management conference;
- (b) case should be dealt with as a matter of urgency; or
- (c) cost of a case management conference is disproportionate to the value of the proceedings or the benefits that might be achieved from a case management conference.

(2) If the court dispenses with a case management conference, it must at the same time

- (a) fix a trial date or the period within which the trial is to take place;
- (b) give directions in writing about the preparation of the case; and
- (c) set a timetable for the steps to be taken before the date of trial.

(3) If the court dispenses with a case management conference, it may

- (a) dispense with a listing questionnaire under rule 27.9;
- (b) dispense with all or any of the requirements relating to the preparation and filing of bundles of documents under rule 39.1;
- (c) dispense with a pre-trial review under Part 38; and
- (d) give any other direction that will assist in the speedy and just trial of the claim, including any direction that might be given under Part 38.

#### **27.7 Adjournment of case management conference.**

(1) The court may not adjourn a case management conference without fixing a new date, time and place for the adjourned case management conference.

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- (2) If the court is satisfied that the parties are
  - (a) attending, or have arranged to attend, a form of ADR procedure; or
  - (b) in the process of negotiating, or are likely to negotiate a settlement;

the court may adjourn the case management conference to a suitable date, time and place to enable negotiations or the ADR procedure to continue.

- (3) If the case management conference is adjourned under paragraph (2) each party must notify the court office promptly if the claim is settled.

- (4) The court may give directions as to the preparation of the case for trial if the case management conference is adjourned.

- (5) So far as practicable any adjourned case management conference and procedural application made prior to a pre-trial review must be heard and determined by the judge, master or registrar who conducted the first case management conference.

#### **27.8 Variation of case management timetable.**

- (1) A party must apply to the court if that party wishes to vary a date which the court has fixed for

- (a) a case management conference;
- (b) a party to do something where the order specifies the consequences of failure to comply;
- (c) a pre-trial review;
- (d) the return of a listing questionnaire; or
- (e) the trial date or trial period.

- (2) Any date set by the court or these rules for doing any act may not be varied by the parties if the variation would make it necessary to vary any of the dates mentioned in paragraph (1).

- (3) A party seeking to vary any other date in the timetable without the agreement of the other parties must apply to the court, and the general rule is that the party must do so before that date.

- Rule 42.7 deals with consent orders.

- (4) A party who applies after that date must apply for
  - (a) an extension of time; and
  - (b) relief from any sanction to which the party has become subject under these Rules or any court order.

- Rule 26.8 provides for applications for relief from sanctions.

- (5) The parties may agree to vary a date in the timetable other than one mentioned in paragraph (1) or (2).

- (6) Where the parties so agree, they must
  - (a) file a consent application for an order to that effect; and
  - (b) certify on that application that the variation agreed will not affect the date fixed for the trial or, if no date has been fixed, the period in which the trial is to commence;

and the timetable is accordingly varied unless the court directs otherwise.

### **27.9 Listing questionnaire.**

(1) The court office must send the parties a listing questionnaire in Form 10 on the date fixed under rule 27.5(4)(a).

(2) Each party must file the completed listing questionnaire at the court office within the period of 21 days after the date on which it is served on that party.

(3) If

- (a) a party fails to

(i) give all the information requested by the listing questionnaire; or

(ii) return the completed questionnaire to the court office within the period of 21 days; or

- (b) the court considers that a hearing is necessary to enable it to decide what directions to give in order to complete the preparation of the case;

the court office may fix a listing appointment and direct any or all of the parties to attend the listing hearing.

(4) The court office must give all parties at least 7 days notice of the date, time and place of the listing hearing.

(5) Any party at fault must attend the listing hearing.

(6) At the listing hearing the court must

- (a) give any directions which may be needed to complete the preparation of the case for trial without any adjournment of the trial; and
- (b) if the listing appointment has been fixed under paragraph (3)(a), make a wasted costs order unless there is a special reason why it should not make such an order.

(7) Apart from the requirement to complete a listing questionnaire the court may at any time require the parties to answer a questionnaire to assist it in the management of the case.

### **27.10 Fixing trial date.**

(1) As soon as practicable after

- (a) each party has returned a completed listing questionnaire to the court office; or
- (b) the court has held a listing hearing under rule 27.9(3);

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the court office must fix the date of the trial (or, if it has already done so, confirm that date) and notify the parties.

(2) The general rule is that the court office must give the parties at least 8 weeks' notice of the date of the trial.

(3) The court may however give shorter notice

(a) if the parties agree; or

(b) in urgent cases.

## **PART 28 – DISCLOSURE AND INSPECTION OF DOCUMENTS**

### **Contents of this Part**

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Duty of disclosure limited to documents which are or have been in party's control	Rule 28.2
Disclosure of copies	Rule 28.3
Standard disclosure	Rule 28.4
Specific disclosure	Rule 28.5
Criteria for ordering specific disclosure	Rule 28.6
Procedure for disclosure	Rule 28.7
Duty of legal practitioner	Rule 28.8
Requirement for maker to certify understanding of duty of disclosure	Rule 28.9
Disclosure in stages	Rule 28.10
Inspection and copying of listed documents	Rule 28.11
Duty of disclosure continuous during proceedings	Rule 28.12
Consequence of failure to disclose documents under order for disclosure	Rule 28.13
Claim of right to withhold disclosure or inspection of document	Rule 28.14
Restriction on use of a privileged document inspection of which has been inadvertently allowed	Rule 28.15
Documents referred to in statements of case, etc.	Rule 28.16
Subsequent use of disclosed documents	Rule 28.17
Notice to prove document	Rule 28.18

### **28.1 Scope of this Part.**

(1) This Part sets out rules about the disclosure and inspection of documents.

(2) In this Part,

“copy”, in relation to a document, means anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly; and

“document” means anything on or in which information of any description is recorded.

(3) A party “**discloses**” a document by revealing that the document exists or has existed.

(4) For the purposes of this Part, a document is “**directly relevant**” if

- (a) the party with control of the document intends to rely on it;
- (b) it tends to adversely affect that party’s case; or
- (c) it tends to support another party’s case; but

the rule of law known as “the rule in *Peruvian Guano*” does not apply.

### **28.2 Duty of disclosure limited to documents which are or have been in party’s control.**

(1) A party’s duty to disclose documents is limited to documents which are or have been in the control of that party.

(2) For this purpose a party has or has had control of a document if

- (a) it is or was in the physical possession of the party;
- (b) the party has or has had a right to inspect or take copies of it; or
- (c) the party has or has had a right to possession of it.

### **28.3 Disclosure of copies.**

(1) Except where required by paragraph (2), a party need not disclose more than one copy of a document.

(2) A party must however disclose a copy if it contains a modification, obliteration or other marking or feature which is not present in the original or any copy of the document which is being disclosed.

### **28.4 Standard disclosure.**

If a party is required by any direction of the court to give standard disclosure, that party must disclose all documents which are directly relevant to the matters in question in the proceedings.

### **28.5 Specific disclosure.**

(1) An order for specific disclosure is an order that a party must do one or more of the following things:

- (a) disclose documents or classes of documents specified in the order;
- (b) carry out a search for documents to the extent stated in the order;
- (c) disclose any document located as a result of that search.

(2) An order for specific disclosure may be made on or without an application.

(3) An application for specific disclosure may be made without notice at a case management conference.



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- (4) An application for specific disclosure may identify documents
  - (a) by describing the class to which they belong; or
  - (b) in any other manner.

- (5) An order for specific disclosure may require disclosure only of documents which are directly relevant to one or more matters in issue in the proceedings.

#### 28.6 **Criteria for ordering specific disclosure.**

- (1) When deciding whether to make an order for specific disclosure, the court must consider whether specific disclosure is necessary in order to dispose fairly of the claim or to save costs.

- (2) The court must have regard to
  - (a) the likely benefits of specific disclosure;
  - (b) the likely cost of specific disclosure; and
  - (c) whether it is satisfied that the financial resources of the party against whom the order would be made are likely to be sufficient to enable that party to comply with any such order.

- (3) If, having regard to paragraph (2)(c), the court would otherwise refuse to make an order for specific disclosure, it may nonetheless make such an order on terms that the party seeking the order must pay the other party's costs of such disclosure in any event.

- (4) If the court makes an order under paragraph (3), it must assess the costs to be paid in accordance with rule 65.12.

- (5) The party in whose favour such order for costs was made may apply to vary the amount of costs so assessed.

#### 28.7 **Procedure for disclosure.**

- (1) Paragraphs (2) to (5) set out the procedure for disclosure.

- (2) Each party must make, and serve on every other party, a list of documents in Form 11.

- (3) The list must identify the documents or categories of documents in a convenient order and manner and as concisely as possible.

- (4) The list must state:
  - (a) what documents are no longer in the party's control;
  - (b) what has happened to those documents; and
  - (c) where each such document then is, to the best of the party's knowledge, information or belief.

- (5) The list must include documents already disclosed.

(6) A list of documents served by a company, firm, association or other organisation must:

- (a) state the name and position of the person responsible for identifying individuals who might be aware of any document which should be disclosed; and
- (b) identify those individuals who have been asked whether they are aware of any such documents and state the position of those individuals.

### **28.8 Duty of legal practitioner.**

The legal practitioner for a party must

- (a) explain to the maker of the list of documents the
  - (i) necessity of making full disclosure in accordance with the terms of the order for disclosure and these Rules; and
  - (ii) possible consequences of failing to do so; and
- (b) certify on the list of documents under rule 28.7(2) that the explanation required by sub-paragraph (a) has been given.

### **28.9 Requirement for maker to certify understanding of duty of disclosure.**

- (1) The maker of the list of documents must certify in the list of documents that
  - (a) the maker understands the duty of disclosure; and
  - (b) to the best of the knowledge of the maker the duty has been carried out.

(2) In the case of a list served on behalf of a company, firm, association or other organisation the certificate referred to in paragraph (1) must be made by the person identified in rule 28.7(6)(a).

(3) If it is impracticable for the maker of the list of documents to sign the certificate required by paragraph (1), it may be given by that person's legal practitioner.

- (4) A certificate given by the legal practitioner must also certify
  - (a) that the certificate is given on the instructions of the maker; and
  - (b) the reasons why it is impractical for the maker of the list of documents to give the certificate.

### **28.10 Disclosure in stages.**

The parties may agree in writing or the court may direct that disclosure or inspection or both may take place in stages.

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**28.11 Inspection and copying of listed documents.**

(1) When a party has served a list of documents on any other party, that party has a right to inspect any document on the list, except documents

- (a) for which a right to withhold from disclosure is claimed; or
- (b) which are no longer in the physical possession of the party who served the list.

(2) The party wishing to inspect the documents must give the party who served the list written notice of the wish to inspect documents in the list.

(3) The party who is to give inspection must permit inspection not more than 7 days after the date on which the notice is received.

(4) If the party giving the notice undertakes to pay the reasonable cost of copying, the party who served the list must supply the other with a copy of each document requested not more than 7 days after the date on which the notice was received.

**28.12 Duty of disclosure continuous during proceedings.**

(1) The duty of disclosure in accordance with any order for standard or specific disclosure continues until the proceedings are concluded.

(2) If documents to which that duty extends come to a party's notice at any time during the proceedings, that party must immediately notify every other party and serve a supplemental list of those documents.

(3) The supplemental list must be served not more than 14 days after the documents to which that duty extends have come to the notice of the party required to serve it.

**28.13 Consequence of failure to disclose documents under order for disclosure.**

(1) A party who fails to give disclosure by the date ordered, or to permit inspection, may not rely on or produce at the trial any document not so disclosed or made available for inspection.

(2) A party seeking to enforce an order for disclosure may apply to the court for an order that the other party's statement of case or some part of it be struck out.

(3) An application under paragraph (2) relating to an order for specific disclosure may be made without notice but must be supported by evidence on affidavit that the other party has not complied with the order.

(4) On an application under paragraph (2) the court may order that unless the party in default complies with the order for disclosure by a specific date that party's statement of case or some part of it be struck out.

- Rule 11.16 deals with applications to set aside order made on application without notice.
- Rule 26.5 deals with judgment without trial after striking out.
- Rule 26.8 deals with relief from sanctions.

**28.14 Claim of right to withhold disclosure or inspection of document.**

(1) A person who claims a right to withhold disclosure or inspection of a document or part of a document must

- (a) make such claim for the document; and
- (b) state the grounds on which such a right is claimed;

in the list or otherwise in writing to the person wishing to inspect the document.

(2) A person may however apply to the court, without notice, for an order permitting that person not to disclose the existence of a document on the ground that disclosure of the existence of the document would damage the public interest.

(3) A person who applies under paragraph (2) must

- (a) identify the document, documents or parts thereof for which a right to withhold disclosure is claimed; and
- (b) give evidence on affidavit showing

(i) that the applicant has a right or duty to withhold disclosure; and

(ii) the grounds on which the right or duty is claimed.

(4) Unless the court orders otherwise, an order of the court under paragraph (2) is not to be

- (a) open for inspection by; nor
- (b) served on;

any person.

(5) A person who does not agree with a claim of right to withhold inspection or disclosure of a document may apply to the court for an order that the document be disclosed or made available for inspection.

(6) On hearing such an application, the court must make an order that the document be disclosed unless it is satisfied that there is a right to withhold disclosure.

(7) If a person

- (a) applies for an order permitting that person not to disclose the existence of a document or part of a document; or
- (b) claims a right to withhold inspection;

the court may require the person to produce that document to the court to enable it to decide whether the claim is justified.

(8) On considering any application under this rule, the court may invite any person to make representations on the question of whether the document ought to be withheld.

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**28.15 Restrictions on use of a privileged document inspection of which has been inadvertently allowed.**

If a party inadvertently allows a privileged document to be inspected, the party who has inspected it may use it only with the

- (a) agreement of the party disclosing the document; or
- (b) permission of the court.

**28.16 Documents referred to in statements of case, etc.**

(1) A party may inspect and copy a document mentioned in

- (a) an affidavit;
- (b) an expert's report;
- (c) a statement of case;
- (d) a witness statement or summary; or
- (e) the claim form.

(2) A party who wishes to inspect and copy such a document must give written notice to the party who, or whose witness, mentioned the document.

(3) The party to whom the notice is given must comply with the notice not more than 7 days after the date on which the notice is served.

**28.17 Subsequent use of disclosed documents.**

(1) A party to whom a document has been disclosed may use the document only for the purpose of the proceedings in which it is disclosed, unless

- (a) the document has been read to or by the court, or referred to, in open court; or
- (b) the party disclosing the document and the person to whom the document belongs, or the court, gives permission.

(2) The court may make an order restricting or prohibiting the use of a document which has been disclosed, even where the document has been read to or by the court, or referred to in open court.

(3) An application for such an order may be made by any

- (a) party; or
- (b) person to whom the document belongs.

**28.18 Notice to prove document.**

(1) A party shall be deemed to admit the authenticity of any document disclosed to that party under this Part unless that party serves notice that the documents must be proved at trial.

(2) A notice to prove a document must be served not less than 42 days before the trial.

## PART 29 – EVIDENCE

### Contents of this Part

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Consequence of failure to serve witness statement or summary	Rule 29.11
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### 29.1 Power of court to control evidence.

The court may control the evidence to be given at any trial or hearing by giving appropriate directions, at a case management conference or by other means, as to the

- (a) issues on which it requires evidence; and
- (b) way in which any matter is to be proved.

### 29.2 Evidence at trial – general rule.

(1) The general rule is that any fact which needs to be proved by the evidence of witnesses is to be proved at

- (a) trial, by their oral evidence given in public; and
- (b) any other hearing, by affidavit.

(2) The general rule is subject to any

- (a) order of the court; and
- (b) provision to the contrary contained in these Rules or elsewhere.

(3) Any evidence taken at the trial or other hearing of any proceedings may be used subsequently in those proceedings.

- Part 30 deals with affidavits.

### 29.3 Evidence by video link or other means.

The court may allow a witness to give evidence without being present in the courtroom, through a video link or by any other means.

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#### **29.4 Requirement to serve witness statements.**

(1) The court may order a party to serve on any other party a statement of the evidence of any witness upon which the first party intends to rely in relation to any issue of fact to be decided at the trial.

(2) A statement of the evidence referred to in paragraph (1) is known as a “**witness statement**”.

(3) A party’s obligation to serve a witness statement is independent of any other party’s obligation to serve such a statement.

- Rule 29.7 provides a procedure that may be adopted when one party does not serve witness statements by the date directed.

(4) The court may give directions as to

- (a) the order in which witness statements are to be served; and
- (b) when they are to be filed.

#### **29.5 Form of witness statements.**

(1) A witness statement must

- (a) be dated;
- (b) be signed or otherwise authenticated by the intended witness;
- (c) give the name, address and occupation of the witness;
- (d) include a statement by the intended witness that he or she believes the statements of fact in it to be true;
- (e) not include any matters of information or belief which are not admissible or, where admissible, must state the source of any matters of information or belief;
- (f) so far as reasonably practicable, be in the intended witness’ own words; and
- (g) sufficiently identify any document to which the statement refers without repeating its contents unless this is necessary in order to identify the document.

(2) The court may order that any inadmissible, scandalous, irrelevant or otherwise oppressive matter be struck out of any witness statement.

#### **29.6 Witness summaries.**

(1) A party who is required to provide and is not able to obtain a witness statement may serve a witness summary instead.

(2) The party who serves a witness summary must certify on the witness summary the reason why a witness statement could not be obtained.

- (3) A “witness summary” is a summary of the
- (a) evidence, so far as is known, which would otherwise be included in a witness statement; or
  - (b) matters about which the party serving the witness summary proposes to question the witness, if the evidence is not known.

(4) Unless the court orders otherwise, a witness summary must include the name and address of the intended witness or other sufficient means of identifying the intended witness.

(5) A witness summary must be served within the period in which a witness statement would have had to be served.

(6) Where a party provides a witness summary, so far as practicable, rules 29.4 (requirement to serve witness statements), 29.7 (procedure where one party does not serve witness statements by date directed), 29.8 (witness to give evidence unless court otherwise orders) and 29.9 (amplifying witness statements at trial) apply to the witness summary.

#### **29.7 Procedure where one party does not serve witness statement by date directed.**

- (1) This rule applies where
- (a) one party (the “first party”) is able and prepared to comply with the order to serve witness statements; and
  - (b) the other party fails to make reasonable arrangements to exchange statements.
- (2) The first party may comply with the requirements of this Part by
- (a) filing the witness statements in a sealed envelope at the court office by the date directed; and
  - (b) giving notice to all other parties that the witness statements have been filed.

(3) Statements filed pursuant to paragraph (2) must not be disclosed to the other party until the other party certifies that the witness statements or summaries in respect of all witnesses upon whose evidence the other party intends to rely have been served.

#### **29.8 Witness to give evidence unless court otherwise orders.**

- (1) If a party
- (a) has served a witness statement or summary; and
  - (b) wishes to rely on the evidence of that witness;

that party must call the witness to give evidence unless the court orders otherwise.

- (2) If a party
- (a) has served a witness statement or summary; and
  - (b) does not intend to call that witness at the trial;

that party must give notice to that effect to the other parties not less than 28 days before the trial.



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**29.9 Amplifying witness statements at trial.**

A witness giving oral evidence may, with the permission of the court,

- (a) amplify the evidence as set out in his or her witness statement if that statement has disclosed the substance of the evidence which the witness is asked to amplify;
- (b) give evidence in relation to new matters which have arisen since the witness statement was served on the other parties; or
- (c) comment on evidence given by other witnesses.

**29.10 Cross-examination on witness statement.**

If a witness is called to give evidence at trial, that witness may be cross examined on the evidence as set out in his or her witness statement, whether or not the statement or any part of it was referred to during the witness' evidence in chief.

**29.11 Consequence of failure to serve witness statement or summary.**

(1) If a witness statement or witness summary is not served in respect of an intended witness within the time specified by the court, the witness may not be called unless the court permits.

(2) The court may not give permission at the trial unless the party asking for permission has a good reason for not previously seeking relief under rule 26.8.

**29.12 Use of witness statement for other purposes.**

(1) Except as provided by this rule, a witness statement may be used only for the purpose of the proceedings in which it is served.

- (2) Paragraph (1) does not apply if and to the extent that the
  - (a) court gives permission for some other use of it;
  - (b) witness gives consent in writing to some other use of it; or
  - (c) witness statement has been put in evidence.

**29.13 Notice to admit facts.**

(1) A party may serve notice on another party requiring that other party to admit the facts or the part of the first party's case specified in the notice.

(2) A notice to admit facts must be served no later than 42 days before the trial.

(3) If the other party makes any admission in response to the notice to admit facts, the admission may be used against that party only

- (a) by the party who served the notice; and
- (b) in the proceedings in which the notice is served.

(4) If the party served with the notice to admit does not admit the facts set out in the notice within 21 days of service of the notice upon that party, the court may assess the costs incurred by the party serving the notice in proving such facts and order the party served with the notice to pay such costs.

- Rule 65.11 deals with assessment of costs.

### **PART 30 – AFFIDAVITS**

#### **Contents of this Part**

Affidavit evidence	Rule 30.1
Form of affidavits	Rule 30.2
Contents of affidavits	Rule 30.3
Documents to be used in conjunction with affidavits	Rule 30.4
Making of affidavits	Rule 30.5
Service of affidavits	Rule 30.6

#### **30.1 Affidavit evidence.**

(1) The court may require evidence to be given by affidavit instead of, or in addition to, oral evidence.

(2) In this Part, “deponent” means the maker of an affidavit.

(3) Whenever an affidavit is to be used in evidence, any party may apply to the court for an order requiring the deponent to attend to be cross-examined.

(4) Such an application must be made not less than, in the case of

- (a) a trial, 21 days; or
- (b) any other hearing, 7 days;

before the date of the hearing at which it is intended to cross-examine the deponent.

(5) If the deponent does not attend as required by the court order, the affidavit may not be used as evidence unless the court permits.

(6) The general rule is that an affidavit must be filed before it may be used in any proceedings.

(7) In a case of urgency the court may make an order on an affidavit which has not been filed if the party tendering it undertakes to file it.

#### **30.2 Form of affidavits.**

Every affidavit must

- (a) be headed with the title of the proceedings;
- (b) be divided into paragraphs numbered consecutively;
- (c) be in the first person and state the name, address and occupation of the deponent and, if more than one, of each of them;

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- (d) be marked on the top right hand corner of the affidavit (and of the backsheet) with
    - (i) the name of the party on whose behalf it is filed;
    - (ii) the initials and surname of the deponent;
    - (iii) (where the deponent swears more than one affidavit in any proceedings), the number of the affidavit in relation to the deponent;
    - (iv) the identifying reference of each exhibit referred to in the affidavit;
    - (v) the date when sworn; and
    - (vi) the date when filed;
- (Example**  
“Claimant: N. Berridge: 2nd: NB 3 and 4:1.10.98: 3.10.98.”)  
and
- (e) state if any deponent is employed by a party to the proceedings.

### 30.3 **Contents of affidavits.**

- (1) The general rule is that an affidavit may contain only such facts as the deponent is able to prove from his or her own knowledge.
- (2) An affidavit may contain statements of information and belief
  - (a) if any of these Rules so allows; and
  - (b) if the affidavit is for use in an application for summary judgment under Part 15 or any procedural or interlocutory application, provided that the affidavit indicates
    - (i) which of the statements in it are made from the deponent’s own knowledge and which are matters of information or belief; and
    - (ii) the source of any matters of information and belief.
- (3) The court may order that any scandalous, irrelevant or otherwise oppressive matter be struck out of any affidavit.
- (4) An affidavit containing any alteration may not be used in evidence unless all such alterations have been initialled both by the deponent and the person before whom the affidavit is sworn.

### 30.4 **Documents to be used in conjunction with affidavits.**

- (1) Any document to be used in conjunction with an affidavit must be exhibited with it.
- (2) If there is more than one such document those documents may be included in a bundle which is arranged chronologically or in some other convenient order and is properly paginated.

(3) Clearly legible photocopies of original documents may be exhibited, provided that the originals are made available for inspection by the other parties before the hearing and by the court at the hearing.

- (4) Each exhibit or bundle of exhibits must be
- (a) produced to and verified by the deponent;
  - (b) accurately identified by an endorsement on the exhibit or on a certificate attached to it signed by the person before whom the affidavit is sworn or affirmed; and
  - (c) marked in accordance with rule 30.2(d).

### **30.5 Making of affidavits.**

- (1) An affidavit must
- (a) be signed by all deponents;
  - (b) be sworn or affirmed by each deponent;
  - (c) be completed and signed by the person before whom the affidavit is sworn or affirmed; and
  - (d) contain the full name, address and qualifications of the person before whom it is sworn or affirmed.

(2) The statement authenticating the affidavit (“the jurat”) must follow immediately from the text and not be on a separate page.

(3) An affidavit may not be admitted into evidence if sworn or affirmed before the legal practitioner of the party on whose behalf it is to be used or before any agent, partner, employee or associate of such legal practitioner.

(4) If it appears that the deponent is illiterate or blind, the person before whom the affidavit is sworn or affirmed must certify in the jurat that the

- (a) affidavit was read to the deponent by him or her in his or her presence;
- (b) deponent appeared to understand it; and
- (c) deponent signed or made his or her mark in his or her presence.

(5) A person may make an affidavit outside the jurisdiction in accordance with

- (a) the law of the place where the affidavit is made; or
- (b) this Part.

(6) Any affidavit which purports to have been sworn or affirmed in accordance with the law and procedure of any place outside the jurisdiction is presumed to have been so sworn.

### **30.6 Service of affidavits.**

(1) The general rule is that a party who is giving evidence by affidavit must serve a copy of the affidavit on every other party.

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(2) The general rule applies whether the affidavit was made in the proceedings or in some other proceedings.

(3) The general rule does not apply if the affidavit is being used in support of an application that may be made without notice.

## **PART 31 – MISCELLANEOUS RULES ABOUT EVIDENCE**

### **Contents of this Part**

Use of plans, photographs, etc. as evidence	Rule 31.1
Evidence on questions of foreign law	Rule 31.2
Evidence of consent of trustee to act	Rule 31.3

#### **31.1 Use of plans, photographs, etc. as evidence.**

- (1) A party who intends to rely at a trial on evidence which is not
- (a) to be given orally; and
  - (b) contained in a witness statement, affidavit or expert report;

must disclose that intention to the other parties in accordance with this rule.

(2) If a party fails to disclose the intention to rely on the evidence as required by this rule, the evidence may not be given.

(3) Subject to paragraphs (4) and (5), a party who intends to use the evidence referred to in paragraph (1) to prove any fact must disclose such intention not later than the latest date for serving witness statements.

- (4) If
- (a) there is no order for service of witness statements; or
  - (b) a party intends to put in the evidence referred to in paragraph (1) solely in order to disprove an allegation made in a witness statement;

that party must disclose the evidence at least 21 days before the hearing at which it is proposed to put in the evidence.

(5) If the evidence referred to in paragraph (1) forms part of expert evidence, the intention to put in the evidence must be disclosed when the expert's report is served on the other party.

(6) If a party has disclosed the intention to put in the evidence referred to in paragraph (1), that party must give every other party an opportunity to inspect the evidence and to agree to its admission without proof.

#### **31.2 Evidence on questions of foreign law.**

(1) This rule sets out the procedure which must be followed by a party who intends to adduce evidence on a question of foreign law.

(2) A party who intends to adduce evidence on a question of foreign law must first give every other party notice of that intention.

(3) Notice under paragraph (2) must be given not less than 42 days before the hearing at which the party proposes to adduce the evidence.

(4) The notice must

- (a) have attached a document which forms the basis of the evidence; and
- (b) specify the question on which the evidence is to be adduced.

### 31.3 **Evidence of consent of trustee to act.**

A document purporting to contain the written consent of a person to act as trustee and to bear that person's signature verified by some other person is evidence of such consent.

## **PART 32 – EXPERTS AND ASSESSORS**

### **Contents of this Part**

Scope of this Part	Rule 32.1
General duty of court and of parties	Rule 32.2
Expert's overriding duty to court	Rule 32.3
Way in which expert's duty to court is to be carried out	Rule 32.4
Expert's right to apply to court for directions	Rule 32.5
Court's power to restrict expert evidence	Rule 32.6
General requirement for expert evidence to be given in written report	Rule 32.7
Written questions to experts	Rule 32.8
Court's power to direct evidence by single expert	Rule 32.9
Cross examination of court appointed expert	Rule 32.10
Instructions to single expert	Rule 32.11
Power of court to direct party to provide expert report	Rule 32.12
Expert's reports to be addressed to court	Rule 32.13
Contents of report	Rule 32.14
Meeting of experts	Rule 32.15
Consequence of failure to disclose expert's report	Rule 32.16
Appointment of assessor	Rule 32.17

### 32.1 **Scope of this Part.**

(1) This Part deals with the provision of expert evidence to assist the court.

(2) In this Part, "expert witness" means an expert who has been instructed to prepare or give evidence for the purpose of court proceedings.

### 32.2 **General duty of court and of parties.**

Expert evidence must be restricted to that which is reasonably required to resolve the proceedings justly.

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### 32.3 Expert's overriding duty to court.

(1) It is the duty of an expert witness to help the court impartially on the matters relevant to his or her expertise.

(2) This duty overrides any obligation to the person by whom he or she is instructed or paid.

### 32.4 Way in which expert's duty to court is to be carried out.

(1) Expert evidence presented to the court must be, and should be seen to be, the independent product of the expert uninfluenced as to form or content by the demands of the litigation.

(2) An expert witness must provide independent assistance to the court by way of objective, unbiased opinion in relation to matters within the witness' expertise.

(3) An expert witness must state the facts or assumptions upon which his or her opinion is based, and must consider and include any material fact which could detract from his or her conclusion.

(4) An expert witness must state if a particular matter or issue falls outside his or her expertise.

(5) If the opinion of an expert witness is not properly researched then this must be stated with an indication that the opinion is no more than a provisional one.

(6) If an expert witness cannot assert that his or her report contains the truth, the whole truth and nothing but the truth without some qualification, that qualification must be stated in the report.

(7) If, after service of a report, an expert witness changes his or her opinion on a material matter, that change of opinion must be communicated to all parties.

### 32.5 Expert's right to apply to court for directions.

(1) An expert witness may apply in writing to the court for directions to assist him or her in carrying out his or her functions and duty to the court as an expert witness.

(2) An expert witness who applies for directions under paragraph (1) need not give notice of the application to any party.

(3) The court may direct that

(a) notice of an application under paragraph (1) be given to any party; or

(b) a copy of the application and any directions given be sent to any party.

### 32.6 Court's power to restrict expert evidence.

(1) A party may not call an expert witness or put in the report of an expert witness without the court's permission.

(2) The general rule is that the court's permission is to be given at a case management conference.

(3) When a party applies for permission under this rule,

(a) that party must name the expert witness and identify the nature of his or her expertise; and

(b) any permission granted shall be in relation to that expert witness only.

(4) The oral or written expert witness' evidence may not be called or put in unless the party wishing to call or put in that evidence has served a report of the evidence which the expert witness intends to give.

(5) The court must direct by what date the report must be served.

(6) The court may direct that part only of an expert witness' report be disclosed.

### **32.7 General requirement for expert evidence to be given in written report.**

(1) Expert evidence is to be given in a written report unless the court directs otherwise.

(2) This rule is subject to any enactment restricting the use of "hearsay evidence".

### **32.8 Written questions to experts.**

(1) A party may put written questions to an expert witness instructed by another party or jointly about his or her report.

(2) Written questions under paragraph (1)

(a) may be put once only;

(b) must be put within 28 days of service of that expert witness' report; and

(c) must only be in order to clarify the report;

unless

(i) the court permits; or

(ii) the other party agrees.

(3) An expert witness' answers to questions under this rule must be treated as part of that expert witness' report.

(4) If a party has put a written question to an expert witness instructed by another party in accordance with this rule and the expert witness does not answer the question, the court may make one or more of the following orders in relation to the party who instructed the expert, namely, that

(a) that party may not recover the fees and expenses of the expert witness from any other party;

(b) that party may not rely on the evidence of the expert witness;



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- (c) the party asking the questions may seek to obtain answers from another expert.

(5) This rule also applies where evidence from a single expert witness is to be used under rule 32.9.

### **32.9 Court's power to direct evidence by single expert.**

(1) If two or more parties wish to submit expert evidence on a particular issue, the court may direct that expert evidence be given by one expert witness.

(2) The parties referred to in paragraph (1) are known as "the instructing parties".

(3) If the instructing parties cannot agree who should be the expert witness, the court may

- (a) select the expert witness from a list prepared or identified by the instructing parties; or
- (b) direct that the expert witness be selected in such other manner as the court may direct.

(4) The court may vary a direction given under this rule.

(5) The court may appoint a single expert witness instead of the parties instructing their own expert witnesses or may replace expert witnesses instructed by the parties.

### **32.10 Cross-examination of court appointed expert.**

If an expert appointed by the court under rule 32.9(5) gives oral evidence, the expert may be cross-examined by any party.

### **32.11 Instructions to single expert.**

(1) If the court gives directions under rule 32.9 for a single expert witness to be used, each instructing party may give instructions to the expert witness.

(2) When an instructing party gives instructions to the expert witness that party must, at the same time, send a copy of the instructions to the other instructing parties.

(3) The court may give directions about the arrangements for

- (a) any inspection, examination or experiment which the expert witness wishes to carry out; and
- (b) the payment of the expert witness' fees and expenses.

(4) The court may, before an expert witness is instructed,

- (a) limit the amount that can be paid by way of fees and expenses to the expert witness; and
- (b) direct that the instructing parties pay that amount into court in such proportions as may be directed.

(5) Unless the court directs otherwise, the instructing parties are jointly and severally liable for the payment of the expert witness' fees and expenses.

### **32.12 Power of court to direct party to provide expert report.**

(1) If a party has access to information which is not reasonably available to the other party, the court may order that party

- (a) to arrange for an expert witness to prepare a report on any matter;
- (b) if appropriate, to arrange for an examination to be carried out in relation to that matter; and
- (c) to file the report and serve a copy on any other party.

(2) The court's powers under this rule may be exercised only on the application of a party.

### **32.13 Expert's reports to be addressed to court.**

An expert witness must address his or her report to the court and not to any person from whom the expert witness has received instructions.

### **32.14 Contents of report.**

(1) An expert witness' report must

- (a) give details of the expert witness' qualifications;
- (b) give details of any literature or other material which the expert witness has used in making the report;
- (c) say who carried out any test or experiment which the expert witness has used for the report;
- (d) give details of the qualifications of the person who carried out any such test or experiment;
- (e) if 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 his or her opinion; and
- (f) contain a summary of the conclusions reached.

(2) At the end of an expert witness' report there must be a statement that the expert witness

- (a) understands his or her duty to the court as set out in rules 32.3 and 32.4;
- (b) has complied with that duty;
- (c) has included in the report all matters within the expert witness' knowledge and area of expertise relevant to the issue on which the expert evidence is given; and
- (d) has given details in the report of any matter which to his or her knowledge might affect the validity of the report.

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- (3) There must also be attached to an expert witness' report copies of
  - (a) all written instructions given to the expert witness;
  - (b) any supplemental instructions given to the expert witness since the original instructions were given; and
  - (c) a note of any oral instruction given to the expert witness;

and the expert must certify that no other instruction than those disclosed have been received by him or her from the party instructing the expert, the party's legal practitioner or any other person acting on behalf of the party.

(4) If a report refers to photographs, plans, calculations, survey reports or other similar documents, these must be provided to the opposite party at the same time as the service of the report.

(5) If it is not practicable to provide a copy of the documents referred to in paragraph (4), those documents must be made available for inspection by the other party or any expert witness instructed by that party within 7 days of a request to do so.

#### **32.15 Meeting of experts.**

- (1) The court may direct a meeting of expert witnesses of like speciality.
- (2) The court may specify the issues which the expert witnesses must discuss.
- (3) The contents of the discussion between the expert witnesses must not be referred to at the trial unless the parties agree.
- (4) The meeting may take place personally, over the telephone or by any other suitable means.
- (5) After the meeting, the expert witnesses must prepare for the court a statement of any issue within their expertise on which they
  - (a) agree; and
  - (b) disagree, with their reasons for disagreeing.
- (6) Instead of, or in addition to, such statement the court may direct that the expert witnesses prepare an agreed statement of the basic 'science' which applies to the matters relevant to their expertise.
- (7) The statement referred to in paragraph (6) must be as short as practicable.

#### **32.16 Consequence of failure to disclose expert's report.**

(1) A party who fails to comply with a direction to disclose an expert witness' report may not use the report at the trial or call the expert witness unless the court gives permission.

(2) The court may not give permission at the trial unless the party asking for permission can show that it was not reasonably practicable to have applied for relief at an earlier stage.

- Rule 26.8 deals with relief from sanctions.

**32.17 Appointment of assessor.**

- (1) The court may appoint an assessor to
  - (a) advise the judge at the trial with regard to evidence of expert witnesses called by the parties;
  - (b) assist the court in understanding technical evidence; or
  - (c) provide a written report.
- (2) On making an order under paragraph (1), the court must decide
  - (a) what fee is to be paid to the assessor; and
  - (b) by whom.
- (3) Notwithstanding paragraph (2), the court may ultimately order any party to pay the fee of the assessor.
- (4) All communications apart from written instructions between the court and an assessor must be in open court.
- (5) Before requesting a written report or opinion from an assessor the court must allow the parties to make submissions in respect of the form and content of the questions to be asked.
- (6) Before giving judgment the court must provide the parties with the questions asked of, and any opinion given by the assessor and give them an opportunity to make submissions.

**PART 33 – COURT ATTENDANCE BY WITNESSES AND DEPOSITIONS****Contents of this Part**

Scope of this Part	Rule 33.1
Witness summonses	Rule 33.2
Issue of witness summons	Rule 33.3
Witness summons in aid of inferior court or tribunal	Rule 33.4
Time for serving witness summons	Rule 33.5
Compensation for loss of time	Rule 33.6
Evidence by deposition before examiner	Rule 33.7
Conduct of examination	Rule 33.8
Evidence without examiner being present	Rule 33.9
Enforcing attendance of witness	Rule 33.10
Special report	Rule 33.11
Fees and expenses of examiner	Rule 33.12
Order for payment of examiner's fees	Rule 33.13
Use of deposition at hearing	Rule 33.14
Where person to be examined is out of the jurisdiction – letter of request	Rule 33.15
Early appointment to produce documents	Rule 33.16

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**33.1 Scope of this Part.**

- (1) This Part provides
  - (a) for a party to obtain evidence prior to a hearing; and
  - (b) for the circumstances in which a person may be required to attend court to give evidence or to produce a document.
- (2) In this Part, reference to a hearing includes a reference to the trial.

**33.2 Witness summonses.**

- (1) A witness summons is a document issued by the court requiring a witness to attend court
  - (a) to give evidence; or
  - (b) to produce documents to the court.
- (2) A witness summons must be in Form 12.
- (3) There must be a separate witness summons for each witness.
- (4) A witness summons may require a witness to produce documents to the court either on
  - (a) the date fixed for the trial or the hearing of any application in the proceedings; or
  - (b) any other date the court may direct.

**33.3 Issue of witness summonses.**

- (1) A witness summons is issued on the date entered on the summons by the court office.
- (2) A party must obtain permission from the court when that party wishes to have
  - (a) a witness summons issued less than 21 days before the date of the hearing; or
  - (b) a summons issued for a witness to attend court to give evidence or to produce documents on any date except the date fixed for the trial or the hearing of any application.
- (3) An application for permission under paragraph (2) may be without notice but must be supported by evidence on affidavit.
- (4) The court may set aside or vary a witness summons.

**33.4 Witness summons in aid of inferior court or tribunal.**

- (1) The court may issue a witness summons in aid of an inferior court or of a tribunal.
- (2) The court may set aside a witness summons issued under this rule.

(3) In this rule, “inferior court or tribunal” means any court or tribunal which does not have power to issue a witness summons in relation to proceedings before it.

### **33.5 Time for serving witness summons.**

(1) The general rule is that a witness summons is binding only if it is served at least 14 days before the date on which the witness is required to attend before the court or tribunal.

(2) The court may direct that a witness summons shall be binding although it will be served less than 14 days before the date on which the witness is required to attend before the court or tribunal.

(3) An application under paragraph (2) may be made without notice but must be supported by evidence on affidavit.

(4) A witness summons which

- (a) is served in accordance with this rule; and
- (b) requires the witness to attend court to give evidence;

is binding until the conclusion of the hearing at which the attendance of the witness is required.

### **33.6 Compensation for loss of time.**

At the time of service of a witness summons the witness must be offered or paid

- (a) a sum reasonably sufficient to cover his or her subsistence and expenses in travelling to and from the court; and
- (b) such sum by way of compensation for loss of time as may be specified in a practice direction.

### **33.7 Evidence by deposition before examiner.**

(1) A party may apply for an order for a person to be examined before the trial or the hearing of any application in the proceedings.

(2) In this rule, “deponent” means a person from whom evidence is to be obtained following any order under this rule, and “deposition” means the evidence given by a deponent.

(3) An order under this rule shall be for a deponent to be examined on oath before

- (a) a judge;
- (b) a legal practitioner who has practised for at least 5 years;
- (c) a magistrate;
- (d) a master;
- (e) a registrar; or
- (f) the Chief Registrar.

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- (4) A person listed in paragraph (3) is referred to as an “examiner”.
- (5) The order must state
  - (a) the date, time and place of the examination; and
  - (b) the name of the examiner.
- (6) The order may require the production of any document which the court considers may be necessary for the purposes of the examination.
- (7) Rule 2.7 applies to an examination under this rule.
- (8) At the time of service of the order the deponent must be offered or paid travelling expenses and compensation for loss of time in accordance with rule 33.6.
- (9) An application may be made by any party whether or not that party would otherwise call the witness.
- (10) If the application is made by the party who would call the witness to give evidence, the court may order that party to serve a witness statement or witness summary in relation to the evidence to be given by the person to be examined.
  - Part 29 contains general rules about witness statements and witness summaries.

### 33.8 **Conduct of examination.**

- (1) Subject to any directions contained in the order for examination, the examination must be conducted in the same way as if the witness were giving evidence at a trial.
- (2) If all the parties are present, the examiner may, with the consent of the parties, conduct the examination of a person not named in the order for examination.
- (3) The examiner may conduct the examination in private if he or she considers it appropriate to do so.
- (4) The examiner must ensure that a full record is taken of the evidence given by the witness.
- (5) If any person being examined objects to answer any question put to him or her, the ground of the objection and the answer to any such question must be set out in the deposition or in a statement annexed to the deposition.
- (6) The examiner must send the original deposition to the court office and a copy of the deposition to
  - (a) every party to the proceedings; and
  - (b) the deponent.
- (7) If the witness or any legal practitioner present at the hearing is of the opinion that the deposition does not accurately represent the evidence, he or she may
  - (a) endorse on the copy deposition the corrections which in his or her opinion should be made;

- (b) file the endorsed copy deposition; and
- (c) serve a copy of it on all other parties.

**33.9 Evidence without examiner being present.**

(1) With the consent of the parties, the court may order that the evidence of a witness be taken as if before an examiner, but without an examiner being appointed or present.

(2) Where such an order is made then, subject to any directions that may be contained in the order,

- (a) a legal practitioner for any party may administer the oath to a witness;
- (b) any person transcribing evidence given need not be sworn but must certify as correct the transcript of the evidence and deliver it to the legal practitioner for the party whose witness was examined;
- (c) the legal practitioner for the party whose witness was examined must file the original transcript and deliver a true copy to all other parties and to the witness who was examined;
- (d) the party whose witness is to be examined must provide a means of recording the evidence of the witness; and
- (e) if the witness or any legal practitioner present at the hearing is of the opinion that the transcript does not accurately represent any evidence given, he or she may
  - (i) endorse on the copy transcript the corrections which in his or her opinion should be made;
  - (ii) file the endorsed copy transcript; and
  - (iii) serve a copy of it on all other parties.

**33.10 Enforcing attendance of witness.**

- (1) If a person served with a witness summons to attend before an examiner
- (a) fails to attend;
  - (b) refuses to answer any lawful question or produce any document at the examination; or
  - (c) refuses to be sworn or to affirm for the purpose of the examination;

the party requiring the deposition may file a certificate signed by the examiner of such failure or refusal.

(2) On the certificate being filed, the party requiring the deposition may apply to the court for an order requiring the person to attend, to be sworn, to affirm or to answer any question or produce any document, as the case may be.

- (3) An application for an order under this rule may be made without notice.



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(4) Any order made by the court must be served personally on the person served with the witness summons and be endorsed with a notice in the first form given in rule 53.3(b).

(5) The court may order the person against whom an order is made under this rule to pay any costs resulting from the

- (a) failure to attend before a referee;
- (b) refusal to answer any lawful question or produce any document at the inquiry; or
- (c) refusal to be sworn or to affirm for the purpose of the inquiry.
  - Part 53 deals with the procedure relating to committal for contempt of court.

### 33.11 **Special report.**

The examiner may make a special report to the court with regard to the

- (a) absence of any person; or
- (b) conduct of any person present;

when the deposition was taken.

### 33.12 **Fees and expenses of examiner.**

(1) On appointing an examiner the court must fix the fee to be paid to the examiner for carrying out the examination.

(2) If an examination is carried out by a person, other than a legal practitioner, the fee must be paid into the court office.

(3) The party who obtained the order must also pay the fee and all reasonable travelling and other expenses including charges for a room (other than the examiner's own chambers or office) where the examination takes place.

(4) Notwithstanding paragraphs (1) and (3), the court may ultimately order any party to bear the costs of the examination.

### 33.13 **Order for payment of examiner's fees.**

(1) The examiner may report to the court the fact that any fees or expenses due to him or her have not been paid and the court may make an order that the party who obtained the order for the examination should pay such fees and expenses.

(2) An order under paragraph (1) may be enforced as a money judgment.

### 33.14 **Use of deposition at hearing.**

(1) A deposition ordered under rule 33.7 or 33.9 may be given in evidence at the trial unless the court orders otherwise.

(2) A party intending to put in evidence a deposition at a hearing must serve notice of such intention on every other party at least 21 days before the day fixed for the hearing.

(3) The court may require a deponent to attend the hearing and give oral evidence.

### **33.15 Where person to be examined is out of the jurisdiction – letter of request.**

(1) If a party wishes to take a deposition from a party outside the jurisdiction, the court may direct the issue of a letter of request to the judicial authorities of the country in which the proposed deponent is.

(2) A letter of request is a request to a judicial authority to take the evidence of that person, or arrange for it to be taken.

(3) If the government of the country to which the letter is sent allows a person appointed by the court to examine a person in that country, the court may make an order appointing an examiner for that purpose.

(4) A person may be examined under this rule on oath or affirmation or in accordance with any procedure permitted in the country in which the examination is to take place.

(5) If the court makes an order for the issue of a letter of request, the party who sought the order must file

- (a) the following documents and, except where paragraph (6) applies, a translation of them:
  - (i) a draft letter of request;
  - (ii) a list of questions or the subject matter of questions to be put to the person to be examined; and
  - (iii) a statement of the issues relevant to the proceedings; and
- (b) an undertaking to be responsible for the expenses of the minister with responsibility for foreign affairs in relation to the request.

(6) There is no need to file a translation if English is one of the official languages of the country where the examination is to take place.

### **33.16 Early appointment to produce documents.**

(1) The court may permit a party to issue a witness summons requiring any person to attend at a date, time or place specified in the summons prior to the date of the trial for the purpose of producing one or more documents.

(2) The only type of document that a summons under this rule can require a person to produce is a document which that person could be compelled to produce at the trial.

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## **PART 34 – REQUESTS FOR INFORMATION**

### **Contents of this Part**

Right of parties to obtain information	Rule 34.1
Orders compelling reply to request for information	Rule 34.2
Information obtained under Part 34 not to be used in other proceedings	Rule 34.3
Certificate of truth	Rule 34.4

#### **34.1 Right of parties to obtain information.**

(1) This Part enables a party to obtain from any other party information about any matter which is in dispute in the proceedings.

(2) To obtain the information referred to in paragraph (1), the party must serve on the other party a request identifying the information sought.

#### **34.2 Orders compelling reply to request for information.**

(1) If a party does not, within a reasonable time, give information which another party has requested under rule 34.1, the party who served the request may apply for an order compelling the other party to do so.

(2) An order may not be made under this rule unless it is necessary in order to dispose fairly of the claim or to save costs.

- (3) When considering whether to make an order, the court must have regard to
- the likely benefit which will result if the information is given;
  - the likely cost of giving it; and
  - whether the financial resources of the party against whom the order is sought are likely to be sufficient to enable that party to comply with the order.

#### **34.3 Information obtained under Part 34 not to be used in other proceedings.**

A party may use information obtained

- in compliance with an order under rule 34.2; or
- in response to a request under rule 34.1;

only in the proceedings in which the request or order was made.

#### **34.4 Certificate of truth.**

Any information provided under this Part must be verified by a certificate of truth in accordance with rule 3.12.

## PART 35 – OFFERS TO SETTLE

### Contents of this Part

Scope of this Part	Rule 35.1
Introductory	Rule 35.2
Making offer to settle	Rule 35.3
Time when offer to settle may be made	Rule 35.4
Procedure for making offer to settle	Rule 35.5
Extent to which offer to settle covers interest, costs or counterclaim	Rule 35.6
Offer to settle made after interim payment	Rule 35.7
Offer to settle part of claim	Rule 35.8
Time limit for accepting offer to settle	Rule 35.9
Procedure for acceptance	Rule 35.10
Effect of acceptance – generally	Rule 35.11
Effect of acceptance – more than two parties	Rule 35.12
Costs of offeror and offeree where offer is accepted – defendant’s offer	Rule 35.13
Costs of offeror and offeree where offer is accepted – claimant’s offer	Rule 35.14
Costs where offer not accepted – general rules	Rule 35.15
How costs are to be dealt with	Rule 35.16

### 35.1 **Scope of this Part.**

- (1) This Part contains Rules about
  - (a) offers to settle which a party may make to another party; and
  - (b) the consequences of such offers.

(2) This Part does not limit a party’s right to make an offer to settle otherwise than in accordance with this Part.

(3) The Rules in this Part are subject to rule 23.12 (compromise, etc. on behalf of a minor or patient).

- Part 36 deals with payments into court.

### 35.2 **Introductory.**

(1) An offer to settle may be made in any proceedings whether or not there is a claim for money.

- (2) The party who makes the offer is called the “offeror”.
- (3) The party to whom the offer is made is called the “offeree”.
- (4) An offer to settle is made when it is served on the offeree.

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### **35.3 Making offer to settle.**

(1) A party may make an offer to another party which is expressed to be “without prejudice” and in which the offeror reserves the right to make the terms of the offer known to the court after judgment is given with regard to

- (a) the allocation of the costs of the proceedings; and
- (b) (in the case of an offer by the claimant) the question of interest on damages.

(2) The offer may relate to the whole of the proceedings or to part of them or to any issue that arises in them.

### **35.4 Time when offer to settle may be made.**

A party may make an offer to settle under this Part at any time before the beginning of the trial.

### **35.5 Procedure for making offer to settle.**

(1) An offer to settle must be in writing.

(2) The offeror must serve the offer on the offeree and a copy on all other parties.

(3) Neither the fact nor the amount of the offer or any payment into court in support of the offer must be communicated to the court before all questions of liability and the amount of money to be awarded (other than costs and interest) have been decided.

(4) Paragraph (3) does not apply to an offer which has been accepted or where a defence of tender before claim has been pleaded.

### **35.6 Extent to which offer to settle covers interest, costs or counterclaim.**

(1) An offer to settle a claim for damages must state whether or not the amount offered includes interest or costs.

(2) If the offer covers interest or costs it must state the amount which is included for each.

(3) If there is a counterclaim as well as a claim, the offer must state, in the case of an offer by the

- (a) claimant, whether or not it takes into account the counterclaim; or
- (b) defendant, whether or not it takes into account the claim; and in each case in what amount.

### **35.7 Offer to settle made after interim payment.**

If an interim payment has been made, whether voluntarily or under an order under Part 17, any subsequent offer to settle must state whether it is in addition to the interim payment or whether it is intended to replace it.

**35.8 Offer to settle part of claim.**

- (1) An offer to settle must state whether or not it covers the whole or part of the claim.
- (2) If it does not state that it covers part of the claim, it is to be taken to cover the whole claim.
- (3) If the offer covers only part or parts of the claim it must
  - (a) identify the part or parts of the claim in respect of which it is made; and
  - (b) if more than one, state what is offered in respect of each part covered by the offer.

**35.9 Time limit for accepting offer to settle.**

- (1) The offeror may state in the offer that it is open for acceptance until a specified date.
- (2) The offer shall have no effect on any decision that the court makes as to the consequences of the offer unless it is open for acceptance for at least 21 days.
- (3) Acceptance of the offer after the beginning of the trial shall have no effect on any decision that the court makes as to the consequences of such acceptance.
- (4) The court may permit an offeree to accept an offer after the specified date on such terms as the court considers just.

**35.10 Procedure for acceptance.**

- (1) To accept an offer a party must
  - (a) serve written notice of acceptance on the offeror; and
  - (b) send a copy of the notice to any other party.
- (2) The offeree accepts the offer when notice of acceptance is served on the offeror.
- (3) If an offer or payment into court under Part 36 is made in proceedings to which rule 23.12 applies
  - (a) the offer or payment may be accepted only with the permission of the court; and
  - (b) no payment out of any sum paid into court may be made without a court order.

Rule 23.12 deals with compromises, etc. by or on behalf of a minor or patient.

**35.11 Effect of acceptance – generally.**

- (1) If the offeree accepts an offer which is not limited in accordance with rule 35.8, the claim is stayed upon the terms of the offer.

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(2) If the offer covers a claim and a counterclaim, both the claim and the counterclaim are stayed on the terms of the offer.

(3) In any other case, the proceedings are stayed to the extent that they are covered by the terms of the offer.

(4) If the court's approval is required for the settlement of the proceedings, any stay arising on the acceptance of the offer has effect only when the court gives its approval.

- Rule 23.12 deals with the settlement of proceedings involving minors and patients.

(5) A stay arising on the acceptance of an offer does not affect proceedings to deal with any question of costs relating to the proceedings which have been stayed and which have not been dealt with by the offer.

(6) If money has been paid into court in support of an offer, a stay arising out of the acceptance of the offer does not affect any proceedings to obtain payment out of court.

- Part 36 deals with payments into court.

(7) If an offer is accepted and its terms are not complied with, any stay arising on acceptance ceases to have effect and

- (a) the proceedings or the part which was stayed may continue; and
- (b) either party may apply to the court to enforce those terms.

(8) If a party claims damages for breach of contract arising from an alleged failure of another party to carry out the terms of an agreed offer, that party may do so by applying to the court without the need to commence new proceedings unless the court orders otherwise.

### 35.12 **Effect of acceptance – more than two parties.**

(1) If there is more than one defendant whom the claimant claims are jointly and severally, or severally, liable and the claimant

- (a) agrees to settle the claim as against one or more, but not all of them; and
- (b) discontinues the claim against any other defendant;

the claimant is liable to pay the costs of that defendant unless the court otherwise orders.

- Part 37 deals with discontinuance.

(2) If a claimant accepts an offer made by one of a number of joint defendants,

- (a) paragraph (1) does not apply; and
- (b) the defendant who made the offer is liable for the costs of the other joint defendants.

(3) If

- (a) there is more than one claimant; and
- (b) one or more, but not all, of them agree to settle;

the other claimants may continue the proceedings.

**35.13 Costs of offeror and offeree where offer is accepted – defendant’s offer.**

- (1) If the
  - (a) defendant makes an offer to settle; and
  - (b) claimant accepts the offer within any period stated for accepting it and before the beginning of the trial;

the claimant is entitled to the costs of the proceedings up to the date of acceptance of the offer.

- (2) If the defendant permits a claimant to accept an offer after the time stated for accepting it, the general rule is that the
  - (a) claimant is entitled to costs to the end of the period stated for accepting the offer; and
  - (b) defendant is entitled to any costs incurred between the end of the period stated for accepting the offer and the date when the offeree accepts the offer;

unless the court orders otherwise.

- (3) If the settlement relates only to part of the proceedings and the remaining part or parts of the proceedings continue
  - (a) the claimant is entitled under this rule only to the costs relating to that part of the proceedings which has been settled; and
  - (b) unless the court orders otherwise or the defendant agrees, the claimant may not recover any such costs, nor have them quantified, until the conclusion of the rest of the proceedings, when the court can deal with the costs of the whole of the proceedings including any costs relating to those parts of the proceedings that were not settled.

**35.14 Costs of offeror and offeree where offer is accepted – claimant’s offer.**

If the claimant makes an offer which is accepted by the defendant, the claimant is entitled to costs up to the time when notice of acceptance of the offer is served.

**35.15 Costs where offer not accepted – general rules.**

- (1) The general rule for defendants’ offers is that, if the defendant makes an offer to settle which is not accepted and,
  - (a) in the case of an offer to settle a claim for damages, the court awards less than 85% of the amount of the defendant’s offer;
  - (b) in any other case, the court considers that the claimant acted unreasonably in not accepting the defendant’s offer;

the claimant must pay any costs incurred by the defendant after the latest date on which the offer could have been accepted without the court’s permission.



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- (2) If a claimant makes an offer to settle and,
- (a) in the case of an offer to settle a claim for damages, the court awards an amount which is equal to or more than the amount of the offer;
  - (b) in any other case, the court considers that the defendant acted unreasonably in not accepting the claimant's offer;

the court may, in exercising its discretion as to interest take into account the rates set out in the following table:

Net amount of damages	Rate of interest
not exceeding EC\$100,000	15% per annum
for the next EC\$150,000	12% per annum
for the next EC\$500,000	10% per annum
in excess of EC\$800,000	8% per annum

where 'net' means the amount of damages on the claim less the amount (if any) awarded on any counterclaim.

**(Example:**

One year since the offer. Damages – EC\$400,000;

The court might award

15% on the first \$100,000 for one year (\$15,000);

plus 12% interest on the next \$150,000 for one year (\$18,000);

plus 10% interest on the remaining \$150,000 for one year (\$15,000);

a total of EC\$48,000 interest on damages.)

(3) The court may decide that the general rule under paragraph (1) is not to apply in a particular case.

(4) In deciding whether the general rule should not apply and in considering the exercise of its discretion under paragraph (2), the court may take into account the

- (a) conduct of the offeror and the offeree with regard to giving or refusing information for the purposes of enabling the offer to be made or evaluated;
- (b) information available to the offeror and the offeree at the time that the offer was made;
- (c) stage in the proceedings at which the offer was made; and
- (d) terms of any offer.

(5) This rule applies to offers to settle at any time, including before proceedings were started.

**35.16 How costs are to be dealt with.**

(1) If an offer to settle is accepted, the parties may agree the amount of costs that are due to be paid under this Part.

(2) if the amount of costs falls to be quantified by the court, then the general rule is that, unless an order has been made for budgeted costs under rule 65.8, the costs are to be determined in accordance with the scale of prescribed costs contained in Part 65, Appendices B and C.

(3) If an offer to settle

- (a) is accepted after the time originally stated for accepting it under rule 35.10(2); or
- (b) deals only with part of the case in accordance with rule 35.13(3);

the amount of costs to be paid to the party entitled to such costs must be assessed by the court and in assessing the costs the court must take into account the scale of prescribed costs or the amount of the budgeted costs, as the case may be.

(4) In determining the appropriate amount of costs to be paid where an order has been made under rule 65.8 (budgeted costs), the court may take into account any written information provided by either party when the costs budget was made.

## **PART 36 – PAYMENTS INTO COURT TO SUPPORT OFFERS UNDER PART 35 AND UNDER COURT ORDER**

### **Contents of this Part**

Scope of this Part	Rule 36.1
Payments into court to support offers to settle	Rule 36.2
Right to payment out on acceptance of offer	Rule 36.3
Cases where payment out requires court order	Rule 36.4
Money paid into court under order	Rule 36.5
Money paid into court as condition for permission to defend or to continue to defend	Rule 36.6
Proceedings under Fatal Accidents Acts	Rule 36.7

### **36.1 Scope of this Part.**

- (1) This Part deals with payments into court made
  - (a) in accordance with an order of court;
  - (b) to support a defence of tender; and
  - (c) to support an offer of payment under Part 35.

(2) A defendant is not obliged to make a payment into court to support an offer under Part 35.

(3) With the

- (a) agreement of the claimant; or
- (b) permission of the court;

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a defendant may pay money in support of an offer of payment into an interest bearing account on such terms as to the

- (i) names of the account holders; and
- (ii) terms on which money may be paid out of the account;

as may be ordered by the court or agreed between the parties.

### **36.2 Payments into court to support offers to settle.**

(1) A defendant who offers to settle the whole or part of a claim may pay money into court in support of the offer.

- (2) A defendant may not pay money into court unless the
  - (a) defendant certifies that such payment is in support of an offer to settle;
  - (b) payment is made to support a defence of tender; or
  - (c) payment is made under a court order.
- (3) A payment into court may not be made until a claim is issued.
- (4) A payment into court to support an offer may be made
  - (a) when the offer is made; or
  - (b) at any time while the offer is outstanding.
- (5) A defendant who pays money into court must
  - (a) serve notice of payment on the claimant; and
  - (b) file a copy of the notice with a statement of the date (if any) by which the offer is open for acceptance under rule 35.9(1).

### **36.3 Right to payment out on acceptance of offer.**

- (1) The general rule is that a claimant who accepts an offer to settle
  - (a) within the period stated; or
  - (b) where no period is stated;

for accepting it in the defendant's offer is entitled to payment of the sum which the defendant paid into court to support the offer, without needing a court order.

(2) To obtain payment, the claimant must file a request for payment certifying that the offer has been accepted in accordance with paragraph (1)(a) or (b).

- (3) The general rule is qualified by rule 36.4.

### **36.4 Cases where payment out requires court order.**

- (1) If a claimant accepts money paid into court
  - (a) after the end of the period stated for accepting it;
  - (b) by one or more, but not all, of a number of defendants;

- (c) to settle a claim to which
  - (i) Part 23 (claims by minors and patients); or
  - (ii) rule 36.7 (proceedings under Fatal Accidents Acts) apply; or
- (d) with a defence of tender before claim;

the money in court may only be paid out under an order of the court.

- (2) An order under paragraph (1)(c) may not be made by consent.
- (3) If
  - (a) a claimant accepts money paid into court after the trial has begun; and
  - (b) all further proceedings on the claim or that part of it to which the acceptance relates are stayed;

the money in court may only be paid out under a court order.

(4) An order under this rule must deal with the costs of the proceedings which have been stayed.

### **36.5 Money paid into court under order.**

- (1) When a party makes a payment into court under a court order that party must give notice of the payment to every other party.
- (2) Money paid into court under a court order may not be paid out unless the court gives permission.
- (3) Paragraph (2) does not apply where
  - (a) the money is paid into court by a defendant;
  - (b) in accordance with rule 36.6(2) that defendant chooses to treat the money paid into court as if it were payment into court in support of an offer to settle; and
  - (c) the claimant accepts the offer to settle.

### **36.6 Money paid into court as condition for permission to defend or to continue to defend.**

- (1) This rule applies where the court makes an order permitting a defendant to
  - (a) continue to defend; or
  - (b) defend;

on condition that the defendant makes a payment into court.

- (2) If
  - (a) a defendant makes such a payment into court; and
  - (b) makes an offer to settle (whether before or after the order to pay money into court);

the defendant may choose to treat the whole or any part of the money paid into court as if it were a payment into court made in support of the offer to settle.

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- (3) To do this the defendant must
  - (a) file a notice that the defendant so chooses; and
  - (b) serve a copy of it on every other party to the proceedings.

### 36.7 Proceedings under Fatal Accidents Act.

(1) If a single sum of money is paid into court in satisfaction of proceedings arising under a Fatal Accidents Act and that sum is accepted, the court must apportion that sum between the different causes of action when

- (a) giving directions under rule 23.13; or
- (b) authorising its payment out of court.

(2) If, in proceedings arising under a Fatal Accidents Act, a claim is made by more than one person and a single sum of money is paid into or apportioned by the court to the cause of action under the Act and is accepted by such persons, the court must apportion the payment between those persons.

## PART 37 – DISCONTINUANCE

### Contents of this Part

Scope of this Part	Rule 37.1
Right to discontinue claim	Rule 37.2
Procedure for discontinuing	Rule 37.3
Right to apply to have notice of discontinuance set aside	Rule 37.4
Effect of discontinuance	Rule 37.5
Liability for costs	Rule 37.6
Quantification of costs	Rule 37.7
Discontinuance and subsequent proceedings	Rule 37.8

### 37.1 Scope of this Part.

(1) The Rules in this Part set out the procedure by which a claimant may discontinue all or any part of a claim.

- (2) A claimant who
  - (a) claims more than one remedy; and
  - (b) subsequently abandons a claim to one or more remedies but continues with the claim for the other remedies;

is not treated as discontinuing part of a claim for the purposes of this Part.

- Rule 42.7 deals with consent orders which may include orders bringing a claim to an end by way of a consent judgment or otherwise.

**37.2 Right to discontinue claim.**

(1) The general rule is that a claimant may discontinue all or part of a claim without the permission of the court.

(2) However,

- (a) a claimant needs permission from the court to discontinue all or part of a claim in relation to which
  - (i) any party has given an undertaking to the court; or
  - (ii) the court has granted an interim injunction;
- (b) a claimant who has received an interim payment in relation to a claim (whether voluntarily or pursuant to an order under Part 17) may discontinue only if the
  - (i) court gives permission; or
  - (ii) defendant who made the payment consents in writing;
- (c) if there is more than one claimant, a claimant may not discontinue unless
  - (i) every other claimant consents in writing; or
  - (ii) the court gives permission.

(3) If there is more than one defendant, the claimant may discontinue all or part of the claim against all or any of the defendants.

**37.3 Procedure for discontinuing.**

- (1) To discontinue a claim or any part of a claim a claimant must
  - (a) serve a notice of discontinuance on every other party to the claim; and
  - (b) file a copy of it.

(2) The claimant must certify on the filed copy that notice of discontinuance has been served on every other party to the claim.

(3) If the claimant needs the consent of some other party, a copy of the necessary consent must be attached to the filed copy of the notice of discontinuance.

(4) If the claimant needs permission from the court, the notice of discontinuance must contain details of the order by which the court gave permission.

(5) If there is more than one defendant, the notice of discontinuance must specify against which defendant or defendants the claim is discontinued.

**37.4 Right to apply to have notice of discontinuance set aside.**

(1) If the claimant discontinues without the consent of the defendant or the permission of the court, any defendant who has not consented may apply to have the notice of discontinuance set aside.

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(2) A defendant may not apply under this rule more than 28 days after the date when the notice of discontinuance was served on that defendant.

### **37.5 Effect of discontinuance.**

(1) Discontinuance against any defendant takes effect on the date when the notice of discontinuance is served on that defendant under rule 37.3(1)(a).

(2) A claim or the relevant part of a claim is brought to an end as against that defendant on that date.

(3) However, this does not affect

- (a) any proceedings relating to costs; or
- (b) the right of the defendant under rule 37.4 to apply to have the notice of discontinuance set aside.

### **37.6 Liability for costs.**

(1) Unless the

- (a) parties agree; or
- (b) court orders otherwise;

a claimant who discontinues is liable for the costs incurred by the defendant against whom the claim is discontinued, on or before the date on which notice of discontinuance was served.

(2) If a claim is only partly discontinued,

- (a) the claimant is only liable for the costs relating to that part of the claim which is discontinued; and
- (b) unless the court orders otherwise, the costs which the claimant is liable to pay are not to be quantified until the conclusion of the rest of the claim.

### **37.7 Quantification of costs.**

(1) The general rule is that, unless an order has been made for budgeted costs under rule 65.8, the costs are to be determined in accordance with the scale of prescribed costs contained in Part 65, Appendices B and C.

(2) If the claimant discontinues part of the case only, the amount of costs must be assessed by the court when the remainder of the claim is resolved.

(3) In determining the appropriate amount of costs to be paid where an order has been made under rule 65.8 (budgeted costs), the court may take into account any written information provided by either party when the costs budget was made.

**37.8 Discontinuance and subsequent proceedings.**

If the claimant

- (a) discontinues a claim after the defendant against whom the claim is discontinued has filed a defence; and
- (b) makes a subsequent claim against the same defendant arising out of facts which are the same or substantially the same as those relating to the discontinued claim; and
- (c) has not paid the defendant's costs of the discontinued claim;

the court may stay the subsequent claim until the costs of the discontinued claim are paid.

**PART 38 – PRE-TRIAL REVIEW****Contents of this Part**

Scope of this Part	Rule 38.1
Direction for pre-trial review	Rule 38.2
Rules relating to case management conference to apply	Rule 38.3
Who is to conduct pre-trial review	Rule 38.4
Parties to prepare pre-trial memorandum	Rule 38.5
Directions at pre-trial review	Rule 38.6

**38.1 Scope of this Part.**

This Part deals with the pre-trial review which is to be held shortly before trial if the court so orders.

**38.2 Direction for pre-trial review.**

(1) At any case management conference and at any subsequent hearing in the claim, other than the trial, the court must consider whether a pre-trial review should be held to enable the court to deal justly with the claim.

(2) A party may apply for a direction that a pre-trial review be held.

(3) An application for a pre-trial review must be made at least 60 days before the trial date or the beginning of any trial period fixed under rule 27.5(3).

(4) The court office must give each party at least 14 days notice of the date, time and place for the pre-trial review.

**38.3 Rules relating to case management conference to apply.**

Parts 25 and 26, where appropriate, apply to a pre-trial review as they do to a case management conference.

**38.4 Who is to conduct pre-trial review.**

Wherever practicable the pre-trial review is to be conducted by the trial judge.



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### 38.5 Parties to prepare pre-trial memorandum.

(1) The parties must seek to agree on and file at the court office a pre-trial memorandum not less than 7 days before the pre-trial review.

(2) If the parties are not able to agree on a memorandum, each party must file its own memorandum and serve a copy on all other parties not less than 3 days before the date fixed for the pre-trial review.

(3) A pre-trial memorandum must contain

- (a) a concise statement of the nature of the proceedings;
- (b) a statement of the issues to be determined at the trial;
- (c) details of any admissions made; and
- (d) the factual and legal contentions of the party or parties filing it.

### 38.6 Directions at pre-trial review.

(1) At the pre-trial review the judge must give directions as to the conduct of the trial in order to ensure the fair, expeditious and economic trial of the issues.

(2) In particular, the court may

- (a) decide on the total time to be allowed for the trial;
- (b) direct either party to provide further information to the other;
- (c) direct how that time shall be allocated between the parties;
- (d) direct the parties jointly to prepare one or more of
  - (i) a core bundle of documents (that is, a bundle containing only the documents which the trial judge will need to pre-read or to which it will be necessary to refer repeatedly at the trial);
  - (ii) an agreed statement of facts;
  - (iii) an agreed statement of the basic technical, scientific or medical matters in issue;
  - (iv) an agreed statement as to any relevant specialist area of law, which statement shall not be binding on the trial judge;
- (e) direct when and by whom the documents should be filed at the court;
- (f) direct whether or not there are to be any opening or closing addresses and the time to be allocated to each;
- (g) give directions as to the extent to which evidence may be given in written form;
- (h) give directions as to the procedure to be followed at the trial; and
- (i) give directions for the filing by each party and service on all other parties of one or more of the following:
  - (i) a chronology of relevant events;
  - (ii) a list of authorities which it is proposed to cite in support of those propositions;
  - (iii) a skeleton argument; and
  - (iv) a summary of any legal propositions to be relied on at the trial.

**PART 39 – TRIAL****Contents of this Part**

Documents for use at trial	Rule 39.1
Cross-examination	Rule 39.2
Written submissions	Rule 39.3
Failure of party to attend trial	Rule 39.4
Applications to set aside judgment given in party's absence	Rule 39.5
Adjournment of trial	Rule 39.6
Inspection	Rule 39.7

**39.1 Documents for use at trial.**

(1) At least 21 days before the date fixed for the trial, all parties must inform the claimant of the documents that they wish to have included in the bundle of documents to be used at the trial.

(2) The claimant must prepare a bundle including all the documents which any party wishes to make use of at the trial.

(3) The bundle of documents should separate those which are agreed and those which are not agreed.

(4) The claimant must paginate and index the bundle of documents.

(5) At least 10 days before the date fixed for the trial the claimant must file at the court office

- (a) a bundle comprising copies of:
  - (i) all statements of case;
  - (ii) any document which the parties were ordered to file under rule 38.6(2)(b);
  - (iii) any requests for information and the replies;
  - (iv) the claim form; and
  - (v) the pre-trial memorandum or memoranda;
- (b) a second bundle comprising copies of:
  - (i) all expert reports;
  - (ii) all witness statements; and
  - (iii) any agreed statements under rule 38.6(2)(c)(ii)-(iv);
- (c) a third bundle comprising the documents referred to in paragraph (2); and
- (d) where the bundles exceed 100 pages of documents in total, a core bundle (that is, a bundle containing only the documents which the trial judge will need to pre-read or to which it will be necessary to refer repeatedly at the trial).

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- (6) There must be excluded from the bundles prepared under this rule any
- (a) application or order relating to interim payments under Part 17; and
  - (b) offer to settle under Part 35 or notice of payment into court under Part 36;

and any reference to any such payment or offer must be excised from any document contained in the bundles.

(7) If only a counterclaim is to be tried, references in this rule to the “**claimant**” should be construed as references to the defendant.

- Rule 27.6 allows the court to dispense with all or some of the requirements of this rule in simple and urgent cases.

### 39.2 **Cross-examination.**

The court may limit examination, cross-examination or re-examination of any witness.

### 39.3 **Written submissions.**

(1) The parties may, with the consent of the judge, file written submissions instead of, or in addition to, closing speeches.

(2) Such written submissions must be filed within 7 days of the conclusion of the trial or such shorter period as the judge directs.

### 39.4 **Failure of party to attend trial.**

If the judge is satisfied that notice of the hearing has been served on the absent party or parties in accordance with these Rules,

- (a) if any party does not appear at the trial, the judge may strike out the claim;
- (b) if one or more but not all parties appear, the judge may proceed in the absence of the parties who do not appear.

### 39.5 **Applications to set aside judgment given in party’s absence.**

(1) A party who was not present at a trial at which judgment was given or an order made may apply to set aside that judgment or order.

(2) The application must be made within 14 days after the date on which the judgment or order was served on the applicant.

(3) The application to set aside the judgment or order must be supported by evidence on affidavit showing

- (a) a good reason for failing to attend the hearing; and
- (b) that it is likely that had the applicant attended, some other judgment or order might have been given or made.

**39.6 Adjournment of trial.**

(1) The judge may adjourn a trial on such terms as the judge thinks just.

(2) The judge may only adjourn a trial to a date and time fixed by the judge or to be fixed by the court office.

**39.7 Inspection.**

The judge trying a claim may inspect any place or thing that may be relevant to any issue in the claim.

**PART 40 – APPOINTMENT OF REFEREE TO INQUIRE AND REPORT****Contents of this Part**

Power to order trial before referee	Rule 40.1
Reference to referee to inquire and report	Rule 40.2
Appointment of referee	Rule 40.3
Conduct of reference	Rule 40.4
Report following reference	Rule 40.5
Consideration of report by court	Rule 40.6
Restrictions on appointment of referee in a claim by or against Crown	Rule 40.7

**40.1 Power to order trial before referee.**

If the

- (a) court considers that the claim requires
  - (i) prolonged examination of documents; or
  - (ii) scientific or local investigation which cannot conveniently be carried out by the court;
- (b) matters in dispute are wholly or mainly a matter of account; or
- (c) parties agree;

then, subject to rule 40.7, the court may order the claim or any issue or allegation to be tried by a referee.

**40.2 Reference to referee to inquire and report.**

The court may refer to a referee for inquiry and report any question or issue of fact arising in a claim.

**40.3 Appointment of referee.**

(1) The general rule is that a referee must be appointed at a case management conference or pre-trial review.

(2) The referee must be a person agreed on by the parties or, if they fail to agree, a person selected by the court in accordance with paragraph (3).

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- (3) If the parties cannot agree who should be the referee, the court may
  - (a) select the referee from a list prepared or identified by the parties; or
  - (b) direct that the referee be selected in such other manner as the court directs.
- (4) The court must identify the question or issue upon which the referee is to report.
- (5) The court must decide what fee is to be paid to the referee and by whom.
- (6) Notwithstanding paragraph (5), the court may ultimately order any party to pay the fee of the referee.

#### 40.4 **Conduct of reference.**

- (1) For the purpose of the inquiry, the referee has the same powers as the court, other than the power to commit for contempt of court.
- (2) Unless the court otherwise orders, the referee must adopt the simplest, least expensive and most expeditious method of conducting the reference.
- (3) The referee may hold the trial or conduct the inquiry at any place and at any time which appears to the referee to be convenient to the parties.
- (4) If a person served with a witness summons to appear before a referee
  - (a) fails to attend;
  - (b) refuses to answer any lawful question or produce any document at the inquiry; or
  - (c) refuses to be sworn or affirm for the purposes of the inquiry;the referee must sign and file a certificate of such failure or refusal.
- (5) Any party may apply to the court for an order requiring the person served with the witness summons to appear before a referee to attend, be sworn or affirmed, or answer any question or produce any document, as the case may be.
- (6) An application for an order under paragraph (5) may be made without notice but must be supported by evidence on affidavit.
- (7) In the case of non-attendance, the affidavit must prove
  - (a) service of the witness summons; and
  - (b) that the person served with the witness summons was paid or offered the payments required by rule 33.6.
- (8) An order under this rule must be served personally on the person served with the witness summons and be endorsed with a notice in accordance with the first form in rule 53.3(b).
- (9) A person who wilfully disobeys an order made against that person under this rule commits contempt of court.

(10) The court may order the person against whom an order is made under this rule to pay any costs resulting from the

- (a) failure to attend before a referee;
- (b) refusal to answer any lawful question or produce any document at the inquiry; or
- (c) refusal to be sworn or to affirm for the purpose of the inquiry.
  - Part 53 deals with the procedure to apply to commit a person for contempt of court.

#### **40.5 Report following reference.**

- (1) The report of the referee is to be made to the court.
- (2) The referee must supply a copy of the report to each party.
- (3) The referee may, in the report,
  - (a) make a special statement of facts from which the court may draw inferences; or
  - (b) submit any question for the decision of the court.

#### **40.6 Consideration of report by court.**

(1) Upon receipt of the report of the referee, the court office must fix a date, time and place for consideration of the report by the court.

(2) The court office must give 14 days notice to the parties of such consideration.

- (3) The court may
  - (a) adopt the report in whole or in part;
  - (b) ask the referee to explain any part of the report;
  - (c) decide the question or issue on the evidence taken by the referee;
  - (d) direct that additional evidence be given to the court;
  - (e) remit any question or issue for further consideration; or
  - (f) vary the report.

#### **40.7 Restrictions on appointment of referee in a claim by or against Crown.**

In a claim by or against the Crown an appointment of a referee may not be made without the consent of the relevant Attorney-General.

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## PART 41 – ACCOUNTS AND INQUIRIES

### Contents of this Part

Scope of this Part	Rule 41.1
Directions for account	Rule 41.2
Verification of account	Rule 41.3
Notice of omissions	Rule 41.4
Allowances	Rule 41.5
Delay	Rule 41.6
Distribution before entitlement ascertained	Rule 41.7

### 41.1 Scope of this Part.

- (1) This Part deals with claims
  - (a) for an account; or
  - (b) for some other relief which requires the taking of an account.
- (2) A claim for an account must be made by fixed date claim supported by evidence on affidavit.
  - Rule 8.1 deals with the issue of a fixed date claim.
  - Rule 27.2 deals with the first hearing of such a claim.

### 41.2 Directions for account.

- (1) If a claim or counterclaim is made for an account or requires the taking of an account, an application for directions relating to the taking of the account must be made at the case management conference or first hearing.
- (2) The court may
  - (a) direct that any preliminary issue of fact be tried;
  - (b) order an account to be taken;
  - (c) order that inquiries be made; or
  - (d) order that any amount shown to be due to a party on the account be paid by a date specified in the order.
- (3) Every direction that an account be taken must be so numbered that each distinct account and inquiry can be designated by that number.
- (4) On directing that an account be taken, or subsequently, the court must direct how it is to be taken or vouched.
- (5) The court may direct that any relevant books of account shall be evidence of the matters contained in them, subject to any objection that any party may take.

**41.3 Verification of account.**

- (1) When there has been a direction for an account to be taken the accounting party must make out its account and verify it by affidavit exhibiting the account.
- (2) The items on each side of the account must be numbered consecutively.
- (3) Unless the court otherwise orders, the accounting party must file the affidavit and the account and serve a copy on all other parties.

**41.4 Notice of omissions.**

Any party who claims that there are omissions or challenges any item in the account must give notice to the accounting party with the

- (a) best particulars that the party who so claims can give of the omission or error; and
- (b) grounds for alleging it.

**41.5 Allowances.**

In taking any account all just allowances must be made.

**41.6 Delay.**

If there is undue delay in taking the account, the court may

- (a) require the accounting party, or any other party, to explain the delay;
- (b) give directions to expedite the taking of the account;
- (c) direct any other party to take over the taking of the account; and
- (d) make such order for costs as is just.

**41.7 Distribution before entitlement ascertained.**

(1) This rule applies where some, but not all, of the persons entitled to share in a fund are ascertained and there is likely to be delay in determining the existence or entitlement of the other persons.

(2) The court may order immediate payment of their shares to the persons who have been ascertained.

(3) The court need not reserve any part of those shares for the purpose of meeting any subsequent costs of determining the existence or entitlement of the other persons.



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## PART 42 – JUDGMENTS AND ORDERS

### Contents of this Part

Scope of this Part	Rule 42.1
Parties present when order made or notified of terms to be bound	Rule 42.2
Practice forms to be used where available	Rule 42.3
Standard requirements	Rule 42.4
Drawing of judgments and orders	Rule 42.5
Service of orders	Rule 42.6
Consent judgments and orders	Rule 42.7
Time when judgment or order takes effect	Rule 42.8
Time for complying with judgment or order	Rule 42.9
Correction of errors in judgments or orders	Rule 42.10
Cases where court gives judgment both on claim and counterclaim	Rule 42.11
Service of copy order on person not a party	Rule 42.12

#### 42.1 Scope of this Part.

- (1) This Part contains rules about judgments and orders made by the court.
- (2) This Part does not apply to the extent that any other rule makes a different provision in relation to the judgment or order in question.

#### 42.2 Parties present when order made or notified of terms to be bound.

A party who is

- (a) notified of the terms of the judgment or order by telephone, FAX or otherwise; or
- (b) present whether in person or by legal practitioner when the judgment was given or order was made;

is bound by the terms of a judgment or order whether or not the judgment or order is served.

#### 42.3 Practice forms to be used where available.

If there is a practice form for a judgment or order of any description, a judgment or order of that description must be in that form.

#### 42.4 Standard requirements.

- (1) Every judgment or order must state the name and judicial title of the person who made it, unless it is a
  - (a) consent order under rule 42.7;
  - (b) default judgment under Part 12; or

- (c) judgment entered on an admission or following a court order under Rule 14.6, 14.7, 14.8, 14.10 or 14.11.
- (2) Every judgment or order must
  - (a) be sealed by the court;
  - (b) bear the date on which it is given or made; and
  - (c) be signed by the registrar.

#### **42.5 Drawing of judgments and orders.**

- (1) Every judgment or order must be drawn by the court, unless
  - (a) a party, with the permission of the court, agrees to draft it;
  - (b) it is a consent order under rule 42.7;
  - (c) the court directs a party to draft it; or
  - (d) the court dispenses with the need to do so.
- (2) If a draft of an order is directed it must be filed no later than 7 days from the date on which the direction was given so that the court office can seal the order.
- (3) If a party fails to file a draft of an order within 7 days after the direction was given any other party may draw and file the order.
- (4) A party who drafts an order must file sufficient copies for service on all parties who are to be served.

#### **42.6 Service of orders.**

- (1) Unless the court otherwise directs, the court office must serve every judgment or order on
  - (a) any person on whom the court orders it to be served; and
  - (b) every party to the claim in which the judgment or order is made.
    - Part 6 deals with service.
- (2) If a party is acting by a legal practitioner, the court may direct that any judgment or order be served on the party in person as well as on the legal representative.

#### **42.7 Consent judgments and orders.**

- (1) Subject to paragraphs (2) to (5), a consent order or judgment must be
  - (a) drawn in the terms agreed;
  - (b) expressed as being “By Consent”;
  - (c) signed by the legal practitioner acting for each party to whom the order relates; and
  - (d) filed at the court office for sealing.

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- (2) This rule applies where
- (a) all relevant parties agree to the terms in which judgment should be given or an order made; and
  - (b) none of these Rules prevents the parties agreeing to vary the terms of any court order.
- (3) Except as provided by paragraphs (4) and (5), this rule applies to the following kinds of judgments or orders:
- (a) a judgment for
    - (i) costs;
    - (ii) the delivery up of goods with or without the option of paying the value of the goods to be assessed or the agreed value; and
    - (iii) the payment of a debt or damages (including a judgment or order for damages or the value of goods to be assessed);
  - (b) an order for the
    - (i) discharge from liability of any party;
    - (ii) dismissal of any claim, wholly or in part;
    - (iii) payment, assessment or waiver of costs, or such other provision for costs as may be agreed;
    - (iv) payment out of money which has been paid into court;
    - (v) setting aside of a default judgment under Part 13;
    - (vi) stay of enforcement of a judgment, either unconditionally or on condition that the money due under the judgment is payable on a stated date or by instalments specified in the order; and
    - (vii) stay of proceedings on terms which are attached as a schedule to the order but which are not otherwise part of it (a “Tomlin Order”); and
  - (c) any procedural order other than one falling within rule 26.7(3) or rule 27.8(1) and (2).
- (4) This rule does not apply
- (a) in Admiralty proceedings;
  - (b) where any party is a litigant in person;
  - (c) where any party is a minor or patient; or
  - (d) where the court’s approval is required by these Rules or any enactment before an agreed order can be made.
- (5) This rule does not allow the making of a consent order by which any hearing date fixed by the court is to be adjourned.

**42.8 Time when judgment or order takes effect.**

A judgment or order takes effect from the day it is given or made, unless the court specifies that it is to take effect on a different date.

**42.9 Time for complying with judgment or order.**

A party must comply with a judgment or order immediately, unless the

- (a) claimant, on requesting judgment in default under Part 12 or judgment on an admission under Part 14, specifies a different time for compliance;
- (b) court varies the time for compliance including specifying payment by instalments; or
- (c) judgment or order specifies some other date for compliance.

**42.10 Correction of errors in judgments or orders.**

(1) The court may at any time (without an appeal) correct a clerical mistake in a judgment or order, or an error arising in a judgment or order from any accidental slip or omission.

- (2) A party may apply for a correction without notice.

**42.11 Cases where court gives judgment both on claim and counterclaim.**

(1) This rule applies where the court gives judgment for specified amounts both for the claimant on the claim and the defendant on the counter-claim.

(2) If there is a balance in favour of one of the parties, the court may order the party whose judgment is for the lesser amount to pay the balance.

(3) In a case to which this rule applies, the court may make against the claimant and the defendant (whether or not it makes an order under paragraph (2)) a separate order as to

- (a) costs; or
- (b) damages.

**42.12 Service of copy order on person not a party.**

(1) If in any claim an order is made which might affect the rights of persons who are not parties to the claim, the court may at any time direct that a copy of any judgment or order be served on any such person.

(2) Service must be effected in accordance with Part 5 and the court may direct which party is to be responsible for service.

- (3) The copy order must be endorsed with a notice in Form 13.

(4) The court may dispense with service of the copy order or judgment if it appears impracticable to serve that person.

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- (5) Any person so served, or on whom service is dispensed with
  - (a) is bound by the terms of the judgment or order; and
  - (b) may take part in any proceedings under the judgment or order.
- (6) Notwithstanding paragraph (5), any person to whom that paragraph applies may apply within 28 days to discharge, vary or add to the judgment or order.

## **PART 43 – ENFORCEMENT – GENERAL PROVISIONS**

### **Contents of this Part**

Scope of this Part	Rule 43.1
Procedure for beginning enforcement	Rule 43.2
Judgment subject to conditions	Rule 43.3
Separate enforcement of costs	Rule 43.4
Effect of setting aside judgment or order	Rule 43.5
Court's powers where person ordered to do act fails to comply	Rule 43.6
Judgment for sum in foreign currency	Rule 43.7
Enforcement by or against person who is not a party	Rule 43.8
Enforcement against partnership	Rule 43.9
Enforcement of awards, etc. made by outside bodies	Rule 43.10

### **43.1 Scope of this Part.**

- (1) This Part deals generally with the enforcement of judgments and orders.
- (2) In this Part and in Parts 44 to 53,
  - “judgment creditor” means the person who is entitled to enforce a judgment or order; and
  - “judgment debtor” means the person who is liable to enforcement under the judgment or order, even though the judgment or order is not a money judgment.

### **43.2 Procedure for beginning enforcement.**

- (1) The general rule is that, once a judgment or order has become enforceable, the court must issue an enforcement order if the judgment creditor files the appropriate request.
- (2) If any of these Rules requires permission to begin enforcement proceedings the judgment creditor must first obtain that permission.

### **43.3 Judgment subject to condition.**

- (1) A person who has a judgment or order subject to the fulfilment of a condition may not enforce the judgment or order unless the
  - (a) condition is fulfilled; or
  - (b) court gives permission for the judgment or order to be enforced.

(2) If a person has the benefit of a judgment or order subject to fulfilment of a condition and there is a failure to fulfil that condition, then, unless the court otherwise orders

- (a) that person loses the benefit of the judgment or order; and
- (b) any other person interested under the judgment or order may take any step which
  - (i) is warranted by the judgment or order; or
  - (ii) might have been taken if the judgment or order had not been given.

#### **43.4 Separate enforcement for costs.**

A judgment creditor who has judgment with costs may enforce the judgment and the costs separately.

#### **43.5 Effect of order setting aside judgment or order.**

(1) The general rule is that if the court sets aside a judgment or order, any order made for the purpose of enforcing it ceases to have effect.

(2) The court may however direct that an order remains in force.

#### **43.6 Court's powers where person ordered to do act fails to comply.**

- (1) If
  - (a) the court orders a party to do an act; and
  - (b) that party does not do it;

the judgment creditor may apply for an order that the judgment creditor; or some person appointed by the court, may do the act.

(2) The court may order the judgement debtor to pay the costs and expenses of the person who does the act.

(3) If the court makes an order under paragraph (2), it must assess the costs under rule 65.11 and determine the amount of expenses to be allowed.

- Part 53 deals with contempt proceedings.

#### **43.7 Judgment for sum in foreign currency.**

If the court gives judgment for a sum expressed in a currency of a country other than that in use in the Member State or Territory in which the judgment is to be enforced, the judgment creditor must, when commencing enforcement proceedings, file a certificate stating the exchange rate current in the Member State or Territory where enforcement is to be carried out (for the purpose of the unit of foreign currency in which the judgment is expressed) at the close of business on the previous business day.

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**43.8 Enforcement by or against person who is not a party.**

(1) A judgment or order in favour of a person who is not a party may be enforced in the same way as a judgement or order in favour of a party.

(2) A judgment or order against a person who is not a party may be enforced in the same way as a judgment or order against a party.

**43.9 Enforcement against partnership.**

(1) This rule has effect where the court gives a judgment or makes an order against a firm or partnership.

(2) A judgment creditor may enforce the judgment or order against

- (a) any of the firm's property; or
- (b) any person who
  - (i) has acknowledged service as a partner in the firm;
  - (ii) has admitted in a statement of case to being a partner in the firm;
  - (iii) was adjudged by the court to be a partner;
  - (iv) was served with the claim form as a partner within the jurisdiction or, with leave of the court under Part 7, out of the jurisdiction; or
  - (v) in Saint Lucia, is registered as a partner in the firm under article 20 of the Commercial Code (Cap. 243).

(3) In a case to which paragraph (2) does not apply the judgment creditor may issue enforcement proceedings against a person whom it claims to be a partner if it has the court's permission to do so.

(4) Notice of an application for permission must be served on the person against whom the judgment creditor seeks to enforce judgment and must be supported by evidence on affidavit.

- (5) A judgment or order given or made on a claim by
- (a) or against a firm against or by a member of the firm; or
  - (b) another firm against a firm where the two firms have one or more partners in common;

may not be enforced without the permission of the court.

**43.10 Enforcement of awards, etc. made by outside bodies.**

- (1) This rule has effect as to the
- (a) enforcement of an award not made by the court but which is enforceable by virtue of a statutory provision as if it were an order of the court; and
  - (b) registration of such an award so that it may be enforceable as if it were an order of the court.

- (2) In this rule,  
     “award” means the award, order or decision which it is sought to enforce;  
     and  
     “outside body” means any authority other than the court.
- (3) The general rule is that an application
- (a) for permission to enforce an award; or
  - (b) to register an award;

may be made without notice but must be supported by evidence on affidavit.

(4) The general rule does not apply where a rule or statutory provision requires notice to be given.

- (5) The applicant must
- (a) exhibit to the affidavit the award or a copy of it;
  - (b) give an address for service on the person against whom the applicant seeks to enforce the award; and
  - (c) (if the award is for the payment of money), certify the amount remaining due to the applicant.

## **PART 44 – ORAL EXAMINATION IN AID OF ENFORCEMENT**

### **Contents of this Part**

Scope of this Part	Rule 44.1
Who may be orally examined	Rule 44.2
Procedure to obtain order for oral examination	Rule 44.3
Order for oral examination	Rule 44.4
Conduct of oral examination	Rule 44.5
Order for payment by instalments	Rule 44.6
Financial position notice	Rule 44.7

#### **44.1 Scope of this Part.**

This Part deals with the examination of a judgment debtor to obtain information to assist in enforcing a judgment, and such an examination is called an “oral examination”.

#### **44.2 Who may be orally examined.**

- (1) The following persons may be ordered to attend an oral examination:
- (a) the judgment debtor; or
  - (b) an officer or former officer of a judgment debtor which is a body corporate.
- (2) A person referred to in paragraph (1) is called “the examinee”.



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#### 44.3 Procedure to obtain order for oral examination.

(1) An application for an order that a person attend an oral examination may be made without notice.

(2) If permission is required to enforce the judgment, a copy of the permission must be attached to the application.

(3) If the application for the order is against an officer of a body corporate, the application must be supported by evidence on affidavit showing that the person to be orally examined is such an officer.

#### 44.4 Order for oral examination.

(1) The order, in Form 14, must state the date, time and place of the examination.

(2) The judgment creditor must serve the order personally on the examinee at least 7 days before the date fixed for the examination.

(3) The judgment creditor must file an affidavit of service not less than 3 days before the date fixed for the examination.

#### 44.5 Conduct of oral examination.

(1) The examination may take place before the registrar or an officer of the court authorised by the Chief Justice.

(2) A person referred to in paragraph (1) is called “**the examiner.**”

(3) The examination must be on oath or affirmation.

(4) The statement made by the examinee must be taken down and read to the examinee who must then be asked to sign it.

(5) If the examinee refuses to sign the statement it must be signed by the examiner and certified to be a true record of the examination.

(6) If the examinee

(a) fails to attend;

(b) refuses to be sworn or affirm; or

(c) refuses to answer any question;

the examiner may adjourn the examination to a judge.

(7) The notice of the adjourned hearing must be in Form 15.

(8) The judgment creditor must

(a) serve the examinee personally with the notice of the adjourned hearing endorsed with the first form of notice set out in rule 53.3(b) at least 7 days before the adjourned examination; and

(b) file an affidavit proving service of Form 15 and that the examinee was offered his or her travelling expenses to and from the court.

**44.6 Order for payment by instalments.**

If the parties agree that the judgment debt should be paid by instalments or at some future date, the court office may draw an order to that effect.

**44.7 Financial position notice.**

(1) If the judgment to be enforced is a money judgment, the judgment creditor may serve, in addition to or in place of an order for an oral examination, a financial position notice in Form 16 requiring a judgment debtor to complete a statement of the judgment debtor's financial position in the practice form and serve it on the judgment creditor within 14 days of service.

(2) The judgment creditor may notify the court if satisfied with the information provided by the judgment debtor.

(3) The court office must then notify the person to be examined that he or she need not attend the examination.

(4) If the judgment debtor is a body corporate, the financial position notice must require an officer of the body corporate to comply with paragraph (1).

**PART 45 – HOW JUDGMENTS MAY BE ENFORCED****Contents of this Part**

Scope of this Part	Rule 45.1
How money judgments may be enforced	Rule 45.2
Enforcement of orders for payment of money into court	Rule 45.3
Enforcement of judgments and orders for possession of land	Rule 45.4
Enforcement of judgments and orders for delivery of goods	Rule 45.5
Enforcement of judgments and orders requiring person to do act within specified time or not to do act	Rule 45.6
Enforcement of judgments and orders requiring body corporate to do act within specified time or not to do act	Rule 45.7

**45.1 Scope of this Part.**

(1) This Part sets out the ways in which judgments may be enforced.

(2) It has effect subject to any enactment as to enforcement of judgments in force for the time being in any Member State or Territory.

**45.2 How money judgments may be enforced.**

A judgment or order for payment of a sum of money other than an order for payment of money into court may be enforced by

- (a) a charging order under Part 48;
- (b) garnishee order under Part 50;

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- (c) (subject to the restrictions of any relevant Debtors Act) a Judgment Summons under Part 52;
- (d) on order for the seizure and sale of goods under Part 46; or
- (e) the appointment of a receiver under Part 51.

**45.3 Enforcement of orders for payment of money into court.**

- (1) An order for the payment of money into court may be enforced by
  - (a) a committal order under Part 53;
  - (b) an order for sequestration of assets under Part 53; or
  - (c) the appointment of a receiver under Part 51.
- (2) An order for committal or sequestration of assets under paragraph (a) or (b) may be made only if the order requires payment to be made within a specified time or by a specified date.

**45.4 Enforcement of judgments and orders for possession of land.**

- (1) A judgment or order for the possession of land may be enforced by
  - (a) a committal order under Part 53;
  - (b) a sequestration of assets order under Part 53; or
  - (c) a writ of possession of land.
- (2) An order for committal or sequestration of assets under paragraph (a) or (b) may be made only if the court has given a judgment or made an order requiring possession of land to be given within a specified time or by a specified date.

**45.5 Enforcement of judgments and orders for delivery of goods.**

- (1) The ways in which an order for delivery of goods may be enforced depend on whether or not the judgment or order gives the judgment debtor the choice of paying the assessed value of the goods.
- (2) If it gives the judgment debtor the choice, the means of enforcement are a writ of
  - (a) delivery to recover the goods or their assessed value under Part 46; or
  - (b) specific delivery for the recovery of specified goods under Part 46.
- (3) A judgment creditor may only obtain a writ of specific delivery under paragraph (2)(b) if the court gives permission under rule 46.9.
- (4) If the judgment or order gives the judgment debtor the choice of paying the assessed value of the goods, that judgment or order may not be enforced by order of committal under Part 53.

(5) However, on the application of the judgment creditor, the court may make an order requiring the judgment debtor to deliver the goods to the judgment creditor within a specified time or by a specified date, and if the judgment debtor does not comply, that order may be enforced by an order for committal under Part 53.

(6) If the judgment or order does not give the judgment debtor the choice of paying the assessed value of the goods, or an order is made under rule 46.9, the means of enforcing the order are by orders for

- (a) committal under Part 53;
- (b) recovery of specified goods under Part 46; or
- (c) sequestration of assets under Part 53.

(7) The judgment creditor may obtain an order for sequestration of assets or committal under paragraph (5) or (6) only if the court has given a judgment or made an order requiring delivery within a specified time.

#### **45.6 Enforcement of judgments and orders requiring person to do act within specified time or not to do act.**

A judgment or order which requires a person to

- (a) abstain from doing an act; or
- (b) do an act within a specified time or by a specified date;

may be enforced by an order under Part 53 for committal or sequestration of assets.

#### **45.7 Enforcement of judgments and orders requiring body corporate to do act within specified time or not to do act.**

(1) If the court gives a judgment or makes an order under rule 45.6 which requires a body corporate to do or abstain from that act it may make an order under Part 53 for

- (a) committal or for sequestration of assets against an appropriate person; or
- (b) sequestration of assets of the body corporate.

(2) In this rule, “appropriate person” means a director or other officer of the body corporate.

### **PART 46 – GENERAL RULES ABOUT WRITS OF EXECUTION**

#### **Contents of this Part**

Meaning of “writ of execution”	Rule 46.1
Permission required to enforce in certain cases	Rule 46.2
Application for permission to enforce	Rule 46.3
Amount to be recovered on enforcement	Rule 46.4
Enforcement of judgment or order requiring judgment debtor to do two or more different things	Rule 46.5

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**Contents of this Part**

No writ of execution against Crown	Rule 46.6
Enforcement of judgment for payment by instalments	Rule 46.7
No writ of execution for goods or payment of assessed value unless court has assessed value	Rule 46.8
Order for specific delivery	Rule 46.9
Period for which writ of execution valid	Rule 46.10
Renewal of writ of execution	Rule 46.11
Period for which court may renew writ of execution	Rule 46.12
Effective date of renewed writ unchanged	Rule 46.13
Claims to goods seized under writ of execution	Rule 46.14
Suspension of writ of execution at request of judgment creditor	Rule 46.15
Return to writ of execution	Rule 46.16

**46.1 Meaning of “writ of execution”.**

In these Rules, a “writ of execution” means any of the following:

- (a) an order for the sale of land (or, in Saint Lucia, a writ for the seizure and sale of immovable property);
- (b) an order for the seizure and sale of goods a writ of fieri facias (or, in Saint Lucia, a writ for the seizure and sale of moveable property);
- (c) an order for sequestration of assets;
- (d) a writ of delivery, being either an order for
  - (i) recovery of specified goods; or
  - (ii) the recovery of goods or their assessed value; and
- (e) a writ of possession.
  - Part 53 deals with enforcement by an order for sequestration of assets.

**46.2 Permission required to enforce in certain cases.**

A writ of execution may not be issued without permission if

- (a) any party against whom a judgment or order was liable to be enforced is no longer liable to have it enforced against it;
- (b) any statutory provision requires the permission of the court to be obtained before judgment is enforced;
- (c) 6 years have elapsed since the judgment was entered;
- (d) the goods against which it is wished to enforce the judgment or order are in the hands of a receiver or confiscator appointed by the court;
- (e) the judgment creditor is no longer entitled to enforce the order;

- (f) the judgment debtor has died and the judgment creditor wishes to enforce against assets of the deceased person which have passed to that person's personal representatives since the date of the order; or
- (g) the judgment was made subject to conditions.

**46.3 Application for permission to enforce.**

(1) An application for permission may be made without notice unless the court otherwise directs but must be supported by evidence on affidavit.

(2) On an application for leave the applicant must satisfy the court that it is entitled to proceed to enforce the judgment or order, and, in particular, must satisfy the court,

- (a) if the judgment is a money judgment, as to the amount
  - (i) originally due; and
  - (ii) due together with interest at the date of the application;
- (b) if rule 46.2 (c) applies, as to the reasons for the delay;
- (c) if rule 46.2 (a) or (e) applies, as to the change that has taken place;
- (d) if rule 46.2 (d) or (f) applies, that a demand to satisfy the judgment or order has been made on the person holding the assets and that that person has refused or failed to do so;
- (e) that the applicant is entitled to enforce the judgment; and
- (f) that the person against whom enforcement is sought is liable to satisfy the judgment.

**46.4 Amount to be recovered on enforcement.**

(1) A judgment creditor may recover on a writ of execution

- (a) fixed costs in accordance with rule 65.4;
- (b) interest on a money judgment; and
- (c) the balance of any money judgment.

(2) The rate of interest payable on a judgment debt is the statutory rate of interest unless the court has directed that some other rate shall apply.

(3) Unless the court otherwise orders, the amount for which a writ of execution may be issued may include the unpaid fixed costs and fees of any previous enforcement proceedings on the same judgment.

**46.5 Enforcement of judgment or order requiring the judgment debtor to do two or more different things.**

If a judgment or order requires the judgment debtor to do two or more different things, the judgment creditor may obtain

- (a) a single writ of execution to enforce every part of the judgment or order; or
- (b) separate writs of execution to enforce one or more parts of it.

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**46.6 No writ of execution against Crown.**

A writ of execution may not be issued where the judgment debtor is the Crown.

**46.7 Enforcement of judgment for payment by instalments.**

(1) This rule has effect where the court has made an order for payment by instalments of a sum of money or the value of goods assessed, after the court has made an order for the recovery of goods or their assessed value and the judgment debtor has failed to pay one or more instalments.

(2) The judgment creditor may issue an order for the seizure and sale of the goods for the purpose of recovering the whole of the amount recoverable under the judgment and not merely the instalment(s) in arrears.

**46.8 No writ of execution for goods or payment of assessed value unless court has assessed value.**

A judgment creditor may not issue a writ of delivery for the recovery of goods or payment of their assessed value unless that value has previously been assessed by the court or an order has been made under rule 46.9.

**46.9 Order for specific delivery.**

(1) If the court makes an order for delivery of goods or payment of their assessed value, the judgment creditor may apply to the court for permission to issue an order for delivery of specified goods without the alternative of payment of the assessed value.

(2) An application for permission must be served on the defendant whether or not that defendant has filed an acknowledgment of service.

**46.10 Period for which writ of execution is valid.**

(1) A writ of execution is valid for a period of 12 months beginning with the date of its issue.

(2) After that period the judgment creditor may not take any step under the writ unless the court has renewed it.

**46.11 Renewal of writ of execution.**

(1) The judgment creditor may apply for the renewal of a writ of execution.

(2) The general rule is that an application for renewal must be made within the period for which the writ is valid.

(3) If the judgment creditor applies for renewal after the end of that period, the court may renew the writ only if it is satisfied that the judgment creditor has

- (a) taken all reasonable steps to execute the writ or some part of it; and
- (b) been unable to do so.

(4) An application for renewal may be made without notice but must be supported by evidence on affidavit.

(5) The judgment creditor must state in the affidavit under paragraph (4) whether or not the judgment creditor is aware of any other judgment creditor and, if so, give such details of which the judgment creditor is aware as to the money due from the judgment debtor to each such judgment creditor.

(6) On such an application the court must have regard to the interests of any other judgment creditor of whose existence it is aware.

#### **46.12 Period for which court may renew writ of execution.**

On an application for renewal of a writ of execution the court may renew it for a period of not more than 6 months.

#### **46.13 Effective date of renewed writ unchanged.**

(1) The renewal of a writ of execution does not change its effective date.

(2) The effective date is therefore still that of the writ as originally issued.

(3) The priority of the renewed writ and of any other writ of execution must be determined accordingly.

#### **46.14 Claims to goods seized under writ of execution.**

If

(a) goods are seized under a writ of execution; and

(b) some person other than the judgment creditor or judgment debtor subsequently claims any of them;

the validity of the writ of execution is extended until the end of 12 months from the conclusion of interpleader proceedings on that claim.

- Part 54 deals with interpleader proceedings.

#### **46.15 Suspension of writ of execution at request of judgment creditor.**

(1) The judgment creditor may ask the sheriff to suspend execution.

(2) If the judgment creditor does so, neither the judgment creditor nor the sheriff may take any further step under the writ of execution unless the court first renews it.

#### **46.16 Return to writ of execution.**

(1) A judgment creditor who has issued a writ of execution may serve a notice on the sheriff requiring the sheriff to make a return of the manner in which it has been executed.

(2) If the sheriff fails to comply with the notice within 14 days the judgment creditor may apply to the court for an order directing the sheriff to comply.



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## **PART 47 – VARIATION OF TERMS OF JUDGMENTS AND SUSPENSION OF WRITS**

### **Contents of this Part**

Scope of this Part	Rule 47.1
Applications to vary time and method of payment or to suspend order for seizure and sale of goods or writ of delivery	Rule 47.2
Where no objection except as to terms – procedure	Rule 47.3
Application for redetermination of court’s decision	Rule 47.4
Where judgment creditor objects to variation or suspension	Rule 47.5
Pre-suspension costs	Rule 47.6
Judgment creditor’s right to re-issue writ of execution	Rule 47.7

### **47.1 Scope of this Part.**

This Part deals with

- (a) variation of the terms of a judgment for payment of a specified sum of money as to the time and method of payment; and
- (b) suspension of orders for the seizure and sale of goods and writs of delivery.

### **47.2 Applications to vary time and method of payment or to suspend order for seizure and sale of goods or writ of delivery.**

- (1) This rule applies to
  - (a) judgments for payment of a sum of money;
  - (b) judgments for the delivery of goods or payment of their value;
  - (c) orders for seizure and sale of goods; and
  - (d) writs of delivery where the defendant has the alternative of paying the assessed value.
- (2) An application by the judgment debtor to vary the terms of the judgment as to the time or method of payment or to suspend a writ of execution under this rule must be supported by evidence in the appropriate practice form.

### **47.3 Where no objection except as to terms – procedure.**

- (1) The court must serve the application to vary or suspend on the judgment creditor.
- (2) The judgment creditor may file and serve on the judgment debtor objections to the application.
- (3) If the judgment creditor does not do so before the end of 14 days from the date of service of the application, the court may make an order according to the terms which the judgment debtor asks.

(4) If the judgment creditor objects only to the rate and time of any payment proposed by the judgment debtor, the court

- (a) may decide the rate and time of payments; and
- (b) may make an order suspending the writ of execution on those terms.

(5) The court may make this decision without a hearing.

(6) The court office must serve a copy of the order made under paragraph (3) or (4) on the judgment creditor and judgment debtor.

#### **47.4 Application for redetermination of court's decision.**

(1) The judgment creditor or the judgment debtor may apply to the court to re-determine the decision.

(2) The application may not be made more than 14 days after the date of service of the court's order under rule 47.3(6).

(3) The court office must fix a hearing and give the judgment creditor and judgment debtor at least 7 days notice of the date, time and place of the hearing.

#### **47.5 Where judgment creditor objects to variation or suspension.**

If the judgment creditor gives the court notice that it does not agree to any variation as to the time or method of payment or suspension of the writ of execution on any terms, the court office must fix a hearing and give the judgment creditor and judgment debtor at least 7 days notice of the date, time and place of the hearing.

#### **47.6 Pre-suspension costs.**

If the court hears an application to vary the judgment or suspend a writ of execution it may add to the judgment debt

- (a) any costs or fees incurred by the judgment creditor in connection with any writ of execution; and
- (b) the costs of the application for variation or suspension;

and such costs must be assessed by the court.

- Rule 65.11 deals with assessed costs.

#### **47.7 Judgment creditor's right to re-issue writ of execution.**

(1) A judgment creditor may re-issue a writ of execution if

- (a) execution has been suspended on terms; and
- (b) the judgment debtor has not complied with those terms.

(2) The re-issued order has the same priority as the original order.

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## PART 48 — CHARGING ORDERS

### Contents of this Part

Scope of this Part and definitions	Rule 48.1
How to apply for charging order	Rule 48.2
Evidence in support of application for charging order	Rule 48.3
Single charging order for more than one judgment debt	Rule 48.4
Procedure for making provisional charging order	Rule 48.5
Interested persons	Rule 48.6
Service of provisional charging order and of copies	Rule 48.7
Making of final charging order	Rule 48.8
Effect of provisional or final charging order	Rule 48.9
Discharge or variation of final charging order	Rule 48.10
Enforcement of charging order by sale	Rule 48.11

#### 48.1 Scope of this Part and definitions.

- (1) This Part deals with the enforcement of a judgment debt by charging
  - (a) stock (including stock held in court); and
  - (b) other personal property.
- (2) In this Part,
  - “proper officer” means the court officer who is responsible for the custody of funds in court; and
  - “stock” includes securities, shares and dividends arising therefrom.

#### 48.2 How to apply for charging order.

- (1) An application for a charging order must be made on the appropriate practice form.
- (2) The application is to be made without notice but must be supported by evidence on affidavit.
- (3) An application for a charging order relating to stock may incorporate an application for an order for sale of such stock under rule 48.11.

#### 48.3 Evidence in support of application for charging order.

- (1) This rule sets out the evidence required to support an application for a charging order.
- (2) The affidavit must
  - (a) certify the amount remaining due under the judgment;
  - (b) identify the judgment or order to be enforced;

- (c) state that the applicant is entitled to enforce the judgment;
- (d) state that to the best of the deponent's information and belief the debtor is beneficially entitled to the stock or personal property, as the case may be;
- (e) state the name and address of every person who is believed to be an unsecured creditor of the judgment debtor;
- (f) state the name and address of the judgment debtor;
- (g) where the application relates to stock,
  - (i) identify the company and the stock of that company to be charged;
  - (ii) identify any person who has responsibility for keeping a register of the stock;
  - (iii) state whether any person other than the judgment debtor is believed to have an interest in that stock whether as a beneficiary, a joint owner or trustee; and
  - (iv) if so, give the names and addresses of such persons and details of their interest; and
- (h) in the case of any other personal property,
  - (i) identify that property; and
  - (ii) state whether any other person is believed to have an interest in the property.

#### **48.4 Single charging order for more than one judgment debt.**

A judgment creditor may apply for a single charging order in respect of more than one judgment or order against a judgment debtor.

#### **48.5 Procedure for making provisional charging order.**

(1) In the first instance, the court must deal with an application for a charging order without a hearing and may make a provisional charging order.

(2) On the application of the judgment creditor the court may grant an injunction to secure the provisional charging order.

(3) An application for an injunction may be made without notice and may remain in force until 7 days after the making of an order under rule 48.8(4).

#### **48.6 Interested persons.**

(1) In this Part, "interested persons" means the persons specified in paragraph (2) as well as the judgment creditor and the judgment debtor.

(2) The interested persons are:

- (a) any person who is responsible for keeping the register of stock for that company;

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- (b) any person who owns the stock to be charged jointly with the judgment debtor;
- (c) any unsecured creditor;
- (d) if the stock is held in court, the proper officer;
- (e) the company whose stock is to be charged;
- (f) if the stock is held by the judgment debtor as a trustee, such of the other trustees and beneficiaries as the court may direct;
- (g) if the stock is held under a trust, the trustees or such of them as the court may direct; and
- (h) any other person who has an interest in the personal property to be charged.

#### 48.7 **Service of provisional charging orders and of copies.**

(1) If the court makes a provisional charging order, the judgment creditor must serve on the judgment debtor, in accordance with Part 5,

- (a) a copy of the affidavit in support of the application for the order; and
- (b) the order.

(2) The judgment creditor must also serve a copy of the order on the interested persons listed in the affidavit filed in support of the application.

(3) Any interested person, other than the company and the person responsible for keeping the register, must be served personally.

(4) The provisional charging order must state the date, time and place when the court will consider making a final charging order.

(5) The order and copy orders must be served at least 28 days before the hearing.

(6) The judgment creditor must file an affidavit of service not less than 7 days before the hearing.

#### 48.8 **Making of final charging order.**

- (1) This rule deals with the
  - (a) filing of objections to a provisional charging order; and
  - (b) making of a final charging order.
- (2) The following persons may file objections to a provisional charging order:
  - (a) any interested person;
  - (b) the judgment creditor; and
  - (c) the judgment debtor.
- (3) The objection must be filed not less than 14 days before the hearing.

(4) At the hearing, if satisfied that the provisional charging order has been served on the judgment debtor, the court has power to

- (a) discharge the provisional charging order;
- (b) give directions for the resolution of any objection that cannot be fairly resolved summarily; or
- (c) make a final charging order.

(5) If the court makes an order under paragraph (4)(b), it may continue any injunction made under rule 48.5 until 7 days after the application is finally determined.

(6) A copy of the charging order must be served by the court office on

- (a) any interested person who has filed an objection;
- (b) the judgment creditor;
- (c) the judgment debtor; and
- (d) in the case of stock,
  - (i) any person who has responsibility for keeping a register of the stock; and
  - (ii) the company.

(7) Every copy of the charging order served on

- (a) any person who has responsibility for keeping a register of the stock; and
- (b) the company;

must contain a stop notice.

- Part 49 deals with the effect of a stop notice.

#### **48.9 Effect of provisional or final charging order.**

(1) A disposition by a judgment debtor of an interest in property subject to a provisional or final charging order is not valid against the judgment creditor.

(2) Any person or body on whom an order was served under rule 48.6(2)(a) or (e) must not permit the transfer of any stock specified in the order or pay any interest or dividend payable out of the stock to any person while the order remains in force.

(3) If, after service of the order, the person or body listed in rule 48.6(2)(a) or (e) makes a transfer or payment prohibited by paragraph (2), that person or body is liable to pay the judgment creditor an amount equivalent to the value of the stock transferred or payment made or as much of it as is necessary to satisfy the judgment debt and costs.

#### **48.10 Discharge or variation of final charging order.**

(1) An application to discharge or vary a final charging order may be made by

- (a) any interested person;
- (b) the judgment creditor; or
- (c) the judgment debtor.

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- (2) Notice of application must be served on the
  - (a) judgment creditor and judgment debtor, if made by an interested person;
  - (b) judgment creditor, if made by the judgment debtor; or
  - (c) judgment debtor, if made by the judgment creditor.
- (3) Any order must be served on every person on whom the final charging order was served.

#### 48.11 Enforcement of charging order by sale.

- (1) If a judgment creditor wishes to enforce a charging order of stock or personal property by sale, the judgment creditor may apply to the court for an order for sale of the stock or personal property.
- (2) The application must be supported by evidence on affidavit.
- (3) Notice must be served on the judgment debtor.
- (4) The court may give such directions as seem appropriate to secure the expeditious sale of the stock or property charged at a price that is fair to both judgment creditor and judgment debtor.

### PART 49 – STOP NOTICES AND STOP ORDERS

#### Contents of this Part

Scope of this Part	Rule 49.1
Right to apply for stop notice	Rule 49.2
Procedure for obtaining stop notice	Rule 49.3
Service	Rule 49.4
Amendment of stop notice	Rule 49.5
Withdrawal or discharge of stop notice	Rule 49.6
Stop orders	Rule 49.7
Procedure on application for stop order	Rule 49.8
Power to vary or discharge stop order	Rule 49.9

#### 49.1 Scope of this Part.

- (1) This Part enables a person by obtaining a
  - (a) stop notice, to be notified of proposed dealings relating to stock;
  - (b) stop order, to prevent certain specified steps being taken with regard to stock or funds in court.
- (2) In this Part,  
“proper officer” means the officer of the court who is responsible for the custody of funds in court;

“stop notice” means a notice requiring any person or body on whom it is served to refrain from taking, in respect of any of the stock specified in the notice, any of the specified steps without first notifying the person by whom, or on whose behalf, the notice was served;

“stop order” means an order of the court prohibiting the taking, in respect of any of the stock or funds in court specified in the order, any of the specified steps; and

“the specified steps” means

- (a) in the case of stock or funds in court, the transfer, sale or other dealing with the stock or funds or the payment out of the income thereof;
- (b) the making of any payment by way of dividend, interest or otherwise in respect of the stock;
- (c) the registration of any transfer of the stock.

#### 49.2 **Right to apply for stop notice.**

Any person who claims to be beneficially entitled to an interest in stock may apply for a stop notice.

#### 49.3 **Procedure for obtaining stop notice.**

(1) Anyone who wants the court office to issue a stop notice may obtain one by filing a notice in the practice form.

- (2) The applicant must also file an affidavit which
  - (a) gives an address for service for the applicant;
  - (b) identifies the stock; and
  - (c) identifies the applicant’s interest in it.

(3) The court office must then issue a stop notice.

(4) Anyone who applies to the court to issue a stop notice is referred to as the “**applicant**”.

#### 49.4 **Service.**

- (1) The applicant must serve a copy of the
  - (a) affidavit; and
  - (b) stop notice;

on the company and any keeper of the register on whom the applicant would have had to serve a charging order relating to the stock in accordance with rule 48.7.

(2) After that, so long as the stop notice is in force, neither the company nor the keeper of the register may register any transfer of the stock or take any step mentioned in the stop notice until 14 days after sending a notification of the proposed registration or other step to the applicant.



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**49.5 Amendment of stop notice.**

- (1) If a stop notice describes any stock incorrectly, the applicant may ask the court office to issue an amended notice.
- (2) The application may be made without notice.
  - Rule 49.4 applies to an amended notice as it applies to the original notice.

**49.6 Withdrawal or discharge of stop notice.**

- (1) The person on whose behalf the court office issued a stop notice may withdraw it by serving a notification of withdrawal on the court and on every person on whom the stop notice was served.
- (2) On the application of any person claiming to be beneficially interested in the stock to which a stop notice relates, the court may, by order, discharge or vary the notice.
- (3) An application for such an order must be served on the person on whose behalf the court originally issued the stop notice.
- (4) The application must be supported by evidence on affidavit.

**49.7 Stop orders.**

- (1) The court may make a stop order relating to
  - (a) funds in court; or
  - (b) stock.
- (2) The stop order may prohibit the taking of any of the specified steps.

**49.8 Procedure on application for stop order.**

- (1) Any person claiming to be beneficially entitled to stock may apply for a stop order.
- (2) In the case of money in court, any person
  - (i) who has a mortgage or charge on the interest of any person in funds in court;
  - (ii) to whom that interest has been assigned; or
  - (iii) who is a judgment creditor of the person entitled to that interest;may apply for a stop order.
- (3) Notice of an application for a stop order must be served by the applicant at least 7 days before the hearing on any person whose interest may be affected by the order and, in the case of funds in court, on the proper officer.

#### 49.9 **Power to vary or discharge stop order.**

The court may vary or discharge a stop order on the application of any person claiming to be entitled to any interest in the stock to which the order relates.

### **PART 50 – ATTACHMENT OF DEBTS**

#### **Contents of this Part**

Scope of this Part	Rule 50.1
Circumstances in which court may make order for attachment of debts	Rule 50.2
Procedure – making of provisional order	Rule 50.3
Money in bank accounts, etc.	Rule 50.4
Joint funds	Rule 50.5
Presumption of equal shares in joint funds	Rule 50.6
Attachment of debts owed by firm	Rule 50.7
Service of provisional order	Rule 50.8
Effect of provisional order	Rule 50.9
Hearing to consider making final order	Rule 50.10
Claim to debt by person other than judgment debtor	Rule 50.11
Enforcement against garnishee	Rule 50.12
Discharge of garnishee’s debt to judgment debtor	Rule 50.13
Costs of attachment of debts proceedings	Rule 50.14
Money in court	Rule 50.15

#### 50.1 **Scope of this Part.**

(1) This Part provides a procedure under which a judgment creditor can obtain payment of all or part of a judgment debt from a person who owes the judgment debtor money.

(2) In this Part,

“attachment of debts order” means the order served on a garnishee attaching a debt in the garnishee’s hands;

“garnishee” means a debtor in whose hands a debt has been attached; and

“proper officer” means the officer of the court who is responsible for the custody of funds in court.

(3) The attachment of debts order may require the garnishee to pay enough to satisfy the fixed costs of the attachment of debt proceedings as well as the judgment debt.

- Part 65, Appendix A sets out the fixed costs.

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#### 50.2 **Circumstances in which court may make order for attachment of debts.**

- (1) The attachment of debts procedure may not be used if the order is to pay money into court.
- (2) An attachment of debts order can be made only against a garnishee who is within the jurisdiction.
- (3) An attachment of debts order may not be made to attach debts due from the Crown.
  - Rule 59.7(3) provides an alternative procedure in this situation.
- (4) A debt may be attached if it
  - (a) is due or accruing to the judgment debtor from the garnishee on the date that the provisional order under rule 50.3 is served on the garnishee; or
  - (b) becomes due or accrues due to the judgment debtor at any time between the service of the provisional order under rule 50.3 and the date of the hearing.

#### 50.3 **Procedure – making of provisional order.**

- (1) An application by a judgment creditor for an attachment of debts order must be in the appropriate practice form.
- (2) The application may be made without notice but must be supported by evidence on affidavit.
- (3) If the court considers that on the evidence submitted the judgment creditor is entitled to an attachment of debts order, it must make a provisional order.
- (4) The court must do this without a hearing.
- (5) The court office must state in the provisional order the date, time and place of the hearing.

#### 50.4 **Money in bank accounts, etc.**

- (1) An attachment of debts order may be made in respect of any type of debt but includes money standing to the credit of any account of the judgment debtor with a bank or other financial institution.
- (2) An attachment of debts order must not require a payment that would reduce below EC\$50 the amount standing in the name of a judgment debtor in an account with a bank or other financial institution.

#### 50.5 **Joint funds.**

- (1) This rule applies where an application is made to attach a fund which is owned jointly by the judgment debtor and another person or persons.

- (2) The evidence in support of the application must state
  - (a) details of the joint fund;
  - (b) the names and addresses of the person or persons who own the fund jointly with the judgment debtor; and
  - (c) if the applicant claims that the judgment debtor is entitled to more than an equal share in the fund, the grounds for that claim.

(3) Each owner of the fund must be served with the provisional attachment of debts order and the evidence in support.

#### **50.6 Presumption of equal shares in joint funds.**

(1) The general rule is that a fund held jointly by the judgment debtor and another person or persons is to be presumed to be owned in equal shares.

(2) Any person served under rule 50.5(3) may apply to the court to determine the actual beneficial entitlement of each owner of the joint fund.

#### **50.7 Attachment of debts owed by firm.**

(1) This rule applies to the attachment of debts due or accruing due from a firm carrying on business within the jurisdiction.

(2) Such debts may be attached even if one or more members of the firm is resident outside the jurisdiction.

- (3) A provisional order under rule 50.3 must be served on
  - (a) a member of the firm; or
  - (b) some other person having the control or management of the partnership business;

in the jurisdiction.

(4) Any member of the garnishee may attend a hearing of an application for an attachment of debts order.

#### **50.8 Service of provisional order.**

(1) The judgment creditor must serve the provisional attachment of debts order.

(2) It must be served first on the garnishee at least 21 days before the hearing, and it must be served personally on the garnishee unless the garnishee is a body corporate.

(3) If the garnishee is a bank or other financial institution, the provisional attachment of debts order must be served at its principal or registered office and also the branch at which the judgment debtor's account is kept, if that address is known to the judgment creditor.

(4) Secondly, the order must be served on the judgment debtor.

(5) It must be served on the judgment debtor at least 7 days after it has been served on the garnishee and not less than 7 days before the hearing.

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**50.9 Effect of provisional order.**

- (1) This rule sets out the effect of a provisional attachment of debts order.
- (2) The order becomes binding on the garnishee as soon as it is served on the garnishee.
- (3) The garnishee does not then have to pay the judgment creditor anything except to the extent that the garnishee's debt to the judgment debtor is greater than the amount of the attachment of debts order.
- (4) However, if the garnishee pays anyone but the judgment creditor the garnishee may have to make further payment to the judgment creditor in accordance with the terms of any final attachment of debts order that the court may make.

**50.10 Hearing to consider making final order.**

At the hearing fixed by the provisional order the court, if satisfied that the order has been properly served, may

- (a) discharge the provisional order;
- (b) give directions for the resolution of any dispute; or
- (c) make a final attachment of debts order.

**50.11 Claim to a debt by person other than judgment debtor.**

(1) This rule has effect where the court is aware from information supplied by the garnishee or from any other source that someone, other than the judgment debtor,

- (a) is or claims to be entitled to the debt; or
- (b) has or claims to have a charge or lien on it.

(2) In this rule, "lien" means a right to retain possession of goods to protect a debt.

(3) Where this rule has effect, the court may require the judgment creditor to serve notice of

- (a) any hearing fixed by the court; and
- (b) the application for an attachment of debts order;

on any person who may have such an interest as is set out in paragraph (1).

- (4) The notice must be served personally unless the person is a body corporate.
- (5) Notice must also be served on the
  - (a) garnishee; and
  - (b) judgment debtor.

(6) A notice under this rule must contain a warning to every person on whom it is served that, if that person does not attend court, the court may proceed to decide the issue in that person's absence.

**50.12 Enforcement against garnishee.**

If a garnishee does not fulfil the terms of an attachment of debts order, the judgment creditor may issue enforcement proceedings against the garnishee.

**50.13 Discharge of garnishee's debt to judgment debtor.**

- (1) This rule has effect where
  - (a) an attachment of debts order is enforced against the garnishee; or
  - (b) the garnishee pays money to the judgment creditor in compliance with an attachment of debts order.

(2) The garnishee's liability to the judgment debtor is then discharged to the extent of the amount paid by, or recovered from the garnishee.

(3) This rule has effect even if the court later sets aside the attachment of debts order or the original judgment or order.

**50.14 Costs of attachment of debts proceedings.**

(1) This rule contains general provisions about the costs of attachment of debts proceedings.

(2) The judgment creditor's costs are those fixed by Part 65, Appendix A unless the court makes some other order in which case it must assess the costs.

(3) The judgment creditor may retain the costs out of the money recovered through the attachment of debts order.

(4) The costs are to be taken to have been paid to the judgment creditor before any payment in respect of the judgment debt.

(5) A garnishee who appears at attachment of debts proceedings may deduct the garnishee's costs before paying any sum over to the judgment creditor in pursuance of the attachment of debts order.

(6) Costs payable under paragraph (5) must be assessed under rule 65.11 if not agreed.

**50.15 Money in court.**

(1) An attachment of debts order may not be made in respect of money in court standing to the credit of the judgment debtor.

(2) The judgment creditor may however apply for an order that a sufficient amount of the money in court to satisfy the judgment and the fixed costs of the application be paid to the judgment creditor.

(3) Notice of the application must be given to the proper officer and any person who has an interest in the fund.

(4) Until hearing of the application the money to which it relates must not be paid out of court.

- Part 65, Appendix A sets out the fixed costs.

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## PART 51 – APPOINTMENT OF RECEIVER

### Contents of this Part

Scope of this Part	Rule 51.1
Application for appointment of receiver and injunction	Rule 51.2
Conditions for appointment of receiver	Rule 51.3
Giving of security by receiver	Rule 51.4
Remuneration of receiver	Rule 51.5
Receiver's powers	Rule 51.6
Accounts of receiver	Rule 51.7
Payment of balance into court	Rule 51.8
Default by receiver	Rule 51.9

#### 51.1 Scope of this Part.

This Part deals with the appointment of a receiver and includes an application to appoint a receiver to obtain payment of the judgment debt from the income or capital assets of the judgment debtor.

#### 51.2 Application for appointment of receiver and injunction.

(1) An application for the appointment of a receiver must be supported by evidence on affidavit.

(2) The applicant may also apply for an injunction to restrain the judgment debtor or other respondent from assigning, charging or otherwise dealing with any property identified in the application.

(3) If an application for an immediate injunction is made, the application for the appointment of a receiver and for an injunction may be made without notice.

- Rules 17.3 and 17.4 deal with applications for interim injunctions.

#### 51.3 Conditions for appointment of receiver.

In deciding whether to appoint a receiver to recover a judgment debt the court must have regard to the

- amount likely to be obtained by the receiver;
- amount of the judgment debt; and
- probable cost of appointing and remunerating the receiver.

#### 51.4 Giving of security by receiver.

(1) The general rule is that a person may not be appointed receiver until that person has given security.

(2) The court may however dispense with security.

(3) The order appointing the receiver must state the amount of the security.

(4) The security must be by guarantee unless the court allows some other form of security.

(5) The guarantee or other security must be filed at the court.

#### **51.5 Remuneration of receiver.**

The receiver may be allowed such remuneration as the court directs.

#### **51.6 Receiver's powers.**

A receiver's powers operate to the exclusion of the powers of the judgment debtor for the duration of the receiver's appointment.

#### **51.7 Accounts of receiver.**

(1) The order appointing a receiver must direct on what dates the receiver must file accounts.

(2) Unless the court orders otherwise, the account must be verified by affidavit.

(3) The receiver must serve a copy of the account on the applicant.

(4) The applicant must obtain an appointment to pass the account.

(5) The passing of the account must be verified by a registrar.

#### **51.8 Payment of balance into court.**

The receiver must pay into court any balance shown on the accounts under rule 51.7 as due from the receiver within 7 days of the passing of any account.

#### **51.9 Default by receiver.**

(1) This rule applies if the receiver fails to

(a) attend for the passing of any account;

(b) pay into court any balance shown on the account as due from the receiver; or

(c) submit an account by the date ordered.

(2) The applicant must ask the court office to fix a hearing for the receiver to show cause for the receiver's failure.

(3) The court office must issue a notice stating the date, time and place of the hearing to show cause.

(4) The applicant must serve the notice on the receiver at least 7 days before the hearing.

(5) At the hearing, the court may do any of the following:

(a) give directions to remedy the default;

(b) give directions for the discharge of the receiver;



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- (c) appoint another receiver;
- (d) disallow any remuneration claimed by the receiver;
- (e) order the receiver to
  - (i) pay the costs of the applicant as assessed by the court; and
  - (ii) pay interest at the statutory rate on any monies which may appear from a subsequent account to be due from the receiver.

## PART 52 – JUDGMENT SUMMONSES

### Contents of this Part

Scope of this Part	Rule 52.1
Issue of judgment summons	Rule 52.2
Service of judgment summons	Rule 52.3
Hearing of judgment summons	Rule 52.4
Failure to comply with instalment order	Rule 52.5
Restored hearing of judgment summons	Rule 52.6

### 52.1 Scope of this Part.

This Part deals with applications to commit a judgment debtor for non-payment of a debt where this is not prohibited by any relevant enactment.

### 52.2 Issue of judgment summons.

(1) An application to commit a judgment debtor for failing to pay all or part of the judgment debt must be made by way of judgment summons in Form 21 and must state:

- (a) any payment that has been made by the judgment debtor;
- (b) the date and details of the judgment or order requiring payment of the debt; and
- (c) the amount of interest claimed to the date of the application and the daily rate thereafter.

(2) The court order must

- (a) fix a date for hearing of the judgment summons;
- (b) seal the judgment summons; and
- (c) return the order to the judgment creditor for service.

### 52.3 Service of judgment summons.

(1) The judgment creditor must serve the judgment debtor with the judgment summons in accordance with Part 5 not less than 7 days before the date fixed for the hearing of the application to commit.

(2) The judgment creditor must file an affidavit of service not less than 3 days before the hearing.

**52.4 Hearing of judgment summons.**

At the hearing of the judgment summons, the court may

- (a) if satisfied that all reasonable efforts have been made to serve the judgment debtor and the
  - (i) judgment debtor is wilfully evading service; or
  - (ii) summons has come to the knowledge of the judgment debtor;proceed in the absence of the judgment debtor as if the judgment debtor had been personally served;
- (b) receive evidence as to the means of the debtor in any manner that it thinks fit; and
- (c) if satisfied that all statutory requirements have been met,
  - (i) adjourn the hearing of the summons to a fixed date;
  - (ii) commit the judgment debtor for such fixed term as is permitted by law;
  - (iii) suspend such committal upon payment of the judgment debt on such dates and by such instalments as the court may order;
  - (iv) dismiss the judgment summons; or
  - (v) make an order for payment of the judgment debt by a particular date or by specified instalments and adjourn the hearing of the judgment summons to a date to be fixed on the application of the judgment creditor.

**52.5 Failure to comply with instalment order.**

If the judgment debtor fails to comply with the terms of the judgment summons, the judgment creditor may

- (a) issue a further judgment summons;
- (b) if a suspended committal order has been made, apply to commit the judgment debtor in accordance with the provisions of Part 53 (committal orders); or
- (c) if an order has been made under rule 52.4(c)(v), apply to the court in writing to restore the judgment summons.

**52.6 Restored hearing of judgment summons.**

- (1) The judgment creditor must
  - (a) serve the notice of the restored hearing of a judgment summons in accordance with Part 5 at least 7 days before the date fixed for hearing; and
  - (b) file an affidavit of service at least 3 days before the hearing.
- (2) At the restored hearing, the court may exercise any of its powers under rule

52.4.

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## PART 53 – COMMITTAL AND SEQUESTRATION

### Contents of this Part

Scope of this Part	Rule 53.1
Order specifying time for act to be done	Rule 53.2
When committal order or sequestration order may be made	Rule 53.3
Committal order or sequestration order against officer of body corporate	Rule 53.4
Making committal order or sequestration order when judgment or order not served	Rule 53.5
Undertakings	Rule 53.6
Application for committal order or sequestration order	Rule 53.7
Service of notice of hearing	Rule 53.8
Powers of the court	Rule 53.9
Restoration of adjourned hearing	Rule 53.10
Application for enforcement of suspended committal order or order for sequestration	Rule 53.11
Special provisions relating to order for sequestration	Rule 53.12

### 53.1 Scope of this Part.

This Part deals with the power of the court to commit a person to prison or to make a sequestration order for failure to comply with an

- (a) order requiring that person to do; or
- (b) undertaking by that person to do;

an act within a specified time or by a specified date or not to do an act.

### 53.2 Order specifying time for act to be done.

(1) If a judgment or order specifies the time or date by which an act must be done the court may by order specify another time or date by which the act must be done.

(2) If a judgment or order does not specify the time or date by which an act must be done, the court may by order specify a time or date by which it must be done.

(3) The time by which the act must be done may be specified by reference to the day on which the order is served on the judgment debtor.

(4) An application for an order under this rule may be made without notice but the court may direct that notice be given to the judgment debtor.

(5) Any order made under this rule must be served in the manner required by rule 53.3 (enforcement against an individual judgment debtor) or 53.4 (enforcement against an officer of a body corporate).

**53.3 When committal order or sequestration order may be made.**

Subject to rule 53.5, the court may not make a committal order or a sequestration order unless

- (a) the order requiring the judgment debtor to do an act within a specified time or not to do an act has been served personally on the judgment debtor;
- (b) at the time the order was served it was endorsed with a notice in the following terms:

**“NOTICE: If you fail to comply with the terms of this order, proceedings may be commenced against you for contempt of court and you may be liable to be imprisoned.”;**  
or,

in the case of an order served on a body corporate, in the following terms:

**“NOTICE: If you fail to comply with the terms of this order, proceedings may be commenced against you for contempt of court.”;** and
- (c) if the order requires the judgment debtor to do an act within a specified time or by a specified date, it was served in sufficient time to give the judgment debtor a reasonable opportunity to do the act before the expiration of that time or before that date.

**53.4 Committal order or sequestration order against officer of body corporate.**

Subject to rule 53.5, the court may not make a committal order or a sequestration order against an officer of a body corporate unless

- (a) a copy of the order requiring the judgment debtor to do an act within a specified time or not to do an act has been served personally on the officer against whom the order is sought;
- (b) at the time the order was served it was endorsed with a notice in the following terms:

**“NOTICE: If [name of body corporate] fails to comply with the terms of this order proceedings may be commenced for contempt of court and you [name of officer] may be liable to be imprisoned or to have an order of sequestration made in respect of your property.”;** and
- (c) if the order required the judgment debtor to do an act within a specified time or by a specified date, it was served in sufficient time to give the judgment debtor a reasonable opportunity to do the act before the expiration of that time or before that date.

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**53.5 Making committal order or sequestration order when judgment or order not served.**

- (1) This rule applies where the judgment or order has not been served.
- (2) If the order requires the judgment debtor not to do an act, the court may make a committal order or sequestration order only if it is satisfied that the person against whom the order is to be enforced has had notice of the terms of the order by being
  - (a) notified of the terms of the order by post, telephone, FAX or otherwise; or
  - (b) present when the order was made.
- (3) The court may make an order dispensing with service of the judgment or order under rule 53.3 or 53.4 if it thinks it just to do so.

**53.6 Undertakings.**

An undertaking given to the court must, if practicable, be given in writing in the appropriate practice form and a copy of this form endorsed with a notice in accordance with rule 53.3(b) or 53.4(b) must, if practicable, be served on the person giving the undertaking.

**53.7 Application for committal order or sequestration order.**

- (1) The application must specify the
  - (a) exact nature of the alleged breach or breaches of the order or undertaking by the judgment debtor; and
  - (b) precise term of the order or undertaking which it is alleged that the judgment debtor has disobeyed or broken.
- (2) The application must be verified by affidavit.
- (3) The applicant must prove
  - (a) service of the order endorsed with the appropriate notice under rule 53.3(b) or rule 54.3(b); and
  - (b) that the person against whom it is sought to enforce the order had notice of the terms of the order under rule 53.5 if the order required the judgement debtor not to do an act; or
  - (c) that it would be just for the court to dispense with service.

**53.8 Service of notice of hearing.**

(1) The judgment creditor must serve on the judgment debtor or, in the case of a body corporate, the officer against whom it is sought to make a committal order or sequestration order, notice of the application for the order at least 7 days before the date fixed for hearing.

(2) If the notice of application is served on the judgment debtor less than 7 days before the hearing, the court may direct that in all the circumstances of the case sufficient notice has been given and may accordingly deal with the application.

(3) The notice of application must be served in accordance with Part 5.

(4) A copy of the application and of the evidence in support must be served with the notice.

### **53.9 Powers of the court.**

If satisfied that the notice of application has been duly served, the court may

- (a) accept an undertaking from the judgment debtor or an officer of a body corporate who is present in court and adjourn the application generally;
- (b) adjourn the hearing of the application to a fixed date;
- (c) dismiss the application and make such order as to assessed costs under rule 65.11 as it considers to be just;
- (d) make a committal order against a judgment debtor who is an individual;
- (e) make a committal order against an officer of a judgment debtor which is a body corporate;
- (f) make a sequestration order against a judgment debtor who is an individual or a body corporate;
- (g) make a sequestration order against an officer of a judgment debtor which is a body corporate; or
- (h) make a suspended committal order or sequestration order on such terms as the court considers just.

### **53.10 Restoration of adjourned hearing.**

(1) If an application for a committal order or a sequestration order has been adjourned under rule 53.9(b), the court office may fix a date for the adjourned hearing.

(2) An application for a date to be fixed

- (a) may be made without notice; but
- (b) must be supported by evidence on affidavit specifying
  - (i) the exact nature of the alleged breach or breaches of the undertaking by the judgment debtor; and
  - (ii) the precise term or terms of the undertaking which it is alleged that the judgment debtor has disobeyed.

(3) The notice of the restored hearing must

- (a) state the date, time and place of the restored hearing; and
- (b) be served on the judgment debtor or the officer of a body corporate personally at least 3 days before the adjourned hearing.

(4) A copy of the evidence under paragraph (2) must be served with the notice.

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**53.11 Application for enforcement of suspended committal order or order for sequestration.**

(1) If the court has imposed terms under rule 53.9(h) and the judgment creditor alleges that the judgment debtor has failed to comply with the terms imposed, the judgment creditor may apply for the suspended order to be enforced.

(2) The application must specify the

- (a) precise term or terms of the suspended order which it is alleged that the judgment debtor has disobeyed; and
- (b) exact nature of the alleged breach or breaches of the terms of the suspended order by the judgment debtor.

(3) The application must be verified by affidavit.

(4) The court office must fix a hearing of the application.

(5) The notice of hearing must be served on the judgment creditor or the officer of a body corporate personally at least 3 days before the adjourned hearing.

(6) A copy of the evidence under paragraph (2) must be served with the application.

**53.12 Special provisions relating to order for sequestration order.**

(1) The judgment creditor may not sell any property seized under a sequestration order without the permission of the court.

(2) An application for permission must be supported by evidence on affidavit.

**PART 54 – INTERPLEADER**

**Contents of this Part**

Scope of this Part	Rule 54.1
Claim to goods taken in execution	Rule 54.2
How to interplead	Rule 54.3
Service of interpleader application	Rule 54.4
Powers of the court	Rule 54.5
Power to order sale of goods taken in execution	Rule 54.6

**54.1 Scope of this Part.**

(1) This Part deals with the situation where a

- (a) claim is made to any money, goods or chattels seized or intended to be seized by the sheriff or the proceeds or value of such goods or chattels; or
- (b) person is under a liability in respect of a debt or in respect of any money, goods or chattels and a claim is made or is likely to be made against that person, by two or more persons making adverse claims in respect of the debt, money, goods or chattels.

(2) The person under a liability under paragraph (1) (b) or the sheriff may apply for relief.

(3) That procedure is called an “**interpleader**”.

#### **54.2 Claim to goods taken in execution.**

(1) A person who makes a claim against any money, goods or chattels seized or about to be seized by the sheriff must give written notice to the sheriff.

(2) The notice must

- (a) give that person’s name and address for service;
- (b) identify the money, goods or chattels claimed; and
- (c) set out the grounds of the claim.

(3) Forthwith on receipt of the claim, the sheriff must give written notice to the judgment creditor.

(4) Within 7 days after receiving the notice the judgment creditor must give notice to the sheriff admitting or disputing the claim.

(5) If the judgment creditor gives notice admitting the claim, the

- (a) judgment creditor is liable only for the fees and expenses of the sheriff incurred before the sheriff receives the notice;
- (b) sheriff must withdraw from possession of the money, goods or chattels; and
- (c) sheriff may apply to the court for an order restraining any claim being brought in respect of having taken possession of the money, goods or chattels.

(6) If the judgment creditor gives notice disputing the claim, or fails to give notice and the claim is not withdrawn, the sheriff may apply to the court for relief under this Part.

#### **54.3 How to interplead.**

(1) A person interpleads by filing an application for relief by way of interpleader.

(2) The application must be filed

- (a) in the court office out of which the writ of execution was issued;
- (b) if a writ of execution has not been issued but there are proceedings in respect of the money, goods or chattels, in the court office in which such proceedings are being conducted; or
- (c) if there are no such proceedings, in any court office.



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(3) An application, other than by the sheriff, must be supported by evidence on affidavit that the applicant

- (a) claims no interest in the subject matter in dispute other than for charges or costs;
- (b) does not collude with any of the claimants to that subject-matter; and
- (c) is willing to pay or transfer that subject-matter into court or dispose of it as the court directs.

#### 54.4 **Service of Interpleader application.**

(1) An application by the sheriff must be served on the judgment creditor and on the person claiming the money, goods or chattels.

(2) An application by any other person must be served on all persons making a claim to the money, goods or chattels.

(3) The application must be served not less than 14 days before the date fixed for hearing of the application.

#### 54.5 **Powers of the court.**

(1) On an application by the sheriff, the court may, unless any claimant objects, summarily determine the question in issue between the parties.

(2) On any other application, the court may order that

- (a) any person claiming the money, goods or chattels be made a defendant in any pending claim relating to such money, goods or chattels either in addition to, or in substitution for, the applicant for relief; or
- (b) the issue between two or more persons claiming the money, goods or chattels be tried, and may direct which person claiming is to be the claimant in those proceedings and which the defendant.

(3) If a person making a claim to any money, goods or chattels who has been served with the application

- (a) fails to attend the hearing; or
- (b) fails to comply with any order made by the court;

the court may make an order barring that person and any person claiming under that person forever from prosecuting any claim to the money, goods or chattels as against the applicant and any person claiming under the applicant.

(4) An order under paragraph (3) does not affect the rights as between the persons claiming the money, goods or chattels.

#### 54.6 **Power to order sale of goods taken in execution.**

On an application by a sheriff who has seized any goods or chattels where a person claims to be entitled to such goods or chattels by way of security, the court may order that all or part of such goods or chattels be sold and the proceeds applied in accordance with the order.

## PART 55 – SALE OF LAND BY ORDER OF COURT

### Contents of this Part

Scope of this Part	Rule 55.1
Application for order for sale	Rule 55.2
Hearing of application	Rule 55.3
Order for sale	Rule 55.4
Directions	Rule 55.5
Further directions	Rule 55.6

### 55.1 Scope of this Part.

- (1) This Part deals with the sale of land
  - (a) under any enactment which authorises the court to order a sale; and
  - (b) when it appears to the court to be necessary or expedient that the land should be sold.
- (2) In this Part, “**land**” includes any interest in, or right over, land.

### 55.2 Application for order for sale.

- (1) An application for an order for sale must be supported by affidavit evidence.
- (2) The evidence under paragraph (1) must
  - (a) exhibit a current valuation of the land by a qualified land valuer or surveyor;
  - (b) identify the land in question; and
  - (c) state
    - (i) any restriction or condition that should be imposed on the sale for the benefit of any adjoining land of the judgment debtor or otherwise;
    - (ii) the full names and addresses of all persons who, to the knowledge or belief of the applicant, have an interest in the land;
    - (iii) the nature and extent of each such interest;
    - (iv) the grounds on which the court should order a sale of the land;
    - (v) the proposed method of sale and why such method will prove most advantageous;
    - (vi) the reason for seeking an order for sale; and
    - (vii) whom it is proposed should have conduct of the sale.
- (3) The application and copies of the evidence in support must be served in accordance with Part 5 on the judgment debtor and every person who has an interest in the land.

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### 55.3 **Hearing of application.**

The court, on hearing the application, may

- (a) direct that notice be given to any person who appears to have an interest in the land but has not been served with the application and adjourn the application to a fixed date;
- (b) order the sale of the land or a specified part of the land;
- (c) direct who shall have conduct of the sale;
- (d) order that any person in
  - (i) possession; or
  - (ii) receipt of the rents or profits;of the land or any part of the land do deliver up possession of the land or receipt of the rents and profits to such person and on such date as the court directs;
- (e) suspend any such order on such terms as the court thinks fit; or
- (f) dismiss the application.

### 55.4 **Order for sale.**

On making an order for sale, the court may

- (a) direct the manner in which the land is to be sold; or
- (b) permit the person having conduct of the sale to sell the land in such manner as that person thinks fit.

### 55.5 **Directions.**

The court may give directions for the purpose of the sale, including

- (a) fixing any reserve or minimum price for the sale;
- (b) obtaining further evidence as to the valuation of the land;
- (c) settling the particulars and conditions of sale;
- (d) fixing the remuneration of the auctioneer or estate agent dealing with the sale;
- (e) requiring payment of the net proceeds of sale into court or otherwise;
- (f) an inquiry into what interests any interested persons may have in the land and the extent of such interests in the net proceeds of sale;
- (g) how the net proceeds of sale should be applied; and
- (h) certification of the result of the sale.

### 55.6 **Further directions.**

Any party or the person having the conduct of the sale may apply to the court to vary the directions or to make further directions.

## PART 56 – ADMINISTRATIVE LAW

### Contents of this Part

Scope of this Part	Rule 56.1
Who may apply for judicial review	Rule 56.2
Judicial review – application for leave	Rule 56.3
Judicial review – hearing of application for leave	Rule 56.4
Delay	Rule 56.5
Proceedings by way of claim which should be application for administrative order	Rule 56.6
How to make application for administrative order	Rule 56.7
Joinder of claims for other relief	Rule 56.8
Service of claim form for administrative order	Rule 56.9
Evidence in answer	Rule 56.10
First hearing	Rule 56.11
Procedural applications	Rule 56.12
Hearing of application for administrative order	Rule 56.13
Special provisions relating to orders for judicial review	Rule 56.14

### 56.1 Scope of this Part.

(1) This Part deals with applications

- (a) by way of originating motion or otherwise for relief under the Constitution of any Member State or Territory;
- (b) for a declaration in which a party is the State, a court, a tribunal or any other public body;
- (c) for judicial review; and
- (d) where the court has power by virtue of any enactment or at common law to quash any order, scheme, certificate or plan, any amendment or approval of any plan, any decision of a minister or government department or any action on the part of a minister or government department.

(2) In this Part, such applications are referred to generally as “applications for an administrative order”.

(3) The term “judicial review” includes the remedies (whether by way of writ or order) of

- (a) certiorari, for quashing unlawful acts;
- (b) mandamus, for requiring performance of a public duty, including a duty to make a decision or determination or to hear and determine any case; and
- (c) prohibition, for prohibiting unlawful acts.

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(4) In addition to, or instead of an administrative order, the court may, without requiring the issue of any further proceedings, grant

- (a) an injunction;
- (b) an order for the return of any property, real or personal; or
- (c) restitution or damages.

### **56.2 Who may apply for judicial review.**

(1) An application for judicial review may be made by any person, group or body which has sufficient interest in the subject matter of the application.

(2) This includes

- (a) any person who has been adversely affected by the decision which is the subject of the application;
- (b) any body or group acting at the request of a person or persons who would be entitled to apply under paragraph (a);
- (c) any body or group that represents the views of its members who may have been adversely affected by the decision which is the subject of the application;
- (d) any body or group that can show that the matter is of public interest and that the body or group possesses expertise in the subject matter of the application;
- (e) any statutory body where the subject matter falls within its statutory limit; or
- (f) any other person or body who has a right to be heard under the terms of any relevant enactment or Constitution.

### **56.3 Judicial review – application for leave.**

(1) A person wishing to apply for judicial review must first obtain leave.

(2) An application for leave may be made without notice.

(3) The application must state

- (a) the name, address and description of the applicant and respondent;
- (b) the relief, including, in particular, details of any interim relief sought;
- (c) the grounds on which such relief is sought;
- (d) the applicant's address for service;
- (e) whether an alternative form of redress exists and, if so, why judicial review is more appropriate or why the alternative has not been pursued;
- (f) details of any consideration which the applicant knows the respondent has given to the matter in question in response to a complaint made by or on behalf of the applicant;

- (g) whether any time limit for making the application has been exceeded and, if so, why;
- (h) whether the applicant is personally or directly affected by the decision about which complaint is made;
- (i) if the applicant is not personally or directly affected, what public or other interest the applicant has in the matter;
- (j) the name and address of the applicant's legal practitioner (if applicable); and
- (k) the applicant's address for service.

(4) The application must be verified by evidence on affidavit which must include a short statement of all the facts relied on.

#### **56.4 Judicial review – hearing of application for leave.**

(1) An application for leave to make a claim for judicial review must be considered forthwith by a judge of the High Court.

(2) The judge may give leave without hearing the applicant.

(3) However, if

- (a) it appears that a hearing is desirable in the interests of justice;
- (b) the application includes a claim for immediate interim relief; or
- (c) the judge is minded to refuse the application;

the judge must direct that a hearing in open court be fixed.

(4) The judge may direct that notice of the hearing be given to the respondent or the Attorney-General of the relevant Member State or Territory.

(5) Where the application relates to any judgment, order, conviction or other proceedings which are subject to appeal, the judge may adjourn consideration of the application to a date after the appeal has been determined.

(6) The judge may allow the application to be amended.

(7) The judge may grant leave on such conditions or terms as he or she considers just.

(8) Where the application is for an order (or writ) of prohibition or certiorari the judge must direct whether or not the grant of leave operates as a stay of the proceedings.

(9) The judge may grant such interim relief as appears just.

(10) On granting leave the judge must direct when the first hearing or, in case of urgency, the full hearing of the claim for judicial review should take place.

(11) Leave must be conditional on the applicant making a claim for judicial review within 14 days of receipt of the order granting leave.

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### **56.5 Delay.**

(1) In addition to any time limit imposed by any enactment, the judge may refuse leave, or to grant relief, in any case in which the judge considers that there has been unreasonable delay before making the application.

(2) When considering whether to refuse leave or to grant relief because of delay the judge must consider whether the granting of leave or relief would be likely to

- (a) be detrimental to good administration; or
- (b) cause substantial hardship to or substantially prejudice the rights of any person.

### **56.6 Proceedings by way of claim which should be application for administrative order.**

(1) This rule applies where a claimant issues a claim for damages or other relief other than an administrative order but where the facts supporting the claim are such that the only or main relief is an administrative order.

(2) The court may, at any stage, direct that the claim is to proceed by way of an application for an administrative order.

(3) If the appropriate administrative order would be for judicial review, the court may give leave for the matter to proceed as if an application had been made under rule 56.3.

(4) If the court makes an order under paragraph (2), it must give such directions as are necessary to enable the claim to proceed under this Part.

### **56.7 How to make application for administrative order.**

(1) An application for an administrative order must be made by a fixed date claim in Form 2 identifying whether the application is for

- (a) a declaration;
- (b) judicial review;
- (c) relief under the relevant Constitution; or
- (d) for some other administrative order (naming it);

and must identify the nature of any relief sought.

(2) The claim form in an application under a relevant Constitution requiring an application to be made by originating motion should be headed 'Originating Motion'.

(3) The claimant must file with the claim form evidence on affidavit.

(4) The affidavit must state:

- (a) the name, address and description of the claimant and the defendant;

- (b) the nature of the relief sought identifying
  - (i) any interim relief sought; and
  - (ii) whether the claimant seeks damages, restitution, recovery of any sum due or alleged to be due or an order for the return of property, setting out the facts on which such claim is based and, where practicable, specifying the amount of any money claimed;
- (c) in the case of a claim under the relevant Constitution, the provision of the Constitution which the claimant alleges has been, is being or is likely to be breached;
- (d) the grounds on which such relief is sought;
- (e) the facts on which the claim is based;
- (f) the claimant's address for service; and
- (g) the names and addresses of all defendants to the claim.

(5) The general rule is that the affidavit must be made by the claimant or, if the claimant is not an individual, by an appropriate officer of the body making the claim.

(6) If the claimant is unable to make the affidavit it may be made by some person on the claimant's behalf but must state why the claimant is unable to do so.

(7) On issuing the claim form the court office must fix a date for a first hearing which must be endorsed on the claim form.

(8) The general rule is that the first hearing must take place no later than 4 weeks after the date of issue of the claim.

(9) Notwithstanding paragraph (8), any party may apply to a judge in chambers for that date to be brought forward or for an early date to be fixed for the hearing of the application for an administrative order.

(10) The application may be made without notice but must be supported by evidence on affidavit.

### **56.8 Joinder of claims for other relief.**

(1) The general rule is that, where permitted by the substantive law, an applicant may include in an application for an administrative order a claim for any other relief or remedy that

- (a) arises out of; or
- (b) is related or connected to;

the subject matter of an application for an administrative order.

(2) In particular, the court may, on a claim for judicial review or for relief under the Constitution, award

- (a) damages;
- (b) restitution; or
- (c) an order for return of property to the claimant;



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if the

- (i) claimant has included in the claim form a claim for any such remedy arising out of any matter to which the claim for an administrative order relates; or
  - (ii) facts set out in the claimant's affidavit or statement of case justify the granting of such remedy or relief; and
  - (iii) court is satisfied that, at the time when the application was made, the claimant could have issued a claim for such remedy.
- (3) The court may, however, at any stage,
- (a) direct that any claim for other relief be dealt with separately from the claim for an administrative order; or
  - (b) direct that the whole application be dealt with as a claim and give appropriate directions under Parts 26 and 27; and
  - (c) in either case, make any order it considers just as to costs that have been wasted because of the unreasonable use of the procedure under this Part.

#### 56.9 Service of claim form for administrative order.

(1) The claim form and the affidavit in support must be served on the defendants not less than 14 days before the date fixed for the first hearing.

(2) A claim form relating to an application for relief under a relevant Constitution must be served on the Attorney-General of the Member State or Territory concerned.

(3) If leave has been given to make a claim for judicial review, the claimant must also serve a copy of the

- (a) application for leave;
- (b) affidavit in support; and
- (c) order giving leave.

(4) The claimant must file at the court office not less than 7 days before the date fixed for the first hearing an affidavit which

- (a) gives the names and addresses of all defendants who have been served with the claim;
- (b) states the date and place of service on each defendant;
- (c) where applicable, states when the claim form was served on the Attorney-General; and
- (d) if any defendant has not been served, states that fact and the reason for not doing so.

(5) If the judge considers that any person who should have been served has not been served, the judge may adjourn the first hearing to a fixed date and give directions for service.

- Part 5 deals generally with the service of claims.

**56.10 Evidence in answer.**

Any evidence filed in answer to a claim for an administrative order must be by affidavit but the provisions of Part 10 (defence) apply to such affidavit.

**56.11 First hearing.**

(1) At the first hearing, the judge must give any directions that may be required to ensure the expeditious and just trial of the claim, and the provisions of Parts 25 to 27 of these Rules apply.

(2) In particular, the judge may

- (a) allow any person or body appearing to have sufficient interest in the subject matter of the claim to be heard whether or not served with the claim form;
- (b) direct whether any person or body having such interest
  - (i) is to make submissions by way of written brief; or
  - (ii) may make oral submissions at the hearing;
- (c) allow the claimant to
  - (i) add or substitute a claim for relief other than an administrative order;
  - (ii) amend any claim for an administrative order; or
  - (iii) substitute another form of application for that originally made;
- (d) direct that claims by one or more persons or bodies or against one or more persons in respect of the same office made on the same grounds be consolidated or heard together; and
- (e) make orders for
  - (i) witness statements or affidavits to be served;
  - (ii) cross-examination of witnesses; and
  - (iii) disclosure of documents.

**56.12 Procedural applications.**

Wherever practicable, any procedural application during a claim for an administrative order must be made to the judge who dealt with the first hearing unless that judge orders otherwise.

**56.13 Hearing of application for administrative order.**

(1) At the hearing of the application, the judge may allow any person or body which appears to have a sufficient interest in the subject matter of the claim to make submissions whether or not served with the claim form.

(2) Such a person or body must make submissions by way of a written brief unless the judge orders otherwise.

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(3) The judge may grant any relief that appears to be justified by the facts proved before the judge, whether or not such relief should have been sought by an application for an administrative order.

(4) The judge may, however, make such orders as to costs as appear to the judge to be just, including a wasted costs order.

(5) If the judge makes any order as to costs the judge must assess them.

- Rules 65.11 and 65.12 deal with the assessment of costs.

(6) The general rule is that no order for costs may be made against an applicant for an administrative order unless the court considers that the applicant has acted unreasonably in making the application or in the conduct of the application.

- Part 64 deals with the court's general discretion as to the award of costs.

#### 56.14 Special provisions relating to orders for judicial review.

(1) If the claimant seeks an order or writ of certiorari to remove any proceedings for the purpose of quashing them, the claimant may not question the validity of any order, warrant, commitment, conviction or record unless

- before the trial, the claimant has lodged with the court office a copy of the order, etc. verified by affidavit; or
- the claimant can account for the failure to do so to the satisfaction of the court.

(2) If the claim is for an order or writ of certiorari, the judge may, if satisfied that there are reasons for quashing the decision to which the claim relates,

- direct that the proceedings be quashed on their removal to the High Court; and
- in addition, remit the matter to the court, tribunal or authority concerned with a direction to reconsider it in accordance with the findings of the High Court.

### PART 57 – HABEAS CORPUS

#### Contents of this Part

Scope of this Part	Rule 57.1
Application for issue of writ of Habeas Corpus	Rule 57.2
Power of court	Rule 57.3
Service of writ	Rule 57.4
Return to writ	Rule 57.5
Powers of court on hearing writ	Rule 57.6
Bringing up prisoner to give evidence, etc.	Rule 57.7

**57.1 Scope of this Part.**

This Part deals with applications for the issue of a writ of Habeas Corpus and proceedings upon such a writ.

**57.2 Application for issue of writ of Habeas Corpus.**

(1) An application for the issue of a writ of Habeas Corpus *ad subjiciendum* must be made to the court.

(2) An application under paragraph (1) may be made without notice but must be supported by evidence on affidavit.

(3) Such evidence must be given by the person restrained stating how that person is restrained.

(4) If the person restrained is not able to make the affidavit it may be made by another person on that person's behalf and must state why the person restrained is not able to make the affidavit.

(5) The application must be heard in open court unless it is made on behalf of a minor when it must be heard in chambers.

**57.3 Power of court.**

(1) The court may

(a) adjourn the application and give directions for notice to be given to

(i) the person against whom the issue of the writ is sought; and

(ii) any other person as the judge may direct; or

(b) forthwith make an order for the writ in Form 22 to issue.

(2) The court may also order that the person restrained be released.

(3) An order under paragraph (2) is sufficient warrant to any person for the release of the person under restraint.

(4) On making an order for the writ to issue the court must give directions as to the date, time and place of hearing.

**57.4 Service of writ.**

(1) The general rule is that the writ must be served personally on the person to whom it is directed.

(2) If it is not possible to serve that person personally or if that person is the keeper of a prison or other public official, the writ may instead be served personally on a servant or agent of the person to whom it is directed at the place where the person restrained is confined or restrained.

(3) If the writ is directed to more than one person it must be served on the person first named and copies served on each of the other persons named in accordance with paragraph (1) or (2).

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- (4) Each person served must also be served with a
- (a) copy of the evidence filed under rule 57.2(2); and
  - (b) notice in the form included in Form 22 of the date, time and place at which the person restrained is to be brought and containing a warning that in default of compliance with the writ proceedings for committal may be taken.

**57.5 Return to writ.**

- (1) Each person served must endorse on or annex to the writ a return stating each cause of detention of the person restrained.
- (2) The return may be amended or another substituted with the permission of the court.

**57.6 Powers of court on hearing writ.**

On the date fixed for the person detained to be brought before the court, the court must make such orders as are just and, in particular, may give directions as to the manner in which any claim for compensation is to be dealt with by the court without requiring the issue of any further process.

**57.7 Bringing up prisoner to give evidence, etc.**

An application for

- (a) a writ of habeas corpus *ad respondendum*;
- (b) a writ of habeas corpus *ad testificandum*; or
- (c) an order to bring up a prisoner to give evidence otherwise than by writ of habeas corpus;

may be made without notice to a judge in chambers but must be supported by evidence on affidavit.

**PART 58 – BAIL APPLICATIONS**

**Contents of this Part**

Scope of this Part	Rule 58.1
How to apply to the court	Rule 58.2
Hearing of application	Rule 58.3

**58.1 Scope of this Part.**

- (1) This Part deals with applications to the court to review a decision by a magistrate about bail.

- (2) In this Part,
- “Commissioner” means the Commissioner of Prisons or other person responsible for the administration of prisons in the Member State or Territory concerned; and
- “magistrate” includes a Justice of the Peace.

**58.2 How to apply to the court.**

- (1) An application under this Part must be in the appropriate practice form.
- (2) If the applicant is in custody and is not represented by a legal practitioner, the application must be lodged with the Commissioner.
- (3) The Commissioner must forthwith file the application at the court office.
- (4) If the applicant is
- (a) not in custody; or
  - (b) represented by a legal practitioner;
- the applicant must file the application at the court office.

- (5) The court office must immediately
- (a) send a copy of the application to the Director of Public Prosecutions;
  - (b) fix a date, time and place to hear the application; and
  - (c) give notice of the date, time and place to
    - (i) the applicant;
    - (ii) the Director of Public Prosecutions; and
    - (iii) (if the applicant is in custody) the Commissioner.

**58.3 Hearing of application.**

- (1) The court may confirm, modify or reverse the decision of the magistrate.
- (2) The court office must serve a copy of any order on the
- (a) Chief Magistrate (if any);
  - (b) Commissioner; and
  - (c) magistrate who made the decision under review.

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## PART 59 – PROCEEDINGS BY AND AGAINST THE CROWN

### Contents of this Part

Scope of this Part	Rule 59.1
Service of claim form	Rule 59.2
Claimant's duty to give particulars	Rule 59.3
Applications in certain revenue matters	Rule 59.4
Proceedings relating to postal packets	Rule 59.5
Applications under s.24 (2) or s.25 (2) of the Act	Rule 59.6
Enforcement against Crown	Rule 59.7

### 59.1 Scope of this Part.

- (1) This Part deals with claims to which the Crown or the State is a party.
- (2) In this Part,  
“Act” means, in
  - (a) Anguilla, the Crown Proceedings Ordinance (Cap. 22);
  - (b) Antigua and Barbuda, the Crown Proceedings Act (Cap. 121);
  - (c) Dominica, the State Proceedings Act (Cap. 7.80);
  - (d) Grenada, the Crown Proceedings Act (Cap. 74);
  - (e) Montserrat, the Crown Proceedings Ordinance (Cap. 22);
  - (f) Saint Christopher and Nevis, the Crown Proceedings Act (Cap. 5.06);
  - (g) Saint Lucia, the Crown Proceedings Act (Cap. 13);
  - (h) Saint Vincent and the Grenadines, the Crown Proceedings Act (Cap. 85); and
  - (i) the British Virgin Islands, the Crown Proceedings Ordinance (Cap 21);

“Crown” means, for the purpose of Dominica, the State; and

“Dominica” means the Commonwealth of Dominica.

(3) References in these Rules to a claim for possession of land are to be construed as including references to a claim against the Crown for an order declaring that the claimant is entitled as against the Crown to the land or to possession of the land.

### 59.2 Service of claim form.

- (1) Part 5 (service of claim form) and Part 6 (service of other documents) do not apply in civil proceedings against the Crown.
- (2) Service of any document including a claim form on the Crown must be effected in accordance with the relevant Act.

**59.3 Claimant's duty to give particulars.**

(1) If a claim is made against the Crown, the claim form or statement of claim must contain reasonable information as to the circumstances in which it is alleged that the liability of the Crown has arisen and as to the government department and officers of the Crown involved.

(2) At any time during the period for entering an acknowledgment of service under rule 9.3(1) the defendant may request information under Part 34.1.

(3) The defendant's time for filing an acknowledgment of service is then extended until 7 days after the

- (a) court, on the application of the claimant, decides that no further information is reasonably required; or
- (b) defendant gives notice in writing to the claimant that it is satisfied with the information supplied;

whichever first occurs.

(4) The defendant's time for filing a defence is extended to 21 days after the earlier event in paragraph (3).

**59.4 Applications in certain revenue matters.**

(1) This rule applies to applications under section 11 of the Acts of Dominica and Grenada and section 12 of the Act of Saint Vincent and the Grenadines only.

(2) An application must be made by fixed date claim in Form 2.

(3) The person from whom an account or information is claimed or by whom any books are required to be produced must be made defendant to the claim.

(4) The claim form or the statement of claim must

- (a) refer to the enactment under which the account or information or payment or the production of books is claimed; and
- (b) where information is claimed must show (by appropriate questions or otherwise) what information is required.

(5) An affidavit by a duly authorised officer of the government department concerned setting out the facts on which the application is based and stating the deponent's belief in such facts is evidence of the facts so set out.

(6) If the defendant files evidence disputing any fact the Crown may file further evidence.

(7) The court may order that the deponents or any of them attend to be cross-examined.

(8) The court may

- (a) decide the matter upon the affidavit evidence after any cross-examination that may be ordered; or
- (b) direct that it be decided by oral evidence in court.



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(9) If the court makes an order in favour of the Crown, it must specify a date by which the defendant is to comply with each of the terms of the order.

- Rules 8.1(5) and 27.2 deal with the procedure relating to fixed date claims.

#### **59.5 Proceedings relating to postal packets.**

(1) This rule deals with applications under the Act for leave to bring a claim in the name of a sender or addressee of a postal packet or that person's personal representative.

(2) An application must be by fixed date claim in Form 2.

(3) The defendants to the claim must be the Attorney-General and the person in whose name the applicant seeks to bring the claim.

(4) No acknowledgment of service need be entered to the claim.

- Rules 8.1 (5) and 27.2 deal with the procedure relating to fixed date claims.

#### **59.6 Applications under s.24(2) or s.25(2) of the Act.**

An application under s.24(2) of the Act of Saint Lucia or s.25 (2) of the Acts relating to other Member States and Territories may be made in accordance with Part 11.

#### **59.7 Enforcement against Crown.**

(1) Parts 44 to 53 do not apply to any order against, or money due or accruing due, or alleged to be due or accruing due from the Crown.

(2) Any application under the Act for a direction that a separate certificate be issued with respect to costs (if any) ordered to be paid to the applicant may be made without notice.

(3) Every application for an order under the Act restraining any person from receiving money payable to that person by the Crown and directing payment to the applicant or some other person must be served on the Crown at least 14 days before the date of hearing and, unless the court otherwise orders, on the person to be restrained.

(4) Every application under paragraph (3) must be supported by evidence on affidavit

- (a) identifying the particular debt from the Crown in respect of which it is made; and
- (b) of the facts giving rise to it.

**PART 60 – APPEALS TO THE HIGH COURT****Contents of this Part**

Scope of this Part	Rule 60.1
How to appeal to the Court	Rule 60.2
Effect of appeal	Rule 60.3
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**60.1 Scope of this Part.**

(1) This Part deals with appeals to the High Court from any tribunal or person under any enactment other than an appeal by way of case stated.

(2) In this Part,

“clerk to the tribunal” means the clerk, secretary or other person responsible for the administration of the tribunal;

“decision” means the award, decision, determination or order appealed against; and

“tribunal” means any tribunal other than a court of law established under an enactment.

(3) This Part takes effect subject to any provisions in the relevant enactment.

**60.2 How to appeal to the Court.**

(1) An appeal to the court is made by issuing a fixed date claim form in Form 2 to which must be annexed the grounds of appeal.

(2) The appellant’s grounds of appeal must state the

- (a) decision against which the appeal is made;
- (b) enactment enabling an appeal to be made to the Court;
- (c) name of the tribunal or person whose decision is being appealed;
- (d) facts found by that tribunal or person; and
- (e) grounds of the appeal, identifying any finding of
  - (i) fact; and
  - (ii) law;

which the claimant seeks to challenge.

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(3) The date for the first hearing must not be less than 28, nor more than 56, days after issue of the claim form.

- Rules 8.1(5) and 27.2 deal with the procedure relating to fixed date claims.
- Part 56 deals with applications to quash a decision by way of certiorari.

### **60.3 Effect of appeal.**

The making of an appeal does not operate as a stay of proceedings on the decision against which the appeal is brought unless the

- (a) court; or
- (b) tribunal or person whose decision is being appealed;

so orders.

### **60.4 Persons on whom claim form must be served.**

The claimant must serve the claim form and grounds of appeal on

- (a) every party to the proceedings in which the decision was made; and
- (b) the clerk to the tribunal, minister or other person by whom the decision appealed against was made.

### **60.5 Time within which claim form must be served.**

The claim form and grounds of appeal must be served within 28 days of the date on which notice of the decision was given to the claimant.

### **60.6 Amendment of statement of case.**

(1) The appellant may amend the grounds of appeal without permission not less than 7 days before the first hearing.

(2) Permission to amend the grounds of appeal may be given at the first hearing.

(3) The court may not give permission to amend the grounds of appeal after the first hearing unless the appellant satisfies the court that the change is necessary because of some change in circumstance which became known after the first hearing.

### **60.7 First hearing.**

(1) The appellant must file at the court office a signed copy of any note made by the person presiding at the proceedings in which the decision was made not less than 7 days before the first hearing.

(2) If the court does not hear the appeal at the first hearing it must fix a date, time and place for the full hearing.

**60.8 Hearing of appeal.**

- (1) Unless an enactment otherwise provides, the appeal is to be by way of rehearing.
- (2) The court may receive further evidence on matters of fact.
- (3) The court may draw any inferences of fact which might have been drawn in the proceedings in which the decision was made.
- (4) The court may
- (a) give any decision or make any order which ought to have been given or made by the tribunal or person whose decision is appealed; and
  - (b) make such further or other order as the case requires; or
  - (c) remit the matter with the opinion of the court for rehearing and determination by the tribunal or person.
- (5) The court is not bound to allow an appeal because of
- (a) a misdirection; or
  - (b) the improper admission or rejection of evidence;

unless it considers that a substantial wrong or a miscarriage of justice has been caused.

**60.9 Right of minister to be heard.**

A Minister is entitled to be heard on any appeal against a decision made by that Minister.

**PART 61 – APPEALS TO THE COURT BY WAY OF CASE STATED****Contents of this Part**

Scope of this Part	Rule 61.1
Application for order to state a case	Rule 61.2
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Time within which claim form must be served	Rule 61.4
Signing and service of case	Rule 61.5
How to commence proceedings to determine a case	Rule 61.6
Determination of case	Rule 61.7

**61.1 Scope of this Part.**

- (1) This Part deals with the way in which the High Court or the Court of Appeal determines a
- (a)
    - (i) case stated; or
    - (ii) question of law;
 referred to it, by a Minister, magistrate, judge of a tribunal, a tribunal or other person; or

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(b) an application for an order directing a Minister, magistrate, judge of a tribunal, tribunal, arbitrator or other person to refer a question of law to the court by way of case stated, where under any enactment the High Court or the Court of Appeal has power to determine such matters.

(2) In this Part,

“case” includes a special case;

“clerk to the tribunal” means the clerk, secretary or other person responsible for the administration of the tribunal;

“court” means the High Court or the Court of Appeal as required by the particular enactment;

“enactment” includes the Constitution of the relevant Member State or Territory; and

“tribunal” means, in relation to

(a) proceedings brought under the Constitution, a court other than the High Court, the Court of Appeal or a court martial;

(b) any other proceedings, any tribunal other than a court of law constituted by or under any enactment.

#### 61.2 **Application for order to state a case.**

(1) An application to the court

(a) for an order directing a Minister, magistrate, judge of a tribunal, tribunal, arbitrator or other person to state a case for determination by the court; or

(b) to refer a question of law to the court by way of case stated;

is made by a fixed date claim in Form 2 which must

(i) identify the question of law upon which it is sought to have a case stated;

(ii) set out any reasons given by the Minister, magistrate, judge of a tribunal, tribunal, arbitrator or other person for the refusal to state a case; and

(iii) state the grounds of the application.

(2) The court office must fix a date for a hearing of the application and endorse on the claim form the date, time and place of that hearing.

(3) The claimant must file at the court office a copy of the proceedings to which the claim relates not less than 7 days before the date fixed for the hearing.

**61.3 Persons on whom claim form must be served.**

The claimant must serve the claim form,

- (a) if the application relates to a claim brought under the relevant Constitution, on
  - (i) the Attorney-General;
  - (ii) the clerk to the tribunal; and
  - (iii) every other party to the proceedings to which the application relates;
- (b) in any other claim, on
  - (i) the clerk to the tribunal;
  - (ii) the Minister or other person whose decision is questioned; and
  - (iii) every other party to the proceedings to which the application relates.
    - Rule 6.9 deals with service on the Attorney-General
    - Rule 59.2 deals with service on the Crown or State.

**61.4 Time within which claim form must be served.**

The claimant must serve the claim form within 14 days of the date on which notice of refusal to state a case was given to the claimant.

**61.5 Signing and service of case.**

- (1) A case stated by a tribunal must be signed by the magistrate, judge, chairperson or president of the tribunal.
- (2) A case stated by any other person must be signed by that person.
- (3) The case must be served, if it relates to
  - (a) a claim brought under the relevant Constitution, on the Attorney-General and on all parties to the proceedings to which the case relates;
  - (b) any other claim, on all parties to the claim to which the case relates.

**61.6 How to commence proceedings to determine a case.**

- (1) Proceedings to determine a case must be commenced by issuing a fixed date claim in Form 2.
- (2) The claim form may be issued by
  - (a) any party on whom a case was served under rule 61.5(3); or
  - (b) if a Minister, magistrate, judge of a tribunal, tribunal, arbitrator or other person is entitled by any enactment to state a case or to refer a question of law by way of case stated to the court, that person or tribunal.

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- (3) The claim form must have the case stated annexed.
- (4) The claim form, or a statement of claim issued and served with it, must set out the claimant's contentions on the question of law to which the case relates.
- (5) The contentions may be in the form of a skeleton argument.
- (6) The court office must fix a date, time and place for the determination of the case.
- (7) The claim form must be served on the persons set out in rule 61.5(3).
- (8) It must be served within 14 days after the service of the case stated.

#### 61.7 Determination of case.

- (1) Not less than 7 days before the date fixed to determine the case, the claimant must file a copy of the proceedings to which the case relates.
- (2) The court may amend the case or order it to be returned to the person or tribunal stating the case for amendment.
- (3) The court may draw inferences of fact from the facts stated in the case.
- (4) A Minister is entitled to be heard on any case stated by that Minister.

### **PART 62 – APPEALS TO THE COURT OF APPEAL**

#### **Contents of this Part**

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**Contents of this Part**

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Application to set aside decision made in party's absence	Rule 62.22
Adjournment of appeal	Rule 62.23
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**62.1 Scope of this Part.**

- (1) This Part deals with appeals to the Court of Appeal from
- (a) a Magistrate's or District Court;
  - (b) a tribunal; or
  - (c) the High Court;

not being

- (i) appeals by way of case stated on a question of law for determination by the court; nor
- (ii) appeals or applications to the court for which other provision is made by these Rules.
  - Part 60 deals with appeals to the High Court.
  - Part 61 deals with appeals to the court by way of case stated.

- (2) In this Part,

“appellant” means the party who first files a notice of appeal;

“core bundle” means a bundle containing only documents listed in rule 62.12 which the court will need to pre-read or to which it will be necessary to refer repeatedly at the appeal;

“court” means the Court of Appeal;

“court below” means the court or tribunal from which the appeal is brought;

“procedural appeal” means an appeal from a decision of a judge, master or registrar which does not directly decide the substantive issues in a claim but excludes

- (a) any such decision made during the course of the trial or final hearing of the proceedings;
- (b) an order for committal or sequestration of assets under Part 53;
- (c) an order granting any relief made on an application for judicial review (including an application for leave to make the application) under the relevant Constitution;



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- (d) an order granting or refusing an application for the appointment of a receiver; and
- (e) the following orders under Part 17:
  - (i) a freezing order;
  - (ii) an interim declaration or injunction;
  - (iii) an order to deliver up goods;
  - (iv) any order made before proceedings are commenced or against a non-party; and
  - (v) a search order; and

“respondent” means any party to the appeal other than the appellant whether or not the respondent files a counter-notice.

#### 62.2 How to obtain leave to appeal.

(1) If an appeal may be made only with the leave of the court below or the court, a party wishing to appeal must apply for leave within 14 days of the order against which leave to appeal is sought.

(2) The application for leave to appeal must be made in writing and set out concisely the grounds of the proposed appeal.

(3) An application for leave to appeal made to the court may be considered by a single judge of the court.

(4) The judge may give leave without hearing the applicant.

(5) If minded to refuse leave, the judge may direct

- (a) that a hearing in chambers be fixed; and
- (b) whether that hearing is to be by a single judge of the court or the court.

#### 62.3 How to appeal.

(1) An appeal is made, in the case of an appeal from the High Court, by filing a notice of appeal at the court office where the judgment was entered.

(2) An appeal is made, in the case of an appeal from

- (a) Magistrate’s or District Court; or
- (b) tribunal;

by filing a notice of appeal at the court office.

(3) A notice of appeal takes effect on the day that it is received at the appropriate court office.

**62.4 Contents of notice of appeal.**

- (1) A notice of appeal must be in Form 23 and must give details of
  - (a) any power which the appellant wishes the court to exercise;
  - (b) the decision which is being appealed, identifying, so far as practicable, any finding of
    - (i) fact; and
    - (ii) law;which the appellant seeks to challenge;
  - (c) the grounds of the appeal; and
  - (d) the order the appellant seeks.

(2) A copy of the judgment or order which is the subject of the appeal must, wherever practicable, be attached to the notice of appeal.

(3) Where leave to appeal is required, a copy of the order giving leave to appeal must be attached to the notice of appeal.

- (4) The notice of appeal must
  - (a) be signed by the appellant or the appellant's legal practitioner;
  - (b) give the details required by rule 3.11; and
  - (c) state the names and addresses and the legal practitioners and their addresses for service of all other parties affected by the appeal.
- (5) The grounds of appeal under paragraph (1)(c) must set out
  - (a) concisely;
  - (b) in consecutively numbered paragraphs; and
  - (c) under distinct heads;

the grounds on which the appellant relies, without any argument or narrative.

- (6) The court may, on or without an application, strike out any ground which
  - (a) discloses no reasonable ground of appeal; or
  - (b) is vague and general in terms.

(7) The appellant may, except on a procedural appeal, amend the grounds of appeal once without permission at any time within 28 days from receiving notice under rule 62.9(b) or (c) that a transcript of the evidence and the judgment have been prepared.

(8) The appellant may not rely on any ground not mentioned in the notice of appeal without the permission of the court.

(9) The court is not confined to the grounds set out in the notice of appeal, but may not make its decision on any ground not set out in the notice of appeal unless the respondent has had sufficient opportunity to contest such ground.

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### 62.5 Time for filing notice of appeal.

The notice of appeal must be filed at the appropriate court office,

- (a) in the case of a procedural appeal, within 7 days of the date the decision appealed against was made;
- (b) if leave is required, within 14 days of the date when such leave was granted; or
- (c) in the case of any other appeal, within 42 days of the date when the order or judgment appealed against was served on the appellant.

### 62.6 Summary appeal.

(1) This rule applies to any appeal in which the appellant files with the notice of appeal

- (a) a certificate that the
  - (i) appeal is of exceptional urgency;
  - (ii) appeal relates to specific issues of law and can be heard justly without the production of the full record; or
  - (iii) circumstances of the appellant and/or the respondent are such that the cost of preparing the record would impede that party's ability to prosecute the appeal and that the appeal can be heard justly without production of the full record; and
- (b) evidence of the parties' agreement that the appeal should proceed as a summary appeal.

(2) The court office must immediately refer the notice of appeal to the Chief Registrar.

(3) The Chief Justice must assign the matter to a single judge of the court to determine whether the appeal should be dealt with summarily, and if the judge so determines, the judge must give such directions as are appropriate to enable the appeal to be dealt with summarily, including dispensing with any procedural requirements in this Part with regard to an appeal proceeding under this rule.

### 62.7 Service of notice of appeal.

The notice of appeal must be served on

- (a) all parties to the proceedings; and
- (b) any other person if the court so directs.
  - Part 6 deals with service.

### 62.8 Counter-notice.

- (1) Any party upon whom a notice of appeal is served may file a counter-notice.
- (2) The counter-notice must comply with rule 62.4.

(3) The counter-notice must be filed at the appropriate court office in accordance with rule 62.3 within 14 days of service of the notice of appeal.

(4) The party filing a counter-notice must serve a copy on all other parties to the proceedings.

#### **62.9 Action by court on receipt of notice of appeal.**

Upon the notice of appeal being filed (unless rule 62.6 applies) the appropriate court office must forthwith, if the appeal is

- (a) a procedural appeal, appoint a date, time and place for the appeal and give notice to all parties;
- (b) from the High Court,
  - (i) arrange for the court below to prepare a transcript of the notes of evidence and of the judgment; and
  - (ii) when these are prepared give notice to all parties that copies of the transcript are available on payment of the prescribed fee; or
- (c) from a Magistrate's Court or a tribunal, apply to the clerk or other officer of the court or tribunal for a
  - (i) certified copy of the record of the proceedings;
  - (ii) certified copy of the notes of the evidence given; and
  - (iii) statement of the judgment, the reasons for the decision and any finding on any question of law under appeal;

and forthwith upon receipt of these documents give notice to all parties that copies of the record and other documents are available on payment of the prescribed fee.

#### **62.10 Procedural appeal.**

(1) On a procedural appeal the appellant must file and serve written submissions in support of the appeal with the notice of appeal.

(2) The respondent may, within 7 days of receipt of the notice of appeal, file and serve on the appellant any written submission in opposition to the appeal or in support of any cross appeal.

(3) The general rule is that a procedural appeal is to be considered on paper by a single judge of the court.

(4) Consideration of the appeal must take place not less than 14 days nor more than 28 days after filing of the notice of appeal.

(5) The judge may, however, direct that the parties be entitled to make oral submissions and may direct that the appeal be heard by the court.

(6) Any oral hearing must take place within 42 days of the filing of the notice of appeal.

(7) The judge may exercise any power of the court whether or not any party has filed or served a counter-notice.

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#### 62.11 **Skeleton arguments.**

(1) Within 42 days of receipt of the notice under rule 62.9 (b) or (c), the appellant must file with the court office and serve on all other parties a skeleton argument.

(2) Within 28 days of service of the appellant's skeleton argument, any other party wishing to be heard on the appeal must file its skeleton argument and serve a copy on all other parties.

(3) The appellant may file and serve a skeleton argument in reply within 14 days of service of the skeleton argument by any other party.

(4) A skeleton argument must

- (a) set out concisely the nature of the appellant's arguments on each ground of appeal;
- (b) in the case of a point of law, state the point and cite the principal authorities in support with references to the particular page(s) where the principle concerned is set out; and
- (c) in the case of questions of fact, state briefly the basis on which it is contended that the Court of Appeal can interfere with the finding of fact concerned, with cross references to the passages in the transcript or notes of evidence which bear on the point.

(5) The appellant's skeleton argument must be accompanied by a written chronology of events relevant to the appeal cross-referenced to the core bundle or record.

#### 62.12 **The record – appeals from High Court.**

(1) This rule applies to all appeals from the High Court, other than

- (a) procedural appeals; or
- (b) summary appeals under rule 62.6.

(2) Within 21 days of receipt of the notice under rule 62.9(b) or (c) that the transcript is available, all parties must inform the appellant of the documents that they wish to have included in the record or the core bundle.

(3) Subject to paragraph (4), within 42 days of receipt of such notice under rule 62.9 (b), the appellant must prepare and file with the court office 6 sets of the record for the use of the court comprising a copy of each of the following documents:

- (a) affidavits (with exhibits) which were put in evidence before the court below;
- (b) a transcript or other record of the
  - (i) evidence given in the court below; and
  - (ii) judgment;
- (c) the documents required by rule 39.1(5) to be lodged with the court (including any core bundle);

- (d) the notice of appeal and any counter-notices that have been served on the appellant; and
- (e) the skeleton arguments and chronologies under rule 62.11.

(4) If the record consists of more than 100 pages the appellant must prepare a core bundle and file

- (a) 4 copies of the core bundle; and
- (b) 2 copies of the record in accordance with paragraph (3);

for the use of the court.

(5) The appellant must forthwith serve one copy of the record or (if paragraph (4) applies) one copy of any core bundle on every respondent.

(6) Any application to correct the record must be made in writing to the Chief Registrar no later than 21 days after the service of the record or core bundle in accordance with paragraph (4).

#### **62.13 The record – appeals from magistrates’ courts.**

(1) This rule applies to appeals from Magistrates’ or District Courts.

(2) In the case of an appeal from a Magistrates’ or District Court, the record must consist of the documents referred to in rule 62.9(c) together with the notice of appeal and any counter-notices that have been served on the appellant.

(3) Within 28 days of receipt of the notice under rule 62.9(c) the appellant must file at the court office six copies of the record for the use of the court.

(4) The appellant must forthwith serve one copy of the record on each respondent to the appeal.

#### **62.14 Case management.**

(1) Parts 25 to 27, so far as relevant, apply to management of an appeal case as they do to case management of a trial.

(2) The Chief Justice may designate a single judge of the court, a judge, master or the Chief Registrar to manage an appeal case.

(3) The person designated under paragraph (2) may

- (a) give written directions which may include a direction that a date for hearing of the appeal be fixed or that a case management conference be held; or
- (b) hold a case management conference.

(4) Directions, whether or not given at a case management conference, must include directions fixing a date for the hearing of the appeal or directions fixing a date by which a listing questionnaire must be sent to all parties and may include directions

- (a) as to the length of time to be allocated to the hearing of the appeal;
- (b) that the parties agree to a core bundle for use at the appeal;

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- (c) that the parties agree and file a statement of issues for the appeal;
  - (d) that the parties agree and file a statement summarising the facts found at the trial; and
  - (e) as to the filing of written briefs and as to the length of time allowed to each party for oral argument; or
  - (f) that the appeal be considered solely on written briefs without oral argument and as to the time by which such briefs are to be filed.
- (5) If directions are given that a listing questionnaire be sent to all parties, rules 27.9 and 27.10 apply as if the references to the trial were references to the hearing of the appeal.
- (6) If the management of an appeal has been referred to a single judge of the court under paragraph (2) that judge must, wherever practicable, be a member of the court hearing the appeal.

#### **62.15 Procedural applications to court.**

- (1) Any application (other than an application for leave to appeal) to the court must be made in writing, in the first instance, and be considered by the Chief Justice, or if the Chief Justice directs, by
- (a) a judge;
  - (b) a master;
  - (c) a single judge of the court;
  - (d) the Chief Registrar;
  - (e) the court; or
  - (f) the registrar of the court below.
- (2) If an appeal has been referred under rule 62.14(2) to a single judge of the court for case management, the application should, wherever practicable, be considered by that judge.
- (3) So far as practicable, a procedural application is to be dealt with on paper or by telephonic or other means of communication.
- (4) The court office must give the parties to the appeal at least 7 days notice of any hearing.

#### **62.16 Powers of single judge of the court, master and Chief Registrar and master to make certain orders.**

- (1) A single judge of the court may make orders for
- (a) an injunction restraining any party from disposing of or parting with the possession of the subject matter of an appeal pending the determination of the appeal;
  - (b) a stay of execution on any judgment or order against which an appeal has been made pending the determination of the appeal;

- (c) extension or abridgement of any time limit prescribed in this Part;
  - (d) the giving of security for any costs occasioned by an appeal.
- (2) The Chief Justice may designate a master or the Chief Registrar to make orders for
- (a) extension or abridgement of any time limit prescribed in this Part;
  - (b) the giving of security for any costs occasioned by an appeal.
- (3) An order made by a master or the Chief Registrar may be varied or discharged by a single judge.
- (4) An order made by a single judge of the court, a master or the Chief Registrar may be varied or discharged by the court.

**62.17 Security for costs of appeal.**

- (1) The court may order
- (a) an appellant; or
  - (b) a respondent who files a counter notice asking the court to vary or set aside an order of a lower court;
- to give security for the costs of the appeal.
- (2) An application for security may not be made unless the applicant has made a prior written request for such security.
- (3) In deciding whether to order a party to give security for the costs of the appeal, the court must consider
- (a) the likely ability of that party to pay the costs of the appeal if ordered to do so; and
  - (b) whether in all the circumstances it is just to make the order.
- (4) On making an order for security for costs the court must order that the appeal be dismissed with costs if the security is not provided in the amount, in the manner and by the time ordered.
- (5) Any costs to be paid under paragraph (4) must be assessed by the court.
- Rule 65.12 deals with the assessment of costs.

**62.18 Non-disclosure of payment into court, etc.**

- (1) If
- (a) any question on an appeal in a claim for a debt, damages or salvage relates to liability for the debt, damages or salvage or to the amount thereof; and
  - (b) an offer of settlement was made under Part 35 or payment into court in support of such an offer was made under Part 36 in the proceedings in the court below before judgment;



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neither the fact nor the amount of the offer or payment is to be stated in any notice of appeal or counter-notice or communicated to the court until all such questions have been decided.

(2) For the purpose of complying with this rule, the appellant must cause to be omitted from the copies of the documents lodged by the appellant every part which states, or refers to the fact, that money was paid into court or an offer to settle was made in the proceedings in that court before judgment.

(3) This rule does not apply to an appeal relating only to costs.

#### **62.19 Stay of execution.**

Except so far as the court below or the court or a single judge of the court otherwise directs,

- (a) an appeal does not operate as a stay of execution or of proceedings under the decision of the court below; and
- (b) any intermediate act or proceeding is not invalidated by an appeal.

#### **62.20 General powers of the court.**

(1) In relation to an appeal, the Court of Appeal has all the powers and duties of the High Court including, in particular, the powers set out in Part 26.

(2) The court may hear an appeal in a Member State or Territory other than where the decision of the court below was made.

#### **62.21 Failure of party to attend appeal.**

(1) If no party appears at the appeal and the court is satisfied that the parties have received notice of the hearing in accordance with these Rules, the court may strike out the appeal and any counter appeal.

(2) If one or more but not all parties appear, the court may proceed in the absence of the parties who do not appear if satisfied that the party who does not appear has received notice of the hearing in accordance with these Rules.

#### **62.22 Application to set aside decision made in party's absence.**

(1) A party who was not present at an appeal at which a decision was made or where an appeal was struck out may apply to set aside that order.

(2) The application must be made within 14 days after the date on which the judgment was served on the applicant.

(3) The application to set aside the order must be supported by evidence on affidavit showing

- (a) a good reason for failing to attend the hearing; and
- (b) that it is likely that had the applicant attended, some other decision might have been made.

**62.23 Adjournment of appeal.**

- (1) The court may adjourn an appeal on such terms as it thinks just.
- (2) The court may only adjourn an appeal to a date and time fixed by the court.

**62.24 Certificate of result of appeal.**

At the conclusion of each appeal the court office must prepare a certificate of the result of the appeal in Form 24 and

- (a) file a copy at the court office at which the Notice of Appeal was lodged; and
- (b) serve a copy on each party to the appeal.

**PART 63 – CHANGE OF LEGAL PRACTITIONER****Contents of this Part**

Scope of this Part	Rule 63.1
Change of legal practitioner	Rule 63.2
Notice of appointment of legal practitioner	Rule 63.3
Party acting in person	Rule 63.4
Application by another party to remove legal practitioner from record	Rule 63.5
Application by legal practitioner to be removed from record	Rule 63.6
Time when notice or order takes effect	Rule 63.7

**63.1 Scope of this Part.**

This part deals with the procedure where

- (a) a legal practitioner acts in the place of a party in person;
- (b) a party who has previously acted by a legal practitioner acts in person; or
- (c) there is a change of legal practitioner.

**63.2 Change of legal practitioner.**

When a party changes its legal practitioner the new legal practitioner must

- (a) file a notice of acting which states the legal practitioner's business name, address, telephone number and FAX number (if any);
- (b) serve a copy of the notice on every other party and the former legal practitioner; and
- (c) file a certificate of service.

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**63.3 Notice of appointment of legal practitioner.**

If a person who has previously acted in person instructs a legal practitioner, that legal practitioner must

- (a) file notice of acting at the court office which states the legal practitioner's business name, address, telephone number and FAX number (if any);
- (b) serve a copy of the notice on every other party; and
- (c) file a certificate of service.

**63.4 Party acting in person.**

If a party who has previously been represented by a legal practitioner decides to act in person, that party must

- (a) file notice of acting in person at the court office which states the address, an address for service within the jurisdiction, telephone number and FAX number (if any) of that party;
- (b) serve a copy of the notice on every other party and the former legal practitioner; and
- (c) file a certificate of service.

**63.5 Application by another party to remove legal practitioner from record.**

- (1) If
  - (a) a legal practitioner on record for a party has
    - (i) become bankrupt;
    - (ii) been removed from the roll;
    - (iii) died; or
    - (iv) failed to take out a practising certificate; and
  - (b) notice of the appointment of a new legal practitioner under rule 63.2 or of the party acting in person under rule 63.4 has not been received;

any other party may apply to the court for an order declaring that the legal practitioner in question has ceased to act.

(2) An application under this Part must be supported by evidence on affidavit and must be served on the legal practitioner (if practicable) and personally on the client.

(3) Any order made must be served by the applicant on the legal practitioner or former legal practitioner (if practicable) and personally on the client.

- (4) The applicant must file a certificate of service of the order.

**63.6 Application by legal practitioner to be removed from record.**

(1) A legal practitioner who wishes to be removed from the record as acting for a party may apply to the court for an order that he or she be removed from the record.

(2) The application must be on notice to the client or former client and to all other parties.

(3) The application must be supported by evidence on affidavit which must be served on the client but must not be served on any other party to the proceedings.

(4) Any order made must be served by the applicant on the other parties' legal practitioners and personally on the former client.

(5) The applicant must file a certificate of service of the order.

### **63.7 Time when notice or order takes effect.**

Any notice under rule 63.2, 63.3 or 63.4, or order under rule 63.5 or 63.6 does not take effect until service.

## **PART 64 – COSTS – GENERAL**

### **Contents of this Part**

Scope of this Part	Rule 64.1
Definitions and application	Rule 64.2
Orders about costs	Rule 64.3
Costs where there is an appeal	Rule 64.4
Entitlement to recover costs	Rule 64.5
Successful party generally entitled to costs	Rule 64.6
Two or more parties having same interest	Rule 64.7
Wasted costs orders	Rule 64.8
Wasted costs orders – procedure	Rule 64.9
Costs against person who is not a party	Rule 64.10

### **64.1 Scope of this Part.**

This Part contains general Rules about costs and the entitlement to costs.

- Part 65 deals with the quantification of such costs.

### **64.2 Definitions and application.**

- (1) In this Part and in Part 65, unless the context otherwise requires,
- “assessed costs” and “assessment” have the meanings given them by rules 65.11 and 65.12;
- “budgeted costs” has the meaning given it by rule 65.8;
- “costs” include a legal practitioner’s charges and disbursements, fixed costs, prescribed costs, budgeted costs or assessed costs;
- “fixed costs” has the meaning given it by rule 65.4; and
- “prescribed costs” has the meaning given it by rule 65.5.

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- (2) If costs of
  - (a) a legal practitioner to his or her client;
  - (b) arbitration proceedings; or
  - (c) proceedings before a tribunal or other statutory body;

are to be taxed or assessed by the court, they must be assessed in accordance with rule 65.12.

(3) If in any enactment there is a reference to the taxation of any costs, this is to be construed as referring to the assessment of such costs in accordance with rule 65.12, unless the enactment otherwise provides.

#### **64.3 Orders about costs.**

The court's powers to make orders about costs include power to make orders requiring a party to pay the costs of another person arising out of or related to all or any part of any proceedings.

#### **64.4 Costs where there is an appeal.**

The court hearing an appeal may make orders about the costs of the proceedings giving rise to the appeal as well as the costs of the appeal.

#### **64.5 Entitlement to recover costs.**

A person may not recover the costs of proceedings from any other party or person except by virtue of

- (a) an agreement between the parties;
- (b) an order of the court; or
- (c) a provision of these Rules.

#### **64.6 Successful party generally entitled to costs.**

(1) Where the court, including the Court of Appeal, decides to make an order about the costs of any proceedings, the general rule is that it must order the unsuccessful party to pay the costs of the successful party.

(2) The court may however order a successful party to pay all or part of the costs of an unsuccessful party or may make no order as to costs.

- (3) This rule gives the court power, in particular, to order a person to pay
  - (a) costs from or up to a certain date only;
  - (b) costs relating only to a certain distinct part of the proceedings; or
  - (c) only a specified proportion of another person's costs.

(4) The court may not make an order under paragraph 3(a) or 3(b) unless it is satisfied that an order under paragraph 3(c) would not be more practicable.

(5) In deciding who should be liable to pay costs the court must have regard to all the circumstances.

(6) In particular, it must have regard to

- (a) the conduct of the parties both before and during the proceedings;
- (b) the manner in which a party has pursued
  - (i) a particular allegation;
  - (ii) a particular issue; or
  - (iii) the case;
- (c) whether a party has succeeded on particular issues, even if the party has not been successful in the whole of the proceedings;
- (d) whether it was reasonable for a party to
  - (i) pursue a particular allegation; and/or
  - (ii) raise a particular issue; and
- (e) whether the claimant gave reasonable notice of intention to issue a claim.
  - Rule 65.11 sets out the way in which the court must deal with the costs of procedural hearings other than a case management conference or pre-trial review.

#### **64.7 Two or more parties having same interest.**

If two or more parties having the same interest in relation to proceedings are separately represented the court may disallow more than one set of costs.

#### **64.8 Wasted costs orders.**

- (1) In any proceedings, the court may, by order,
- (a) direct the legal practitioner to pay; or
  - (b) disallow as against the legal practitioner's client;

the whole or part of any wasted costs.

(2) In this rule,

“wasted costs” means any costs incurred by a party

- (a) as a result of any improper, unreasonable or negligent act or omission on the part of any legal practitioner or any employee of the legal practitioner; or
- (b) which, in the light of any act or omission occurring after they were incurred;

the court considers it unreasonable to expect that party to pay.

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**64.9 Wasted costs orders – procedure.**

- (1) This rule applies where
  - (a) an application is made for; or
  - (b) the court is considering whether to make;

an order under rule 64.8(1), except where rule 27.9(6)(b) applies.

(2) Any application by a party must be on notice to the legal practitioner against whom the costs order is sought and must be supported by evidence on affidavit setting out the grounds on which the order is sought.

(3) If the court is considering making such an order the court must give the legal practitioner notice of the fact that it is minded to make such an order.

(4) Notice under paragraph (3) must state the grounds on which the court is minded to make the order.

(5) A notice under paragraph (2) or (3) must state a date, time and place at which the legal practitioner may attend to show cause why the order should not be made.

(6) The legal practitioner against whom the costs order is sought and all parties to the proceedings must be given 7 days notice of the hearing.

**64.10 Costs against person who is not a party.**

- (1) This rule applies where
  - (a) an application is made for; or
  - (b) the court is considering whether to make;

an order that a person who is not a party to the proceedings nor the legal practitioner to a party should pay the costs of some other person.

(2) Any application by a party must be on notice to the person against whom the costs order is sought and must be supported by evidence on affidavit.

(3) If the court is considering making an order against a person the court must give that person notice of the fact that it is minded to make such an order.

(4) A notice under paragraph (3) must state the grounds of the application on which the court is minded to make the order.

(5) A notice under paragraph (2) or (3) must state a date, time and place at which that person may attend to show cause why the order should not be made.

(6) The person against whom the costs order is sought and all parties to the proceedings must be given 14 days notice of the hearing.

**PART 65 – COSTS – QUANTIFICATION****Contents of this Part**

Scope of this Part	Rule 65.1
Basis of quantification	Rule 65.2
Ways in which costs are to be quantified	Rule 65.3
Fixed costs	Rule 65.4
Prescribed costs	Rule 65.5
Applications to determine value of claim for purpose of prescribed costs	Rule 65.6
What is included in prescribed costs	Rule 65.7
Budgeted costs	Rule 65.8
Client's consent to application for budgeted costs	Rule 65.9
What is included in costs budget	Rule 65.10
Assessed costs – procedural applications	Rule 65.11
Assessed costs – general	Rule 65.12
Costs in Court of Appeal	Rule 65.13
Appendix A – Fixed Costs	
Appendix B – Prescribed Costs	
Appendix C – Prescribed Costs: Percentage to be allowed at various stages of claim	

**65.1 Scope of this Part.**

This Part deals with the way in which any costs awarded by the court are quantified.

**65.2 Basis of quantification.**

(1) If the court has a discretion as to the amount of costs to be allowed to a party, the sum to be allowed is

- (a) the amount that the court deems to be reasonable were the work to be carried out by a legal practitioner of reasonable competence; and
- (b) which appears to the court to be fair both to the person paying and the person receiving such costs.

(2) If the court has a discretion as to the amount of costs to be paid to a legal practitioner by his or her client, the sum allowed is

- (a) the amount that the court deems to be reasonable; and
- (b) which appears to be fair both to the legal practitioner and the client.

(3) In deciding what would be reasonable the court must take into account all the circumstances, including

- (a) any order that has already been made;
- (b) the care, speed and economy with which the case was prepared;



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- (c) the conduct of the parties before as well as during the proceedings;
- (d) the degree of responsibility accepted by the legal practitioner;
- (e) the importance of the matter to the parties;
- (f) the novelty, weight and complexity of the case;
- (g) the time reasonably spent on the case; and
- (h) in the case of costs charged by a legal practitioner to his or her client
  - (i) any agreement about what grade of legal practitioner should carry out the work;
  - (ii) any agreement that may have been made as to the basis of charging; and
  - (iii) whether the legal practitioner advised the client and took the client's instructions before taking any unusual step or one which was unusually expensive having regard to the nature of the case.

### 65.3 Ways in which costs are to be quantified.

Costs of proceedings under these Rules are to be quantified as follows:

- (a) where rule 65.4 applies, in accordance with the provisions of that rule; and
- (b) in all other cases if, having regard to rule 64.6, the court orders a party to pay all or any part of the costs of another party, in one of the following ways:
  - (i) costs determined in accordance with rule 65.5 ("prescribed costs");
  - (ii) costs in accordance with a budget approved by the court under rule 65.8 ("budgeted costs"); or
  - (iii) (if neither prescribed nor budgeted costs are applicable), by assessment in accordance with rules 65.11 and 65.12.

### 65.4 Fixed costs.

(1) A party is entitled to the costs set out in column 3 of Appendix A to this Part in the circumstances set out in column 2 of that Appendix.

(2) The court may however direct that some other amount of costs be allowed for the work covered by any item in Part 2 of Appendix A.

(3) If it does so, the court must assess such costs.

- Rule 65.11 and 65.12 deals with the assessment of costs.

**65.5 Prescribed costs.**

(1) The general rule is that where rule 65.4 does not apply and a party is entitled to the costs of any proceedings, those costs must be determined in accordance with Appendices B and C to this Part and paragraphs (2) to (4) of this rule.

- (2) In determining such costs the value of the claim is,
- (a) in the case of a claimant, the amount agreed or ordered to be paid;
  - (b) in the case of a defendant,
    - (i) the amount claimed by the claimant in the claim form;
    - (ii) if the claim is for damages and the claim form does not specify an amount that is claimed, such sum as is agreed between the party entitled to, and the party liable for, the costs or, if not agreed, a sum stipulated by the court as the value of the claim; or
    - (iii) if the claim is not for a monetary sum, the amount of EC\$50,000 unless the court makes an order under rule 65.6(1)(a).

(3) The general rule is that the amount of costs to be paid is to be calculated in accordance with the percentages specified in column 3 of Appendix B against the appropriate value.

- (4) The court may
- (a) award a proportion only of such sum having taken into account the matters set out in rule 64.6(4) and (5); and
  - (b) order a party to pay costs
    - (i) from or to a certain date; or
    - (ii) relating only to a certain distinct part of the proceedings, in which case it must specify the proportion of the fixed costs which is to be paid by the party liable to pay such costs and in so doing may take into account the table set out in Appendix C.

**65.6 Applications to determine value of claim for purpose of prescribed costs.**

- (1) A party may apply to the court at a case management conference
- (a) to determine the value to be placed on a case which has no monetary value; or
  - (b) if the likely value is known, to direct that the prescribed costs be calculated on the basis of some higher or lower value.

(2) The court may make an order under paragraph (1)(b) only if it is satisfied that the costs as calculated in accordance with rule 65.5 are likely to be either

- (a) excessive; or
- (b) substantially inadequate;

taking into account the nature and circumstances of the particular case.

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(3) If an application is made for costs to be prescribed at a higher level, rules 65.8(4)(c) and 65.9 apply.

**65.7 What is included in prescribed costs.**

(1) Prescribed costs include all work that is required to prepare the proceedings for trial including, in particular, the costs involved in

- (a) instructing any expert;
- (b) considering and disclosing any report made by the expert;
- (c) arranging the expert witness' attendance at trial; and
- (d) attendance and advocacy at the trial including attendance at any case management conference or pre-trial review.

(2) Prescribed costs exclude

- (a) expert's fees for preparing a report and attending any conference, hearing or trial;
- (b) costs incurred in enforcing any order (which are generally fixed in accordance with rule 65.4 but may, in certain cases, be assessed in accordance with rule 65.12);
- (c) the cost of obtaining a daily transcript of the evidence if the trial judge certifies this as a reasonable disbursement in all the circumstances of the case; and
- (d) the making or opposing of any application except at a case management conference or pre-trial review.

**65.8 Budgeted costs.**

(1) A party may apply to the court to set a costs budget for the proceedings.

(2) An application for a costs budget must be made at or before the first case management conference.

(3) The application may be made by either or both parties but an order setting a costs budget may not be made by consent unless all relevant parties are bodies corporate.

(4) An application for a costs budget must be accompanied by

- (a) a statement of the amount that the party seeking the order wishes to be set as the costs budget;
- (b) a statement showing how the budget has been calculated and setting out, in particular,
  - (i) a breakdown of the costs incurred to date;
  - (ii) the anticipated amount of any expert witness fees and whether or not such fees are included in the budget;
  - (iii) the disbursements other than expert fees that are included in the budget;

- (iv) the fees that are anticipated to be paid to any legal practitioner other than the legal practitioner on record for advocacy (including advocacy by a Queen's Counsel, a State Counsel or more than one counsel), advising or settling any document;
  - (v) the hourly rate charged by the legal practitioner (or other basis of charging);
  - (vi) a statement of the number of hours of preparation time (including attendances upon the party, any witness and any other party to the proceedings) that the legal practitioner for the party making the application has already spent and anticipates will be required to bring the proceedings to trial; and
  - (vii) what procedural steps or applications are or are not included in the budget; and
- (c) the written consent from the client in accordance with rule 65.9.

(5) A party may apply to vary the terms of an order made under this rule at any time prior to the commencement of the trial but no order may be made increasing the amount of the budgeted costs unless the court is satisfied that there has been a change of circumstances which became known after the order was made.

#### **65.9 Client's consent to application for budgeted costs.**

- (1) The court may not make an order for budgeted costs unless
- (a) the court satisfies itself that each party fully understands the consequences of the order that is being sought as to
    - (i) the party's liability for costs to the party's own legal practitioner, whether the party obtains an order for costs against any other party or not;
    - (ii) the party's liability to pay costs in the budgeted sum to the other party if that other party obtains an order for costs against the party; and
    - (iii) what the party's liability might be under paragraphs (i) and (ii) if rule 65.5 applied;
  - (b) the consent under sub-paragraph (c) is in a separate document which
    - (i) deals only with the question of budgeted costs;
    - (ii) gives an estimate of the total costs of the proceedings as between the legal practitioner and the client;
    - (iii) is signed by the party in person;
    - (iv) states the legal practitioner's estimate of what the prescribed costs appropriate to the proceedings would be; and
    - (v) sets out the basis of that estimate including the amount of any hourly charge;

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- (c) there has been filed a document recording the express consent of the party in person to the application and to any order made as a consequence of the application; and
  - (d) the party seeking the order is present in person when the application is made except where
    - (i) that party is a body corporate; or
    - (ii) for some exceptional reason this is impracticable.
- (2) The written consent of the client must not be disclosed to the other party.
- (3) This rule also applies to any other party personally who consents to or does not oppose an order for a costs budget.

#### 65.10 **What is included in costs budget.**

Unless the costs budget approved by the court specifies otherwise, rule 65.7 applies to budgeted costs as it does to prescribed costs.

#### 65.11 **Assessed costs – procedural applications.**

- (1) On determining any application, except at a case management conference, pre-trial review or the trial, the court must
- (a) decide which party, if any, should pay the costs of that application;
  - (b) assess the amount of such costs; and
  - (c) direct when such costs are to be paid.
- (2) In deciding which party, if any, should pay the costs of the application the general rule is that the unsuccessful party must pay the costs of the successful party.
- (3) The court must take into account all the circumstances including the factors set out in rule 64.6(6) but where the application is
- (a) an application to amend a statement of case;
  - (b) an application to extend the time specified for doing any act under these Rules or an order or direction of the court;
  - (c) an application for relief under rule 26.8 (relief from sanctions); or
  - (d) one that could reasonably have been made at a case management conference or pre-trial review;

the court must order the applicant to pay the costs of the respondent unless there are special circumstances.

- (4) In assessing the amount of costs to be paid by any party the court must take into account any representations as to the time that was reasonably spent in making the application and preparing for and attending the hearing and must allow such sum as it considers fair and reasonable.

(5) A party seeking assessed costs must supply to the court and to all other parties a brief statement showing

- (a) any counsel's fees incurred;
- (b) how that party's legal representative's costs are calculated; and
- (c) the disbursements incurred.

(6) The statement under paragraph (5) must comply with any relevant practice direction.

(7) The costs allowed under this rule may not exceed one tenth of the amount of the prescribed costs appropriate to the claim unless the court considers that there are special circumstances of the case justifying a higher amount.

#### **65.12 Assessed costs – general.**

(1) This rule applies where costs fall to be assessed in relation to any matter or proceedings, or part of a matter or proceedings, other than a procedural application.

(2) If the assessment relates to part of court proceedings it must be carried out by the judge, master or registrar hearing the proceedings.

(3) If the assessment does not fall to be carried out at the hearing of any proceedings then the person entitled to the costs must apply to a master or the registrar for directions as to how the assessment is to be carried out.

(4) The application must be accompanied by a bill or other document showing the sum in which the court is being asked to assess the costs and how such sum was calculated.

(5) On hearing any such application the master or registrar must either

- (a) assess the costs if there is sufficient material available to do so; or
- (b) fix a date, time and place for the assessment to take place.

(6) The master or registrar may direct that the party against whom the bill is assessed pay the costs of the party whose bill is being assessed and, if so, must assess such costs and add them to the costs ordered to be paid.

#### **65.13 Costs in Court of Appeal.**

Unless the

- (a) Court of Appeal, on an application made in accordance with rules 65.8 and 65.9, makes an order for budgeted costs; or
- (b) parties to the appeal agree otherwise;

the costs of any appeal must be determined in accordance with rules 65.5, 65.6 and 65.7 and Appendix B but must be limited to two thirds of the amount that would otherwise be allowed.

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**Revision Date: 31 Dec 2002****APPENDIX A****Fixed Costs****PART I**

This Part of the Appendix sets out the fixed costs applicable to a claim for a specified sum of money

- (a) which a defendant who does not defend must pay to the claimant, in addition to the amount claimed and interest and the court fees paid by the claimant, in order to avoid judgment being entered under Part 12. These sums are to be entered on the claim form. The table also deals with claims for possession of land or delivery of goods and an application for an order for attachment of debts – Table 1 refers; and
- (b) which a claimant is entitled to include as costs in any default judgment under Part 12 in addition to the costs set out in Table 1 – Table 2 refers.

**Scale of Fixed Costs****Table 1**

1. This table shows the amounts to be entered on a claim form or provisional attachment of debts order in respect of a legal practitioner's charges in

- (a) a claim for payment of a specified sum of money;
- (b) attachment of debt proceedings; or
- (c) a claim for the recovery of land.

2. In addition to the fixed costs, the appropriate court fee is to be allowed together with the sum of \$100 for personal service of the claim form.

Column 1	Column 2	Column 3
(1)	Claim exceeding \$5,000 but not exceeding \$15,000 or a claim for recovery of land or delivery of goods	\$750
(2)	Claim exceeding \$15,000 but not exceeding \$50,000	\$1,000
(3)	Claim exceeding \$50,000 but not exceeding \$100,000	\$1,500
(4)	Claim exceeding \$100,000 but not exceeding \$500,000	\$2,000
(5)	Claim exceeding \$500,000	\$2,500

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**Table 2**

This table shows additional costs which may be added on the entry of a default judgment under Part 12 or a judgment on admissions under Part 14 for a specified sum of money.

Column 1	Column 2	Column 3
(1)	Where there is only one defendant and items (3) to (6) of this table do not apply	\$350
(2)	Where there is more than one defendant, in respect of each additional defendant served against whom judgment is entered	\$50
(3)	Where an order is made under rule 5.12 (specified method of service) for each defendant served	\$500
(4)	Where an order is made under Part 7 for service out of the jurisdiction (to cover the obtaining of an order under Part 7 and service)	\$500
(5)	Where judgment is entered on an admission and the claimant accepts the defendant's proposals as to method of payment under rule 14.10	\$350
(6)	Where judgment is entered on an admission and the time and rate of payment are not agreed under rule 14.11	\$500

**PART 2**

**MISCELLANEOUS ENFORCEMENT PROCEEDINGS**

The following table shows the amount to be allowed in respect of a legal practitioner's charges in the circumstances set out. The appropriate court fee is to be added. The court may order that the costs of any such matter be assessed.

Column 1	Column 2	Column 3
(1)	For filing a request for the issue of a writ of execution	\$150
(2)	For each attendance at a hearing of <ul style="list-style-type: none"> <li>(i) an application for time to pay where the debt is admitted</li> <li>(ii) an application to suspend a writ of execution; or</li> <li>(iii) an oral examination;</li> </ul>	\$300
(3)	For the costs of the judgment creditor where allowed in proceedings for an attachment of debts order or an application for payment out of money in court under rule 50.15, where the amount recovered <ul style="list-style-type: none"> <li>(i) does not exceed \$ 1000;</li> <li>(ii) exceeds \$ 1000</li> </ul>	One half of the amount recovered \$500
(4)	For the costs of the judgment creditor where allowed in an application for a charging order	\$500
(5)	In addition, for the personal service of any application requiring such service	\$ 100



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**APPENDIX B**  
**Scale of prescribed costs**

Column 1	Column 2	Column 3
	Value of Claim	Percentage
(1)	Not exceeding \$30,000	30%
(2)	Exceeding \$30,000 but not exceeding \$50,000	25%
(3)	Exceeding \$50,000 but not exceeding \$100,000	20%
(4)	Exceeding \$100,000 but not exceeding \$250,000	15%
(5)	Exceeding \$250,000 but not exceeding \$500,000	10%
(6)	Exceeding \$500,000 but not exceeding \$1m	5%
(7)	Exceeding \$1m but not exceeding \$2m	3%
(8)	Exceeding \$2m but not exceeding \$5m	0.5%
(9)	Exceeding \$5m but not exceeding \$10m	0.5%
(10)	Exceeding \$10m	0.25%

**Note:** The costs for each stage of the scale are cumulative

<b>(Example)</b>	Claim for \$750,000
First \$30,000	\$9,000
Next \$20,000	\$5,000
Next \$50,000	\$10,000
Next \$150,000	\$22,500
Next \$250,000	\$25,000
Last \$170,000	\$8,000
Total	\$80,000

**APPENDIX C**

**Prescribed Costs: Percentage to be allowed at various stages of claim**

Table showing the percentage of the prescribed costs to be allowed under Appendix B where a claim concludes prior to trial.

Column 1	Column 2	Column 3
	Stage	Percentage
(1)	Up to and including service of defence	45%
(2)	After defence and up to and including the case management conference	55%
(3)	From case management conference and up to and including listing questionnaire	70%
(4)	From listing questionnaire and up to and including pre-trial review (if any)	75%
(5)	To trial	100%
(6)	Up to default judgment and including assessment of damages	60%

**(Example:**

Claim for \$750,000 – full costs as in Appendix B – \$80,000

Claim discontinued after case management conference – defendant entitled to 70% of total costs – \$56,000)

**PART 66 – MORTGAGE CLAIMS****Contents of this Part**

Scope of this Part	Rule 66.1
Mortgage claim to be by fixed date claim	Rule 66.2
Evidence at first hearing	Rule 66.3
Claim for possession or payment of mortgage debt	Rule 66.4

**66.1 Scope of this Part.**

(1) This Part deals with claims by a mortgagor or mortgagee for any of the following forms of relief:

- (a) foreclosure;
- (b) delivery of possession by the mortgagee;
- (c) payment of moneys secured by a mortgage;
- (d) possession of a mortgaged property;
- (e) reconveyance of the property or release from the mortgage;
- (f) redemption of a mortgage; and
- (g) sale of a mortgaged property.

(2) In this Part,

“mortgage” includes a legal or equitable charge and a legal or equitable mortgage;

“mortgage claims” means the claims by a mortgagee or mortgagor for any of the forms of relief referred to in paragraph (1);

“mortgagee” means the person to whom the mortgage was granted; and

“mortgagor” means the person who has granted a mortgage of the mortgaged property.

(3) This Part does not apply to Saint Lucia.

(4) This Part does not affect any procedure under any enactment relating to the registration of title to land unless court proceedings are taken.

**66.2 Mortgage claim to be by fixed date claim.**

- (1) A mortgage claim is made by issuing a fixed date claim in Form 2.
- (2) Notice of the claim must be given to all other mortgagees of the land.
  - Rules 8.1 and 27.2 deal with the procedure relating to fixed date claims.

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### 66.3 Evidence at first hearing.

A claimant who seeks final judgment at the first hearing must

- (a) file evidence on affidavit in support of the claim;
- (b) serve
  - (i) a copy of the affidavit but not the exhibits; and
  - (ii) a notice stating what relief is sought; with the claim form; and
- (c) file a certificate of service not less than 7 days before the first hearing.
  - Rule 28.16 enables a party to require copies of any document referred to in an affidavit.

### 66.4 Claim for possession or payment of mortgage debt.

(1) On a claim for possession of the mortgaged property or for payment of the mortgage debt the claimant must file with the claim form evidence by affidavit

- (a) exhibiting a copy of the original mortgage;
- (b) exhibiting a copy of any other document which sets out the terms of the mortgage; and
- (c) giving particulars of
  - (i) the amount of the advance;
  - (ii) the interest payable under the mortgage;
  - (iii) the amount of any periodic payments required to be made stating whether or not such payments include interest;
  - (iv) the amount of repayments that have been made;
  - (v) the amount of any repayments or interest due but unpaid at the date of the claim and at the date of the affidavit;
  - (vi) the amount remaining due under the mortgage; and
  - (vii) if the claim includes a claim for interest to judgment, the daily rate at which such interest accrues.

(2) If the claimant seeks possession of the mortgaged property, the claimant must also file with the claim form evidence by affidavit

- (a) giving details of any person other than the defendant and the defendant's family who to the claimant's knowledge is in occupation of the mortgaged property; and
- (b) stating the circumstances under which the right to possession arises.

(3) If the mortgage creates a tenancy other than a tenancy at will between the mortgagor and the mortgagee, the affidavit must show how and when the tenancy was determined and if by service of a notice when and how that notice was served.

**PART 67 – ADMINISTRATION CLAIMS****Contents of this Part**

Scope of this Part	Rule 67.1
Parties	Rule 67.2
Claims by third parties	Rule 67.3
Determination of questions without administration claim	Rule 67.4
Judgments and orders in administration claims	Rule 67.5
Conduct of sale of trust property	Rule 67.6

**67.1 Scope of this Part.**

- (1) This Part deals with
  - (a) claims for
    - (i) the administration of the estate of a deceased person; and
    - (ii) the execution of a trust under the direction of the court;

which are referred to as “administration claims”; and

- (b) claims to determine any question or grant any relief relating to the administration of the estate of a deceased person or the execution of a trust.
- (2) Such claims must be brought by a fixed date claim in Form 2.
- (3) In this Part,  
“administration claims” mean claims for
  - (a) the administration of the estate of a deceased person; and
  - (b) the execution of a trust under the direction of the court.

**67.2 Parties.**

- (1) An administration claim or a claim under rule 67.4 may be brought by any
  - (a) executor or administrator of the relevant estate;
  - (b) person having or claiming to have a beneficial interest in the estate of a deceased person or under a trust; or
  - (c) trustee of the relevant trust.
- (2) Any executor or administrator of the relevant estate or trustee of the relevant trust who is not a claimant must be a defendant to the claim.
- (3) The general rule is that the claimant need not join as a defendant any person having a beneficial interest under the estate or trust.
- (4) The claimant may make any such person a defendant, and the court may direct that any such person be made a defendant.

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**67.3 Claims by third parties.**

- (1) This rule applies where
  - (a) there are proceedings under a judgment or order made in an administration claim relating to the estate of a deceased person; and
  - (b) a person not a party to the claim makes a claim against the estate.
- (2) Any person, other than the executors or administrators, may not appear in proceedings relating to that claim unless the court otherwise directs.

**67.4 Determination of questions without administration claim.**

- (1) An executor, administrator or trustee may issue a claim for
  - (a) any relief; or
  - (b) the determination of any question;without bringing an administration claim.
- (2) The “**determination of any question**” includes any question
  - (a) arising in the administration of the estate of a deceased person;
  - (b) arising in the execution of, or under a trust;
  - (c) as to the composition of any class of persons having a claim against
    - (i) a beneficial interest in the estate of a deceased person;
    - (ii) any property subject to a trust; or
    - (iii) the estate of a deceased person; and
  - (d) as to the rights or interests of a person claiming to be
    - (i) a creditor of the estate of a deceased person;
    - (ii) beneficially entitled under a trust; or
    - (iii) entitled under a will or on the intestacy of a deceased person.
- (3) “Any relief” includes an order
  - (a) approving any sale, purchase, compromise or other transaction by a person in the capacity of executor, administrator or trustee;
  - (b) directing any act to be done in the administration of the estate of a deceased person or in the execution of a trust, which the court could order to be done if the estate or trust were being administered or executed under the direction of the court;
  - (c) directing a person to do or abstain from doing a particular act in the capacity of executor, administrator or trustee;
  - (d) requiring an executor, administrator or trustee to furnish and verify accounts; or
  - (e) requiring the payment into court of money held by a person in the capacity of executor, administrator or trustee.

**67.5 Judgments and orders in administration claims.**

(1) The court need not make any judgment or order in an administration claim unless satisfied that the question in issue cannot be determined by other means.

(2) If an administration claim is brought by a

- (a) creditor of the estate of a deceased person;
- (b) person claiming to be beneficially entitled under a trust; or
- (c) person claiming to be entitled under the will or the intestacy of a deceased person; and

the claimant alleges that no, or no sufficient accounts have been furnished by the executors, administrator or trustees, the court may

- (i) stay the proceedings until a specified date and direct the executors, administrators or trustees to supply proper accounts to the claimant; or
- (ii) if it is necessary to prevent proceedings by other creditors or claimants, give judgment or make an order for the administration of the estate and include an order that no proceedings are to be taken under the judgment or order, or under any particular account or inquiry directed without the court's permission.

**67.6 Conduct of sale of trust property.**

If in an administration claim an order is made for the sale of any property vested in administrators, executors or trustees, they are to have conduct of the sale unless the court otherwise directs.

**PART 68 – CONTENTIOUS PROBATE PROCEEDINGS****Contents of this Part**

Scope of this Part	Rule 68.1
How to commence probate proceedings	Rule 68.2
Parties to proceedings for revocation of grant	Rule 68.3
Lodgment of grant in proceedings for revocation	Rule 68.4
Affidavit of testamentary scripts	Rule 68.5
Failure to file acknowledgment of service	Rule 68.6
Counterclaim	Rule 68.7
Contents of statements of case	Rule 68.8
Discontinuance and dismissal	Rule 68.9
Compromise of claim: trial on affidavit evidence	Rule 68.10
Application for order to bring in will, etc.	Rule 68.11
Probate counterclaim in other proceedings	Rule 68.12

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### 68.1 **Scope of this Part.**

(1) This Part applies to probate causes and matters, including applications for the rectification of a will, and the other provisions of these Rules apply to those causes and matters subject to this Part.

(2) In this Part,

“probate claim” means a claim for the grant of probate of the will, or letters of administration of the estate, of a deceased person or for the revocation of such a grant or for a decree pronouncing for or against the validity of an alleged will, not being a claim which is non-contentious or common form probate business; and

“will” includes a codicil.

### 68.2 **How to commence probate proceedings.**

(1) Probate proceedings must be begun by issuing a fixed date claim form in Form 2.

(2) The claim form must state the nature of the interest of the claimant and of the defendant in the estate of the deceased person to which the claim relates.

(3) The claimant must file a statement of claim with the claim form.

### 68.3 **Parties to proceedings for revocation of grant.**

Every person who is entitled or claims to be entitled to administer the estate of a deceased person under or by virtue of an unrevoked grant of probate of the deceased person’s will or letters of administration of the estate must be made a party to any proceedings for revocation of the grant.

### 68.4 **Lodgment of grant in proceedings for revocation.**

(1) If, at the commencement of proceedings for the revocation of a grant of probate of the will or letters of administration of the estate of a deceased person, the probate or letters of administration, as the case may be, have not been lodged in court the

(a) claimant must lodge the probate or letters of administration at the court within 7 days after the issue of the claim where the proceedings are commenced by a person to whom the grant was made; or

(b) applicable defendant must lodge the probate or letters of administration at the court within 14 days after the service of the claim form, if it or them are in the possession or under the control of that defendant.

(2) Any person who fails to comply with paragraph (1) may, on the application of any party to the proceedings, be ordered by the court to lodge the probate or letters of administration within a specified time.

(3) If an order is made under paragraph (2), a person against whom such an order is made may not take any step in the proceedings without the permission of the court until that person has complied with the order.

#### **68.5 Affidavit of testamentary scripts.**

(1) Unless the court otherwise directs, the claimant and every defendant who has entered an acknowledgment of service in probate proceedings must swear an affidavit

- (a) describing any testamentary script of the deceased person, whose estate is the subject of the claim, of which he or she has any knowledge or, if such be the case, stating that he or she knows of no such script; and
- (b) if the defendant has knowledge of any such script which is not in his or her possession or under his or her control
  - (i) giving the name and address of the person in whose possession or under whose control it is; or
  - (ii) that he or she does not know the name or address of that person.

(2) Any affidavit required by this rule must be filed, and any testamentary script referred to therein which is in the possession or under the control of the deponent, must be lodged at the court

- (a) within 14 days after the filing of an acknowledgment of service by a defendant to the proceedings; or
- (b) if no defendant files an acknowledgment of service and the court does not otherwise direct, before the first hearing.

(3) If any testamentary script required by this rule to be lodged or any part thereof is written in pencil, then, unless the court otherwise directs, a facsimile copy of that script, or of the page or pages thereof containing the part written in pencil, must also be lodged and the words which appear in pencil in the original must be underlined in red ink in the copy.

(4) Notwithstanding rule 3.14 (2), except with the leave of the court, a party to probate proceedings may not be allowed to inspect an affidavit filed, or any testamentary script lodged, by any other party to the proceedings under this rule, until an affidavit sworn by the first party containing the information referred to in paragraph (1) has been filed.

(5) In this rule, “testamentary script” means a will or draft thereof, written instructions for a will made by or at the request or under the instructions of the testator and any document purporting to be evidence of the contents, or to be a copy, of a will which is alleged to have been lost or destroyed.

#### **68.6 Failure to file acknowledgment of service.**

- (1) Part 12 does not apply to probate proceedings.



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(2) If any of several defendants to probate proceedings fails to file an acknowledgment of service or to file and serve a defence, the claimant may

- (a) after the time for entering an acknowledgment of service or filing a defence has expired; and
- (b) upon filing an affidavit proving due service of the claim form and statement of claim on that defendant;

proceed with the claim as if that defendant had entered an acknowledgment of service.

(3) If the defendant, or all the defendants, to probate proceedings, fails or fail to file an acknowledgment of service or file and serve a defence, then, unless on the application of the claimant the court orders the claim to be dismissed or discontinued, the claimant may apply to the court, at the first hearing,

- (a) for the claim to be dealt with summarily at that hearing; or
- (b) for a trial date to be fixed and any necessary directions to be given.

(4) Before applying for an order under paragraph (3) the claimant must file an affidavit proving due service of the claim form and statement of claim on the defendant.

(5) If the court grants an order under paragraph (3), it may direct the proceedings to be tried on affidavit evidence.

#### **68.7 Counterclaim.**

A defendant to probate proceedings who alleges that he or she has any claim or is entitled to any relief or remedy in respect of any matter relating to the grant of probate of the will, or letters of administration of the estate of the deceased person which is the subject of the proceedings, must add to the defence a counterclaim for that relief or remedy.

#### **68.8 Contents of statements of case.**

(1) If the claimant in probate proceedings disputes the interest of a defendant, the claimant must

- (a) deny the interest of that defendant; and
- (b) state the claimant's reasons for so doing;

in the statement of claim.

(2) In probate proceedings in which the interest by virtue of which a party claims to be entitled to a grant of letters of administration is disputed, the party disputing that interest must show in that party's statement of case that if the allegations made therein are proved he or she would be entitled to an interest in the estate.

(3) Any party who pleads that at the time when a will, the subject of the proceedings, was alleged to have been executed the testator did not know and approve of its contents, must specify the nature of the case on which he or she intends to rely, and no allegation in support of that plea which would be relevant in support of any of the following other pleas, that is to say, that

- (a) at the time of the execution of the will the testator was not of sound mind, memory and understanding;

- (b) the execution of the will was obtained by undue influence or fraud; or
- (c) the will was not duly executed;

may be made by that party unless that other plea is also set out in his or her statement of case.

#### **68.9 Discontinuance and dismissal.**

(1) Part 37 does not apply to probate proceedings.

(2) At any stage of the proceedings the court may, on the application of the claimant or of any party to the proceedings who has entered an acknowledgment of service, order the proceedings to be

- (a) discontinued; or
- (b) dismissed;

on such terms as to costs or otherwise as it thinks just, and may further order that a grant of probate of the will, or letters of administration of the estate of the deceased person, as the case may be, be made to the person entitled.

#### **68.10 Compromise of claim: trial on affidavit evidence.**

If, either before or after the service of the defence in probate proceedings, the parties to the proceedings agree to a compromise, the court may order the trial of the proceedings on affidavit evidence.

#### **68.11 Application for order to bring in will, etc.**

(1) Any application in probate proceedings for an order requiring a person to bring a will or other testamentary paper into court or to attend in court for examination may be made without notice but must be supported by evidence on affidavit setting out the grounds of the application.

(2) Any person against whom an order is made under paragraph (1) and who denies that the will or other testamentary paper referred to in the order is in his or her possession or under his or her control may file an affidavit to that effect.

#### **68.12 Probate counterclaim in other proceedings.**

(1) In this rule, “**probate counterclaim**” means a counterclaim in any claim other than probate proceedings by which the defendant claims any such relief as is mentioned in rule 68.1(2).

(2) Subject to the following paragraph, this Part applies with the necessary modifications to a probate counterclaim as it applies to probate proceedings.

(3) A probate counterclaim must contain a statement of the nature of the interest of the defendant and of the claimant in the estate of the deceased person to which the counterclaim relates.

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## PART 69 – DEFAMATION CLAIMS

### Contents of this Part

Scope of this Part	Rule 69.1
Claimant's statement of claim	Rule 69.2
Defendant's statement of case	Rule 69.3
Ruling on meaning	Rule 69.4
Payments into court and offers	Rule 69.5
Statement in open court	Rule 69.6
Requests for information	Rule 69.7
Evidence to mitigate damages	Rule 69.8

#### 69.1 Scope of this Part.

These Rules apply to claims for libel or slander subject to the rules in this Part.

#### 69.2 Claimant's statement of claim.

The statement of claim (or counterclaim) in a defamation claim must, in addition to the matters set out in Part 8

- (a) give sufficient particulars of the publications in respect of which the claim is brought to enable them to be identified;
- (b) if the claimant alleges that the words or matters complained of were used in a defamatory sense other than their ordinary meaning, give particulars of the facts and matters relied on in support of such sense; and
- (c) if the claimant alleges that the defendant maliciously published the words or matters, give particulars in support of the allegation.

#### 69.3 Defendant's statement of case.

A defendant (or in the case of a counterclaim, the claimant) who alleges that

- (a) in so far as the words complained of consist of statements of facts, they are true in substance and in fact; and
- (b) in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest; or
- (c) pleads to like effect;

must give particulars stating

- (i) which of the words complained of are alleged to be statements of fact; and
- (ii) the facts and matters relied on in support of the allegation that the words are true.

**69.4 Ruling on meaning.**

(1) At any time after the service of the statement of claim, either party may apply to a judge in chambers for an order determining whether or not the words complained of are capable of bearing a meaning or meanings attributed to them in the statement of case.

(2) If it appears to the judge on the hearing of an application under paragraph (1) that none of the words complained of are capable of bearing the meaning or meanings attributed to them in the statement of case, the judge may dismiss the claim or make such other order or give such judgment in the proceedings as may be just.

**69.5 Payments into court and offers.**

If the claimant claims against several defendants sued jointly and accepts money paid into court under Part 36 or a written offer under Part 35 by any one or more but not all of those defendants, the claim must be stayed against that defendant or those defendants, but

- (a) the sum recoverable under any judgment in favour of the claimant against any other defendant must not exceed the amount paid into court or the offer by the defendant or defendants against whom the claim has been stayed; and
- (b) the claimant is not entitled to any costs after the date of acceptance of the payment into court or the offer to settle unless either the
  - (i) court is satisfied that there were reasonable grounds to continue the claim against the other defendant or defendants; or
  - (ii) damages awarded exceed the amount paid into court or offered.

**69.6 Statement in open court.**

If a defamation claim is settled before trial either party may apply to a judge in chambers for leave to make a statement in open court in terms agreed by the judge.

**69.7 Requests for information.**

In a defamation claim where the defendant states that the words or matters complained of

- (a) are fair comment on a matter of public interest; or
- (b) were published on a privileged occasion;

the claimant may not make a request for information under Part 34 as to the defendant's sources of information or grounds of belief.

**69.8 Evidence to mitigate damages.**

A defendant who does not in the defence assert the truth of the statement of which complaint is made may not give evidence in chief as to the

- (a) character of the claimant; or
- (b) circumstances under which the libel or slander was published;

with a view to mitigating damages unless particulars are given in a witness statement served at least 42 days before the trial.

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## PART 70 – ADMIRALTY PROCEEDINGS

### Contents of this Part

Scope of this Part	Rule 70.1
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Admiralty claims in rem	Rule 70.3
How to make Admiralty claim	Rule 70.4
Service of claim form in rem	Rule 70.5
Service on ships, etc. – how effected	Rule 70.6
Service of claim form out of jurisdiction	Rule 70.7
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Execution, etc., of warrant of arrest	Rule 70.12
Directions with respect to property under arrest	Rule 70.13
Release of property under arrest	Rule 70.14
Caveat against release, etc.	Rule 70.15
Duration of caveats	Rule 70.16
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Failure to file preliminary act: proceedings against party in default	Rule 70.20
Special provisions as to statements of case in collision, etc. proceedings	Rule 70.21
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Order for sale of ship: determination of priority of claims	Rule 70.23
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Undertakings as to expenses, etc.	Rule 70.25
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Case management conference	Rule 70.27
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Stay of proceedings in collision, etc. proceedings until security given	Rule 70.29
Inspection of ship, etc.	Rule 70.30
Examination of witnesses and other persons: evidence by affidavit	Rule 70.31
Proceedings for apportionment of salvage	Rule 70.32
Applications in proceedings in rem	Rule 70.33
Limitation proceedings: parties	Rule 70.34
Limitation proceedings: payments into court	Rule 70.35

**Contents of this Part**

Application for decree or directions in limitation proceedings	Rule 70.36
Limitation proceedings: proceedings under decree	Rule 70.37
Limitation proceedings: proceedings to set aside decree	Rule 70.38

**70.1 Scope of this Part.**

(1) This Part applies to Admiralty proceedings including those proceedings listed in rule 70.2 and any other Admiralty jurisdiction of the High Court.

(2) The other provisions of these Rules apply to Admiralty proceedings subject to the provisions of this Part.

(3) In this Part,

“Act” means any relevant enactment relating to merchant shipping in force in the particular Member State or Territory;

“caveat against arrest” means a caveat entered in the caveat book under rule 70.10;

“caveat against release and payment” means a caveat entered in the caveat book under rule 70.15;

“caveat book” means the book in which caveats issued under this Part are entered;

“claim in rem” means any such claim as is mentioned in rule 70.3;

“collision regulations” means regulations made under the Act or in accordance with any international convention or treaty applicable to the relevant Member State or Territory;

“limitation claim” means any proceedings by ship owners or other persons under the Act for the limitation of the amount of their liability in connection with a ship or other property;

“relevant person” means the person referred to in rule 70.9(3)(b), that is, the person who would be liable on the claim in a claim in personam; and

“ship” includes every description of vessel used in navigation and not propelled by oars and, where the context so admits, includes an aircraft.

**70.2 Claims to be dealt with under this Part.**

The following claims, questions and proceedings, namely,

- (a) all proceedings to enforce a claim for damage, loss of life or personal injury arising out of
  - (i) a collision between ships;
  - (ii) the carrying out of or omission to carry out a manoeuvre in the case of one or more of two or more ships; or

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- (iii) non-compliance, on the part of one or more of two or more ships, with the collision regulations;
- (b) any application to the court under the Act;
- (c) any claim arising out of an act which is or is claimed to be a general average act;
- (d) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;
- (e) any claim arising out of bottomry;
- (f) any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship;
- (g) any claim for damage done by a ship;
- (h) any claim for damage received by a ship;
- (i) any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or in consequence of the wrongful act, neglect or fault of
  - (i) the owners, charterers or persons in possession or control of a ship; or
  - (ii) the master or crew of a ship, or any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible;being an act, neglect or default in the navigation or management of a ship or in the loading, carriage or disembarkation of persons on, in or from the ship;
- (j) any claim for loss or damage to goods carried in a ship;
- (k) any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried, in a ship, or for the restoration of a ship or any such goods after seizure, or for droits of Admiralty;
- (l) any claim in respect of a mortgage of or charge on a ship or any share therein;
- (m) any claim in respect of goods or materials supplied to a ship for her operation or maintenance;
- (n) any claim in respect of the construction, repair or equipment of a ship or dock charges or dues;
- (o) any claim in the nature of pilotage in respect of a ship or an aircraft;
- (p) any claim in the nature of towage in respect of a ship or an aircraft;
- (q) any claim to the possession or ownership of a ship or to the ownership of any share therein, including power
  - (i) to settle any account outstanding and unsettled between the parties in relation to the ship; and

- (ii) to direct that the ship, or any share thereof, must be sold, and to make such other order as the court thinks fit;
- (r) any claim
  - (i) under the International Convention on Salvage 1989;
  - (ii) under any contract for or in relation to salvage services; or
  - (iii) in the nature of salvage not falling within (i) or (ii) above, or any corresponding claim in connection with an aircraft;
- (s) any question arising between the co-owners of a ship as to possession, employment or earnings of that ship;
- (t) every limitation claim, in relation to
  - (i) all ships or aircraft whether of any Member State or Territory or not and whether registered or not and wherever the residence or domicile of their owners may be;
  - (ii) all claims, wherever arising (including, in the case of cargo or wreck salvage, claims in respect of cargo or wreck found on land); and
  - (iii) (so far as they relate to ships or aircraft) all mortgages or charges, whether registered or not and whether legal or equitable including mortgages and charges created under foreign law;
- (u) subject to any limitations imposed by the Act, any claim by a master or member of the crew of a ship for wages (including any sum allotted out of wages or adjudged by a superintendent to be due by way of wages);

are to be dealt with as Admiralty claims.

### 70.3 Admiralty claims in rem.

(1) In the case of any such claim or question as is mentioned in rule 70.2(b), (l), (q) or (s) a claim in rem may be brought against the ship or property in connection with which the claim or question arises.

(2) In any case in which there is a maritime lien or other charge on any ship, aircraft or other property for the amount claimed, a claim in rem may be brought against that ship, aircraft or property.

(3) In the case of any such claim as is mentioned in rule 70.2(c) to (g), (i) to (k), (m) to (p), (r) and (u), where

- (a) the claim arises in connection with a ship; and
- (b) the person who would be liable in a claim in personam was, when the cause of action arose, the owner or charterer, or in possession or in control, of the ship;



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a claim *in rem* may (whether or not the claim gives rise to a maritime lien on that ship) be brought against

- (i) that ship, if at the time when the claim is made the relevant person is either the beneficial owner of that ship as respects all the shares in it or the charterer of it under a charter by demise; or
- (ii) any other ship of which, at the time when the claim is made, the relevant person is the beneficial owner as respects all the shares in it.

(4) In the case of a claim in the nature of towage or pilotage in respect of an aircraft, a claim *in rem* may be brought against that aircraft if, at the time when the claim is made, it is beneficially owned by the person who would be liable on the claim in a claim *in personam*.

(5) For the purpose of determining under paragraphs (3) and (4) whether a person would be liable on a claim *in personam* it shall be assumed that that person has an habitual residence or place of business within the jurisdiction.

(6) In this rule, “the time when the claim is made” means the date on which the claim is issued in accordance with rule 8.1(2).

(7) If, as regards any claim mentioned in rule 70.3(3), a ship has been served with a claim form or arrested in a claim *in rem* brought to enforce that claim, no other ship may be

- (a) served with a claim form; or
- (b) arrested;

in that or any other claim *in rem* brought to enforce that claim.

(8) Paragraph (7) does not prevent the issue, in respect of any one such claim, of a claim form naming more than one ship or two or more claim forms each naming a different ship.

(9) A claim *in rem* may not be brought against the Crown.

#### 70.4 **How to make Admiralty claim.**

- (1) An Admiralty claim *in rem* is begun by a claim form in Form 25.
- (2) An Admiralty claim *in personam* is begun by a claim form in Form 1.
- (3) A limitation claim is begun by a claim form in Form 26.
- (4) A claim *in rem* and a claim *in personam* may not be combined in the same claim form.
  - Part 6 deals with the service of other documents.
  - Part 8 deals with the issue of a claim form.

**70.5 Service of claim form in rem.**

(1) Subject to paragraph (2), a claim form by which a claim in rem is begun must be served on the property against which the claim is brought, except where the property

- (a) has been sold by the marshal, in which case the claim form may not be served on that property but a sealed copy of it must be filed and the claim is deemed to have been duly served on the day on which the copy was filed; and
- (b) is freight, in which case the claim form must be served on the cargo in respect of which the freight is payable or on the ship in which that cargo was carried.

(2) A claim form need not be served or filed as mentioned in paragraph (1) if it is deemed to have been duly served on the defendant by virtue of rule 5.19(2) or (3).

(3) If, by virtue of this rule, a claim form is required to be served on any property, the claimant may request service of the claim form to be effected by the marshal only if a warrant of arrest has been issued for service against the property or the property is under arrest.

(4) Where paragraph (3) applies, the claimant must file a request in the appropriate practice form and lodge

- (a) the claim form and a copy thereof; and
- (b) an undertaking to pay on demand all expenses incurred by the marshal in respect of the service of the claim form;

and thereupon the marshal must serve the claim form on the property described in the request.

(5) If a claim form is served on any property by the marshal, the person effecting service must endorse on the claim form the following particulars:

- (a) the day of the week and the date on which it was served;
- (b) the manner in which it was served;
- (c) the name and the address of the person effecting service;
- (d) the property on which it was served; and
- (e) where it was served;

and the endorsement is evidence of the facts stated.

(6) If the

- (a) claimant; or
- (b) claimant's legal practitioner;

in a claim in rem becomes aware that there is in force a caveat against arrest with respect to the property against which the proceedings are brought, that person must serve the claim form forthwith on the person at whose instance the caveat was entered.

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(7) The general rule is that if a claim form by which a claim in rem is begun is amended after service under Part 20, the amended claim form must be served on any

- (a) defendant who has acknowledged issue or service of the claim form; and
- (b) intervener.

(8) However, if no defendant has acknowledged issue or service of the claim form, it must be served or filed

- (a) in accordance with paragraph (1); or
- (b) as the court otherwise directs.

(9) An application for a direction under paragraph (8)(b) may be made without notice but must be supported by evidence on affidavit.

#### **70.6 Service on ships, etc. – how effected.**

(1) The general rule is that service of a warrant of arrest or claim form in proceedings in rem against a ship, freight or cargo is to be effected

- (a) by affixing the warrant or claim form for a short time on any mast of the ship or on the outside of any suitable part of the ship's superstructure; and
- (b) on removing the warrant or claim form, by leaving a copy of it affixed
  - (i) (in the case of the warrant) in its place; or
  - (ii) (in the case of the claim form) on a sheltered, conspicuous part of the ship.

(2) However, service of a warrant of arrest or claim form in proceedings in rem against freight or cargo or both, if the cargo has been landed or transhipped, is to be effected

- (a) by placing the warrant or claim form for a short time on the cargo and, on removing the warrant or claim form, leaving a copy of it on the cargo; or
- (b) if the cargo is in the custody of a person who will not permit access to it, by leaving a copy of the warrant or claim form with that person.

#### **70.7 Service of claim form out of jurisdiction.**

(1) A claim form under rule 70.2(1)(g) or (v), other than a claim form in rem, may be served out of the jurisdiction with the permission of the court if

- (a) the defendant's habitual residence or place of business is within the jurisdiction;
- (b) the facts out of which the claim arises took place within the waters or within the limits of a port of a Member State or Territory; or
- (c) a claim arising out of the same incident or series of incidents is proceeding in the court or has been heard and determined in the court.

(2) An application to serve a claim form out of the jurisdiction must be made in accordance with rule 7.5.

(3) In this rule, “port” includes a place and a harbour.

#### **70.8 Acknowledgment of service.**

A defendant to a claim form in rem which has not been served, or a defendant to a limitation claim who has not been served with the claim form, who desires to take part in the proceedings, may acknowledge the issue of the claim form by filing an acknowledgment of service substituting for the references to service of the claim form references to issue of the claim.

#### **70.9 Warrant of arrest.**

(1) In a claim in rem, the claimant or defendant who counterclaims may, after the issue of the claim form and subject to the provisions of this rule, issue a warrant in Form 27 for the arrest of the property against which the claim or counterclaim is brought.

(2) The party intending to issue the warrant must first cause a search to be made in the caveat book to see whether there is a caveat against arrest in force with respect to that property.

(3) The general rule is that a warrant of arrest may not be issued until the party intending to issue the same has filed an affidavit made by the party or its agent containing the following particulars:

- (a) in every case,
  - (i) the nature of the claim or counterclaim and that it has not been satisfied;
  - (ii) if the claim arises in connection with a ship, the name of that ship;
  - (iii) the nature of the property to be arrested; and
  - (iv) if the property is a ship, the name of the ship and her port of registry;
- (b) in the case of a claim against a ship under rule 70.2(c) to (g), (i) to (k), (m) to (p), (r) and (u),
  - (i) the name of the person who would be liable on the claim in a claim in personam;
  - (ii) that the relevant person was when the cause of action arose the owner or charterer of, or in possession or in control of, the ship in connection with which the claim arose; and
  - (iii) that at the time of the issue of the claim form the relevant person was either the beneficial owner of all the shares in the ship in respect of which the warrant is required or (where appropriate) the charterer of it under a charter by demise; and

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- (c) in the case of a claim for possession of a ship or for wages,
  - (i) the nationality of the ship in respect of which the warrant is required; and
  - (ii) that the notice (if any) required by paragraph (7) has been sent.
- (4) Where appropriate, a copy of any notice sent to a consul under paragraph (7) must be exhibited to an affidavit required by paragraph (3).
- (5) The court may, however, give permission to issue the warrant notwithstanding that the affidavit does not contain all those particulars.
- (6) A warrant of arrest may not be issued without the permission of the court in the case of property whose beneficial ownership has, since the issue of the claim, changed as a result of a sale or disposal by the court.
- (7) The general rule is that a warrant of arrest may not be issued in a claim in rem against a foreign ship registered at a port of a State having a consulate in the jurisdiction, being a claim for possession of the ship or for wages, until notice that the proceedings have been begun has been sent to the consul or the court gives permission.
- (8) Issue of a warrant of arrest takes place upon its being sealed by the court office.

#### 70.10 **Caveat against arrest.**

- (1) Except in a case to which paragraph (2) applies, a person who wishes to prevent the arrest of any property must file a request in the appropriate practice form signed by that person or that person's legal practitioner undertaking
  - (a) to acknowledge issue or service (as may be appropriate) of the claim form in any claim that may be made against the property described in the request; and
  - (b) within 3 days after receiving notice that such a claim has been made, to give bail in that claim in a sum not exceeding an amount specified in the request or to pay the amount so specified into court.
- (2) On the filing of the request under paragraph (1) the court office must enter a caveat against the issue of a warrant to arrest the property described in the request in the caveat book.
- (3) If a claimant in limitation proceedings
  - (a) has constituted a limitation fund in accordance with Article 11 of the Convention on Limitation of Liability for Maritime Claims 1976 and rule 70.35; and
  - (b) desires to prevent the arrest of any property for a claim which may be or has been made against the fund;

the claimant must file in the court office a request, in the appropriate practice form signed by the claimant or its legal practitioner,

- (i) stating that a limitation fund in respect of damage arising from the relevant incident has been constituted; and
- (ii) undertaking to acknowledge issue or service (as may be appropriate) of the claim form in any claim that may be begun against the property described in the request;

and on the filing of the request a caveat against the issue of a warrant to arrest the property described in the request must be entered in the caveat book.

(4) The fact that there is a caveat against arrest in force does not prevent the issue of a warrant to arrest the property to which the caveat relates.

(5) If any property with respect to which a caveat against arrest is in force is arrested in pursuance of a warrant of arrest, the party at whose instance the caveat was entered may apply to the court for an order discharging the warrant.

(6) On the hearing of an application under paragraph (5), the court, unless it is satisfied that the party procuring the arrest of the property had a good and sufficient reason for so doing, may

- (a) by order discharge the warrant; and
- (b) order the last-mentioned party to pay to the applicant damages in respect of the loss suffered by the applicant as a result of the arrest.

#### **70.11 Committal of legal practitioner for failing to comply with undertaking.**

If the legal practitioner for a party to a claim in rem fails to comply with a written undertaking given by him or her to any other party or legal practitioner to

- (a) acknowledge issue or service of the claim form;
- (b) give bail; or
- (c) pay money into court in lieu of bail;

the legal practitioner is liable to committal.

- Part 53 deals with committal orders.

#### **70.12 Execution, etc., of warrant of arrest.**

(1) A warrant of arrest is valid for 12 months beginning with the date of its issue.

(2) A warrant of arrest may be executed only by the marshal.

(3) A warrant of arrest may not be executed until an undertaking to pay on demand

- (a) the fees of the marshal; and
- (b) all expenses incurred by the marshal in respect of the arrest of the property and the care and custody of it while under arrest;

has been lodged in the marshal's office.

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(4) A warrant of arrest may not be executed if the party at whose instance it was issued lodges a written request to that effect with the marshal.

(5) The general rule is that a warrant of arrest must be served on the property against which it is issued.

(6) However, a warrant of arrest issued against freight may be executed by serving the warrant on the cargo in respect of which the freight is payable or on the ship in which that cargo was carried or on both of them.

(7) Within 7 days after the service of a warrant of arrest, the warrant must be filed.

#### **70.13 Directions with respect to property under arrest.**

(1) The marshal may at any time apply to the court for directions with respect to property under arrest in any proceedings.

(2) The marshal may, and if the court so directs must, give notice of the application under paragraph (1) to any or all of the persons referred to in paragraph (3).

(3) The marshal must send by post a copy of any order made on an application under paragraph (1) to all those persons who, in relation to that property, have

- (a) acknowledged issue or service of the claim form in any claim in which the property is under arrest;
- (b) caused a warrant for the arrest of the property to be executed by the marshal;
- (c) entered a caveat which is still in force; or
- (d) intervened in any claim in which the property is under arrest.

(4) A person, other than the marshal, may make an application under this rule.

(5) The application together with copies of any affidavits in support must be served upon the marshal and all persons referred to in paragraph (3) unless the court otherwise orders.

(6) An application for an order dispensing with service may be made without notice.

#### **70.14 Release of property under arrest.**

(1) Except where property arrested in pursuance of a warrant of arrest is sold under an order of the court, such property may only be released under the authority of a release in the appropriate practice form.

(2) A release may not be issued with respect to property as to which a caveat against release is in force, unless

- (a) at the time of the issue of the release the property is under arrest in one or more other proceedings; or
- (b) the court so orders.

(3) A release may be issued at the instance of any party to the claim in which the warrant of arrest was issued if

- (a) the court so orders; or
- (b) subject to paragraph (2), if all the other parties, except a defendant who has not acknowledged issue or service of the claim form, consent.

(4) Before a release is issued, the party applying for its issue must, unless paragraph (2)(a) applies, give notice to any person at whose instance a subsisting caveat against release has been entered, or to that person's legal practitioner, requiring the caveat to be withdrawn.

(5) Before property under arrest is released in compliance with a release issued under this rule, the party at whose instance it was issued must, in accordance with the directions of the marshal, either

- (a) pay the fees of the marshal already incurred and lodge in the marshal's office an undertaking to pay on demand the other fees and expenses in connection with the arrest of the property and the care and custody of it while under arrest and of its release; or
- (b) lodge in the marshal's office an undertaking to pay on demand all such fees and expenses, whether incurred or to be incurred.

(6) The court, on the application of any party who objects to directions given to that party by the marshal under paragraph (5), may vary or revoke the directions.

#### **70.15 Caveat against release, etc.**

- (1) A person
  - (a) claiming to have a right to claim in rem against any property which is under arrest or the proceeds of sale thereof; and
  - (b) who wishes to be served with notice of any application to the court in respect of that property or those proceeds;

must file a request in the appropriate practice form.

(2) On the filing of a request under paragraph (1), the court office must enter a caveat in the caveat book.

(3) If the release of any property under arrest is delayed by the entry of a caveat under this rule, any person having an interest in that property may apply to the court for an order requiring the person who procured the entry of the caveat to pay to the applicant damages in respect of the loss suffered by the applicant by reason of the delay.

(4) On hearing an application under paragraph (3) the court, unless it is satisfied that the person procuring the entry of the caveat had a good and sufficient reason for so doing, may make an order accordingly.

(5) If the court makes an order under paragraph (4), it must decide who should pay the costs of the application and assess the costs in accordance with rule 65.11.



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#### 70.16 Duration of caveats.

(1) A caveat entered in the caveat book is valid for 12 months beginning with the date of its entry.

(2) The person at whose instance a caveat was entered may withdraw it by filing a request in the appropriate practice form.

(3) The period of validity of a caveat may not be extended, but this provision is not to be taken as preventing the entry of successive caveats.

#### 70.17 Bail.

(1) Unless a ship or aircraft has been arrested in respect of a claim under rule 70.2(q) or (s), the court must permit the release of a ship or aircraft which has been arrested upon sufficient bail being provided.

(2) If a ship or aircraft has been arrested in respect of a claim under rules 70.2(q) or (s), the court may

(a) permit the person in possession of the ship or aircraft to continue trading upon such person providing sufficient bail; or

(b) deal otherwise with the operation of the ship or aircraft during the period of arrest.

(3) In default of agreement between the parties as to the amount of bail, the court must determine the nature and amount of such bail.

(4) Bail on behalf of a party to a claim in rem may be given by

(a) bond in the appropriate practice form; or

(b) a bank guarantee or other security from a reputable financial institution acceptable to the marshal.

(5) Sureties to a bond must enter into the bond before a commissioner for oaths or justice of the peace, not being a commissioner, who or whose partner or associate, is acting as legal practitioner or agent for the party on whose behalf the bail is to be given.

(6) Subject to paragraph (7), a surety to a bail bond must make an affidavit stating that the surety is able to pay the sum for which the bond is given.

(7) If a corporation is a surety to a bail bond given on behalf of a party, no affidavit need be made under paragraph (6) on behalf of the corporation unless the opposite party requires it, but where such an affidavit is required it must be made by a director, manager, secretary or other similar officer of the corporation.

(8) The party on whose behalf bail is given must serve on the opposite party a notice of bail containing the names and addresses of the persons who have given bail on that party's behalf and of the commissioner for oaths or justice of the peace before whom the bail bond was entered into.

(9) After the expiration of 24 hours from the service of the notice (or sooner with the consent of the opposite party) the party on whose behalf bail is given may file the bond and must at the same time file

- (a) the affidavits (if any) made under paragraph (6); and
- (b) an affidavit proving due service of the notice of bail to which a copy of that notice must be exhibited.

#### **70.18 Intervenor.**

(1) If property against which a claim in rem is brought is under arrest or money representing the proceeds of sale of that property is in court, a person who has an interest in that property or money but who is not a defendant to the proceedings may, with the permission of the court, intervene in the proceedings.

(2) An application for permission may be made without notice.

(3) It must be supported by an affidavit showing the interest of the applicant in the property against which the proceedings is brought or in the money in court.

(4) A person to whom leave is granted under this rule becomes a party to the proceedings.

(5) The court may order that a person to whom it grants leave to intervene in proceedings must, within the period or periods specified in the order, serve on any other party to the proceedings such notice of the intervention and such pleading as is specified.

#### **70.19 Preliminary acts.**

(1) This rule deals with proceedings relating to damage, loss of life or personal injury arising out of a collision between ships.

(2) The following provisions apply unless the court otherwise orders.

(3) The claimant must, within 2 months after service of the claim form on any defendant and the defendant must within 2 months of acknowledging issue or service of the claim, file in the court office a document in 2 parts (in these Rules referred to as a "preliminary act") containing a statement of the following:

##### **Part One**

- (a) the names of the ships which came into collision and their ports of registry;
- (b) the length, breadth, gross tonnage, horsepower and draught at the material time of the ship and the nature and tonnage of any cargo carried by the ship;
- (c) the date and time (including the time zone) of the collision;
- (d) the place of the collision;
- (e) the direction and force of the wind;
- (f) the state of the weather;
- (g) the state, direction and force of the tidal or other current;

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- (h) the position, the course steered and speed through the water of the ship when the other ship was first seen or immediately before any measures were taken with reference to her presence, whichever was the earlier;
- (i) the lights or shapes (if any) carried by the ship;
- (j)
  - (i) the distance and bearing of the other ship if and when her echo was first observed by radar;
  - (ii) the distance, bearing and approximate heading of the other ship when first seen;
- (k) what lights or shapes or combinations of lights or shapes (if any) of the other ship were first seen;
- (l) what other lights or shapes or combinations of lights or shapes (if any) of the other ship were subsequently seen before the collision, and when;
- (m) what alterations (if any) were made to the course and speed of the ship after the earlier of the two times referred to in article (h) up to the time of the collision, and when, and what measures (if any) other than alterations of course or speed, were taken to avoid the collision, and when;
- (n) the heading of the ship, the parts of each ship which first came into contact and the approximate angle between the two ships at the moment of contact, what light or shape or combination of lights or shapes (if any) of the other ship was first seen;
- (o) what sound signals (if any) were given, and when; and
- (p) what sound signals (if any) were heard from the other ship, and when.

### **Part Two**

- (a) a statement that the particulars in Part One are incorporated in Part Two;
- (b) any other facts and matters upon which the party filing the preliminary act relies;
- (c) all allegations of negligence or other fault which the party filing the preliminary act makes; and
- (d) the remedy or relief which the party filing the preliminary act claims.

(4) Part Two of the preliminary act shall be deemed to be the statement of claim of the person filing the preliminary act including, in the case of the defendant, a counterclaim, and rules 8.4 to 8.8 and 10.5 to 10.8 apply to it save insofar as this rule and rule 70.21 provide otherwise.

(5) The court may order that Part Two of the preliminary act need not be filed by the claimant or defendant and give directions for the further conduct of the proceedings.

(6) Every preliminary act must be sealed before filing and be filed in a sealed envelope which must not be opened except as provided in paragraph (8) or by order of the court.

(7) A claimant must serve notice of filing the preliminary act on every defendant who acknowledges issue or service of the claim within 3 days of receiving notice of that acknowledgment or upon filing the preliminary act, whichever is the later, and a defendant must, upon filing the preliminary act, serve notice that the defendant has done so on the claimant and on every other defendant who has acknowledged issue or service of the claim.

(8) Any party may inspect and bespeak a copy of the preliminary act of any other party upon filing a consent signed by that other party or its legal practitioner.

(9) Within 14 days after the last preliminary act in the proceedings is filed each party must serve on every other party a copy of its preliminary act.

(10) At any time after all preliminary acts have been filed any party may apply to the court for an order that

- (a) one or more parties file a schedule of the damages claimed by them and serve a copy thereof on every other party; and
- (b) the damages be assessed prior to or at the trial on liability.

(11) Wherever practicable, such an application must be dealt with at the case management conference.

#### **70.20 Failure to file preliminary act: proceedings against party in default.**

(1) If in a claim covered by rule 70.19(1) the claimant fails to file a preliminary act within the prescribed period,

- (a) any defendant who has filed such an act may apply to the court for an order to dismiss the proceedings; and
- (b) the court may
  - (i) dismiss the proceedings; or
  - (ii) make such other order on such terms as it thinks fit.

(2) If in a claim in personam covered by rule 70.19(1) a defendant fails to file a preliminary act within the prescribed period, Part 12 applies as if the defendant's failure to file the preliminary act within that period were a failure to file a defence on the claimant within the period fixed for service of the defence, and the claimant, if it has filed a preliminary act may, subject to rule 12.3(1)(b), enter judgment against that defendant.

- Rule 12.3(1)(b) deals with default judgment in proceedings against a State.

(3) If in a claim in rem within rule 70.19(1) a defendant fails to file a preliminary act within the prescribed period, the claimant, if the claimant has filed such an act,

- (a) may apply to the court for judgment against that defendant; and
- (b) need not file or serve a statement of case or an affidavit before the hearing.

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- (4) On the hearing of an application under paragraph (3), if
  - (a) the defendant does not appear at the hearing; and
  - (b) the court is of the opinion that judgment should be given for the claimant provided the claimant proves the claimant's case;

it must order the claimant's preliminary act to be opened and require the claimant to satisfy the court that the claim is well founded.

(5) If paragraph (4) applies, the claimant's evidence may, unless the court otherwise orders, be given by affidavit without any order or direction in that behalf.

(6) If the claimant satisfies the court that the claim is well founded, the court may

- (a) give judgment on the claim; and
- (b) at the same time order the property against which the claim is brought to be appraised and sold and the proceeds to be paid into court; or
- (c) make such order as it thinks fit.

(7) The court may, on such terms as it thinks fit, set aside any judgment entered in pursuance of this rule.

(8) In this rule, references to the prescribed period are to be construed as references to the period within which by virtue of

- (a) rule 70.19(3); or
- (b) any order of the court;

a party is required to file a preliminary act.

#### **70.21 Special provisions as to statements of case in collision, etc. proceedings.**

(1) The claimant in any such claim as is referred to in rule 70.2(1)(a) may not serve a reply or a defence to counterclaim on the defendant without the permission of the court.

(2) Subject to paragraph (3), in any such proceedings there is an implied joinder of issue on the facts set out in the preliminary acts and those acts stand as the statements of case of the claimant and the defendants.

(3) Paragraph (2) does not apply to a counterclaim if the claimant has served a defence to counterclaim pursuant to leave given under paragraph (1).

#### **70.22 Judgment by default.**

(1) If a claim form is served under rule 70.5(5) on a party at whose instance a caveat against arrest was issued, then if

- (a) the sum claimed in the proceedings begun by the claim does not exceed the amount specified in the undertaking given by that party or that party's legal practitioner to procure the entry of that caveat; and

- (b) that party or its legal practitioner does not within 14 days after service of the claim fulfil the undertaking given as aforesaid;

the claimant may, after filing an affidavit verifying the facts on which the proceedings are based, apply to the court for judgment by default.

(2) Judgment given under paragraph (1) may be enforced by the arrest and an order for sale of the property against which the proceedings were brought and by committal of the party at whose instance the caveat with respect to that property was entered.

(3) If a defendant to a claim in rem fails to acknowledge service of the claim within the time limited for doing so, then,

- (a) on the expiration of 14 days after service of the claim form; and
- (b) upon filing
  - (i) an affidavit proving due service of the claim form;
  - (ii) an affidavit verifying the facts on which the proceedings are based; and
  - (iii) if a statement of claim was not filed and served with the claim form, a copy of the statement of claim;

the claimant may apply to the court for judgment by default and an order for sale.

(4) If the claim is deemed to have been duly served on the defendant by virtue of rule 5.19(2) (deemed service where defendant's legal practitioner accepts service), or was served by the marshal under rule 70.5(4), an affidavit proving due service of the claim need not be filed under this paragraph, but the certificate of service of the defendant's legal practitioner or the endorsement of the marshal under rule 70.5(5) must be lodged with the affidavit verifying the facts on which the claim is based.

(5) If a defendant to a claim in rem fails to serve a defence before the expiration of the period fixed by or under these Rules for service of the defence, the claimant, upon filing

- (a) an affidavit stating that no defence has been served by that defendant;
- (b) an affidavit verifying the facts on which the proceedings are based; and
- (c) if a statement of claim was not served with the claim, a copy of the statement of claim;

may apply to the court for judgment by default and an order for sale.

(6) If a defendant to a counterclaim in a claim in rem fails to serve a defence to counterclaim on the defendant making the counterclaim, then, subject to paragraph (7),

- (a) after the expiration of the period fixed by or under these Rules for service of the defence to counterclaim; and

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- (b) upon filing
  - (i) an affidavit stating that no defence to counterclaim has been served on the defendant making the counterclaim by the first-mentioned defendant;
  - (ii) an affidavit verifying the facts on which the counterclaim is based; and
  - (iii) a copy of the counterclaim;

the defendant making the counterclaim may apply to the court for judgment by default.

(7) No application may be made under paragraph (6) against the claimant in any such proceedings as is referred to in rule 70.2(a).

- (8) If the court is satisfied that the applicant's claim is well founded, it may
  - (a) give judgment for the claim or counterclaim; and
  - (b) order the property against which the claim or counterclaim is brought to be appraised and sold and the proceeds to be paid into court; or
  - (c) make such other order as it thinks just.

(9) In default proceedings in rem evidence may, unless the court otherwise orders, be given by affidavit without any order or direction in that behalf.

(10) The court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance of this rule.

- (11) Part 12 does not apply to a claim in rem.

#### **70.23 Order for sale of ship: determination of priority of claims.**

(1) If in a claim in rem against a ship the court has ordered the ship to be sold, any party who has obtained or obtains judgment against the ship or proceeds of sale of the ship may,

- (a) in a case where the order for sale contains the further order referred to in paragraph (2), after the expiration of the period specified in the order under paragraph (2)(a); or
- (b) in any other case, after obtaining judgment;

apply to the court for an order determining the order of priority of the claims against the proceeds of sale of the ship.

- Part 11 deals with applications to the court.

(2) If in a claim in rem against a ship the court orders the ship to be sold, it may further order that

- (a) the order of priority of the claims against the proceeds of sale of the ship is not to be determined until after the expiration of 90 days, or such other period as the court specifies, beginning with the day on which the proceeds of sale are paid into court;

- (b) any party to the proceedings or to any other claim in rem against the ship or the proceeds of sale thereof may apply to the court in the proceedings to which it is a party to extend the period specified in the order; and
- (c) within 7 days after the date of payment into court of the proceeds of sale, the marshal must send for publication in the Official Gazette of the Member State or Territory concerned and such other newspaper, if any, as the court directs, a notice complying with paragraph (3).

(3) The notice referred to in paragraph (2)(c) must state that

- (a) the ship (naming her) has been sold by order of the High Court in a claim in rem, identifying the claim;
- (b) the gross proceeds of the sale as specified have been paid into court;
- (c) the order of priority of the claims against the said proceeds will not be determined until after the expiration of the period specified in the order for sale; and
- (d) any person with a claim against the ship or the proceeds of sale thereof, on which that person intends to proceed to judgment should do so before the expiration of that period.

(4) The marshal must lodge in the court a copy of each newspaper in which the notice referred to in paragraph (2)(c) appeared.

(5) The expenses incurred by the marshal in complying with an order of the court under this rule are to be included in the marshal's expenses relating to the sale of the ship.

(6) A copy of any application to the court to extend the period referred to in paragraph (2) (a) must be served on each party who has begun a claim in rem against the ship or the proceeds of sale thereof at least 3 days before the day fixed for the hearing.

#### **70.24 Appraisalment and sale of property.**

(1) A commission for the appraisalment and sale of any property under an order of the court may not be issued until the party applying for it has filed a request in the appropriate practice form.

(2) Such a commission must be

- (a) in the appropriate practice form; and
- (b) executed by the marshal unless the court otherwise orders.

(3) A commission for appraisalment and sale may not be executed until an undertaking in writing satisfactory to the marshal to pay the fees and expenses of the marshal on demand has been lodged in the marshal's office.

(4) The sale must be by public auction unless the court gives permission for a sale by private treaty.



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(5) The court may allow the sale to be completed at a price lower than the value shown in the appraisal.

(6) The marshal must pay into court the gross proceeds of the sale of any property sold by the marshal under a commission for sale and bring into court the account relating to the sale (with vouchers in support) for assessment.

(7) On the assessment of the marshal's account relating to a sale any person interested in the proceeds of the sale is entitled to be heard.

- Rule 65.12 deals with the assessment of costs.

#### **70.25 Undertakings as to expenses, etc.**

(1) Every undertaking under rule 70.5(4), 70.12(3), 70.14(5) or 70.24(3) must be given in writing to the satisfaction of the marshal.

(2) If a party is required by any of the rules mentioned in paragraph (1) to give to the marshal an undertaking to pay any fees or expenses, the marshal may accept, instead of an undertaking, the deposit with the marshal of such sum as the marshal considers reasonable to meet those fees and expenses.

(3) The court may, on the application of any party who is dissatisfied with a direction or determination of the marshal under this rule, vary or revoke the direction or determination.

#### **70.26 Payment into and out of court.**

(1) Parts 35 and 36 apply in relation to an Admiralty claim (other than limitation proceedings).

(2) However, money paid into court may not be paid out except in pursuance of an order of a Judge of the High Court.

#### **70.27 Case management conference.**

- (1) Parts 25 to 27 and 38 apply to an Admiralty claim except that
  - (a) the date time and place for the case management conference must be fixed by the court office on the happening of the following events:
    - (i) in any proceedings other than one to which rule 70.19 or 70.36 applies, on the filing of a defence;
    - (ii) where rule 70.19 applies, on the filing of the second preliminary act;
  - (b) where rule 70.36 applies, then, if the court does not make a decree limiting the claimant's liability, it must treat the hearing of the application under that rule as a case management conference; and
  - (c) the case management conference must be conducted by a judge of the High Court.

(2) At the case management conference, the court must determine whether the trial is to be without assessors or with one or more assessors and the qualifications for such assessors.

(3) Rules 38.5, 38.6 and 39.1 apply to Admiralty claims subject to the following and any other necessary modifications:

- (a) the bundles referred to in rules 38.6 and 39.1 must include any preliminary acts; and
- (b) if trial with one or more assessors has been ordered, an additional bundle of the documents listed in rule 39.1(5) as amended by paragraph (a) must be lodged for the use of each assessor.

#### **70.28 Trial.**

(1) Part 39 applies to the trial of Admiralty proceedings.

(2) If the claim has been ordered to be tried with an assessor or assessors, the legal practitioner to the party with conduct of the claim must file in the court office an undertaking to pay the proper fees and expenses of such assessor or assessors.

(3) If all the parties to a claim consent, the proceedings may be withdrawn without the leave of the court at any time before trial by producing to the court a written consent to the proceedings being withdrawn signed by all the parties.

#### **70.29 Stay of proceedings in collision, etc. proceedings until security given.**

If a claim in rem, being proceedings to enforce any claim as referred to in rule 70.2(1) (a), is begun and a cross claim in rem arising out of the same collision or other occurrence as the first mentioned proceedings is subsequently begun, or a counterclaim arising out of that occurrence is made in the first mentioned proceedings,

- (a) if the ship in respect of or against which the first mentioned proceedings are brought has been arrested or security given to prevent her arrest; but
- (b) the ship in respect of or against which the cross proceedings is brought or the counterclaim made cannot be arrested and security has not been given to satisfy any judgment given in favour of the party bringing the cross proceedings or making the counterclaim;

the court may stay proceedings in the first mentioned claim until security is given to satisfy any judgment given in favour of that party.

#### **70.30 Inspection of ship, etc.**

The court may, on the application of any party, make an order for the inspection by the assessors (if the proceedings are tried with assessors), by any party or witness, of any ship or other property, whether real or personal, the inspection of which may be desirable for the purpose of obtaining full information or evidence in connection with any issue in the claim.

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**70.31 Examination of witnesses and other persons: evidence by affidavit.**

(1) The powers under rules 33.7 to 33.16 extend to the making of an order authorising the examination of a witness or person on oath before a judge sitting in court as if for the trial of the claim.

(2) In proceedings in which preliminary acts fall to be filed under rule 70.19, an order must not be made authorising any examination of a witness before the preliminary acts have been filed unless for special reasons the court otherwise orders.

(3) Unless the court otherwise directs, affidavits made for the purpose of rules 70.20(5), 70.22(3) and 70.36(2) may contain statements of information and belief provided that the sources and grounds are given.

**70.32 Proceedings for apportionment of salvage.**

(1) Proceedings for the apportionment of salvage, the aggregate amount of which has already been ascertained, must be commenced by a fixed date claim.

(2) The claimant need not file or serve a statement of claim but must file an affidavit in support of the claim.

(3) At the first hearing, the judge may exercise any jurisdiction conferred by the Act or may give directions as on a case management conference.

**70.33 Applications in proceedings in rem.**

(1) The affidavits, if any, in support of an application in a claim in rem must be filed unless the court gives permission to the contrary.

(2) Notice of an application, except an application for judgment in default, must be served on all caveators together with copies of the affidavits, if any, in support of the application 7 clear days at least before the hearing, unless the court gives permission to the contrary.

**70.34 Limitation proceedings: parties.**

(1) In a limitation claim the person seeking relief is to be the claimant and must be named in the claim by name and not described merely as the owner of, or as bearing some other relation to, a particular ship or other property.

(2) The claimant must make one of the persons with claims against it in respect of the casualty to which the proceedings relate a defendant to the proceedings and may also make any or all of the others defendants.

(3) At least one of the defendants to the proceedings must be named in the claim by name but the other defendants may be described generally and not named by their names.

(4) The claim form must be served on one or more of the defendants who are named by their names therein and need not be served on any other defendant.

(5) In this rule and rules 70.36, 70.37 and 70.38, "name" includes a firm name or the name under which a person carries on business.

(6) If any person with a claim against the claimant in respect of the casualty to which the proceedings relate is described for the purposes of the claim

- (a) merely as the owner of; or
- (b) as bearing some other relation to;

a ship or other property, that person may be so described as defendant in the claim and, if so described, is deemed for the purposes of the rules mentioned in paragraph (5) to have been named in the claim by name.

### **70.35 Limitation proceedings: payments into court.**

(1) The claimant may constitute a limitation fund by paying into court the Eastern Caribbean (or in the case of the Virgin Islands, the United States) dollar equivalent of the number of special drawing rights to which the claimant claims to be entitled to limit its liability under the Act together with interest thereon from the date of the occurrence giving rise to its liability to the date of payment into court.

(2) If the claimant does not know the appropriate equivalent of the said number of special drawing rights on the date of payment into court, it may calculate the same on the basis of the latest available published Eastern Caribbean or United States (as the case may be) dollar equivalent of a special drawing right as fixed by the International Monetary Fund.

(3) In the event of the appropriate dollar equivalent of a special drawing right on the date of payment into court being different from that used under paragraph (2), the claimant may

- (a) make up any deficiency by making a further payment into court which, if made within 14 days after the payment into court under paragraph (1), is to be treated, except for the purposes of the Rules relating to the accrual of interest on money paid into court, as if it had been made on the date of that payment into court; or
- (b) apply to the court for payment out of any excess amount (together with any interest accrued thereon) paid into court under paragraph (1).

(4) An application under paragraph (3)(b) may be made without notice.

(5) The application must be supported by evidence on affidavit proving the appropriate dollar equivalent of the appropriate number of special drawing rights on the date of payment into court.

(6) On making any payment into court under this rule, the claimant must give notice thereof in writing to every defendant, specifying the

- (a) date of payment in;
- (b) amount paid in;
- (c) amount of interest included therein;
- (d) rate of such interest; and
- (e) period to which such interest relates.

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(7) The claimant must also give notice to every defendant of any excess amount (and any interest thereon) paid out to the claimant under paragraph (3)(b).

**70.36 Application for decree or directions in limitation proceedings.**

- (1) The claimant must, within 7 days after the
- (a) acknowledgment of issue or service of the claim by one of the defendants identified by name; or
  - (b) time limited for entering an acknowledgment of service if none of the defendants acknowledges issue or service;

apply to the court for a decree limiting liability or, in default of such a decree, for directions as to the future proceedings in the claim.

- (2) The application must be supported by an affidavit
- (a) verifying the claimant's case in the proceedings;
  - (b) proving service of the claim on at least one of the defendants identified by name if no such defendant has acknowledged service; and
  - (c) stating
    - (i) the names of all the persons who, to the knowledge of the claimant, have claims against the claimant in respect of the casualty to which the proceedings relate, not being defendants to the claim who are identified in the claim form by their names; and
    - (ii) the address of each of those persons if known to the claimant.

(3) The application and every affidavit in support must be served on every defendant who has acknowledged issue or service of the claim at least 14 days before the hearing of the application.

- (4) Any defendant who
- (a) disputes the claimant's claim to limit his or her liability; or
  - (b) alleges inability to decide whether to dispute that claim;

must, within 14 days of the service of the summons and any affidavit in support upon that defendant, serve upon the claimant an affidavit stating

- (i) the grounds upon which the defendant relies to dispute the claimant's claim to limit his or her liability; or
- (ii) such facts and matters as could justify the court in giving a direction under paragraph (7) of this rule.

(5) The claimant may, within 7 days of service upon it of any affidavit under paragraph (4), serve such further affidavit evidence as it may wish upon any defendant who has served an affidavit under paragraph (4) of this rule.

(6) If, on the hearing of the application, it appears to the court that the claimant's claim to limit its liability is not disputed, the court must make an order limiting the claimant's liability to a specified amount.

(7) If, on the hearing of the application, the court is satisfied that any defendant has not obtained sufficient information to enable the defendant to decide whether to dispute the claimant's claim to limit its liability, the court may, on such terms as seem just,

- (a) give such directions as appear to be appropriate to enable the defendant to obtain such information; and
- (b) adjourn the hearing to a specified date, time and place.

(8) Any defendant who thereafter disputes the claimant's claim to limit its liability must

- (a) file an affidavit stating the grounds upon which the defendant relies; and
- (b) serve the affidavit on the claimant at least 7 clear days before the adjourned hearing of the application.

(9) If, on the hearing or the adjourned hearing of the application, the court does not make a decree limiting the claimant's liability, the court must proceed to deal with the application as a case management conference.

(10) Any defendant who, after the court has given directions under paragraph (7) or (9), ceases to dispute the claimant's right to limit its liability must

- (a) forthwith file a notice to that effect; and
- (b) serve a copy on the claimant and on any other defendant who has acknowledged issue or service of the claim.

(11) If every defendant who disputes the claimant's right to limit its liability serves a notice on the claimant under paragraph (10), the claimant may apply to the court for an order limiting its liability, and paragraphs (3) and (6) apply to such an application.

#### **70.37 Limitation proceedings: proceedings under decree.**

(1) If

- (a) the only defendants in a limitation proceedings are those named in the claim form by their names; and
- (b) all the persons so named have either been served with the claim form or acknowledged the issue thereof;

any order in the claim limiting the claimant's liability

- (i) need not be advertised; but
- (ii) operates only to protect the claimant in respect of claims by the persons so named or persons claiming through or under them.

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(2) In any case not falling within paragraph (1), any order in the claim limiting the claimant's liability must

- (a) be advertised by the claimant in such manner and within such time as may be provided by the order;
- (b) fix a time within which persons with claims against the claimant in respect of the casualty to which the proceedings relate may file their claims, and, in cases to which rule 70.38 applies, apply to set the order aside.

(3) The advertisement required under paragraph (2)(a) must, unless for special reasons the court otherwise directs, be a single advertisement in each of 3 newspapers specified in the order

- (a) identifying the claim, the casualty and the relation of the claimant thereto (whether as owner of a ship involved in the casualty or otherwise);
- (b) stating that the order has been made; and
- (c) specifying the
  - (i) amounts fixed thereby as the limits of the claimant's liability; and
  - (ii) time allowed for the filing of claims and applying to set the order aside.

(4) The claimant must within the time fixed under paragraph (2)(b) file a copy of each newspaper in which the advertisement required under paragraph (2)(a) appears.

(5) The time to be allowed under paragraph (2)(b) must, unless for special reasons the court otherwise directs, be not less than 2 months from the latest date allowed for the acknowledgment of service of the advertisements.

(6) After the expiration of the time allowed under paragraph (5), no claim may be filed or application made to set aside the order except with the permission of the court.

(7) Save as aforesaid, on the making of any order limiting the claimant's liability arising out of a casualty to which the proceedings relate the court may

- (a) distribute the limitation fund; and
- (b) stay any proceedings relating to any claim arising out of that occurrence which is pending against the claimant.

#### **70.38 Limitation proceedings: proceedings to set aside decree.**

(1) If an order limiting the claimant's liability fixes a time in accordance with rule 70.37(2), any person with a claim against the claimant in respect of the casualty to which the proceedings relate who

- (a) was not named by name in the claim as a defendant to the proceedings; or

- (b) if so named,
  - (i) was not served with; or
  - (ii) has not acknowledged the issue of;

the claim form, may, within that time, after acknowledging issue of the claim, apply for the order to be set aside.

(2) The application must be supported by an affidavit or affidavits showing that the defendant in question has

- (a) a bona fide claim against the claimant in respect of the casualty in question; and
- (b) sufficient *prima facie* grounds for the contention that the claimant is not entitled to the relief given it by the decree.

(3) At least 7 clear days before the hearing of the application, the application and every affidavit in support thereof must be served on the claimant and any defendant who has acknowledged issue or service of the claim.

(4) On the hearing of the summons, the court, if satisfied that the defendant in question has a *bona fide* claim against the claimant and sufficient *prima facie* grounds for the contention that the claimant is not entitled to the relief given to the claimant by the decree, must set the decree aside and give directions as if the hearing were a case management conference.

## PART 71 – OBTAINING EVIDENCE FOR FOREIGN COURTS

### Contents of this Part

Scope of this Part	Rule 71.1
Application for order	Rule 71.2
Application by Attorney General in certain cases	Rule 71.3
Person to take and manner of taking examination	Rule 71.4
Dealing with depositions	Rule 71.5
Claim to privilege	Rule 71.6

#### 71.1 Scope of this Part.

(1) This Part deals with the procedure by which evidence may be obtained from a witness in a State or Territory for the purpose of proceedings in a court or tribunal outside the jurisdiction.

(2) Except where the enactment provides otherwise, the power of the High Court to make an order under any relevant enactment may be exercised by a judge in chambers, a master or the registrar.

#### 71.2 Application for order.

(1) Subject to paragraph (3) and rule 71.3, an application for an order may be made without notice but must be supported by affidavit evidence.



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(2) There must be exhibited with the affidavit the request in pursuance of which the application is made, and if the request is not in the English language, a translation of the request into English.

(3) After an application has been made under paragraph (1) any application for a further order or directions must be on notice.

### 71.3 **Application by Attorney-General in certain cases.**

If a request is to be received by the

- (a) court in pursuance of a Civil Procedure Convention providing for the taking of the evidence of any person in a State or Territory for the assistance of a court or tribunal in the foreign country, and no person is named in the document as the person who will make the necessary application on behalf of the party; or
- (b) Minister with responsibility for foreign affairs and sent by the Minister to the court office with an intimation that effect should be given to the request without requiring an application for that purpose;

the court office must send the document to the Attorney-General.

### 71.4 **Person to take and manner of taking examination.**

(1) Any order made in pursuance of this Part for the examination of a witness may direct the examination to be taken before any fit and proper person nominated by the person applying for the order or before an examiner of the court or before any other qualified person as to the court seems fit.

(2) Subject to rule 71.6 and to any special directions contained in any order made in pursuance of this Part for the examination of any witness, the examination must be taken in the manner provided by rules 33.8 to 33.12 and an order may be made under rule 33.13 for payment of the fees and expenses due to the examiner.

### 71.5 **Dealing with depositions.**

Unless any order made in pursuance of this Part for the examination of any witness otherwise directs, the examiner before whom the examination is taken must send the deposition of that witness to the court, and the court must

- (a) give a certificate sealed with the seal of the Supreme Court identifying the documents annexed thereto, that is to say, the request, the order of the court for examination and the deposition taken in pursuance of the order; and
- (b) send the certificate with the documents annexed thereto to the Minister with responsibility for foreign affairs, or, if the request was sent to the court office by some other person in accordance with a Civil Procedure Convention, to that other person;

for transmission to the court or tribunal out of the jurisdiction requesting the examination.

**71.6 Claim to privilege.**

- (1) This rule applies where
  - (a) a witness claims a right to withhold evidence; and
  - (b) that claim is contested.
- (2) The examiner may require the witness to give the evidence to which the claim relates.
- (3) If the examiner does not do so the person who obtained the order under rule 71.2 may apply to the court to do so.
- (4) Such an application may be made without notice.
- (5) If such evidence is taken,
  - (a) it must be recorded in a document separate from that witness' deposition;
  - (b) the examiner must send to the court office with the deposition
    - (i) that document; and
    - (ii) a statement signed by the examiner setting out the claim and the ground on which it was made;
  - (c) on receipt of the document, the court office must, notwithstanding anything in rule 71.5,
    - (i) retain the document containing the evidence to which the claim related; and
    - (ii) send the statement with a request to determine the claim to the foreign court or tribunal with the documents mentioned in rule 71.5.
- (6) If the claim is rejected by the foreign court or tribunal, the court office must send to that court or tribunal the document containing the evidence to which the claim related.
- (7) If the claim is upheld the court must send the document to the witness.
- (8) In either case the court must notify the witness and the person who obtained the order under rule 71.2 of the court's or tribunal's determination.

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## PART 72 – RECIPROCAL ENFORCEMENT OF JUDGMENTS

### Contents of this Part

Scope of this Part	Rule 72.1
Application for registration	Rule 72.2
Security for costs	Rule 72.3
Order for registration	Rule 72.4
Register of judgments	Rule 72.5
Notice of registration	Rule 72.6
Application to set aside registration	Rule 72.7
Issue of execution	Rule 72.8
Certified copy of High Court judgment for enforcement in another country	Rule 72.9

### 72.1 Scope of this Part.

(1) This Part deals with the procedure whereby under the provisions of any enactment a judgment of a foreign court or tribunal may be registered in the High Court for enforcement within a Member State or Territory.

(2) In this Part, “relevant enactment” means any enactment in force in a Member State or Territory in question which relates to the reciprocal enforcement of judgments.

(3) This Part is subject to the requirements of any relevant enactment.

### 72.2 Application for registration.

An application to have a judgment registered in the High Court may be made without notice to the court but must be supported by affidavit evidence

- (a) exhibiting the judgment or a verified, certified or otherwise duly authenticated copy of it and, if the judgment is not in the English language, an English translation of it certified by a notary public or authenticated by affidavit;
- (b) specifying the amount of the interest, if any, which under the law of the country of the original court has become due under the judgment up to the time of the application;
- (c) stating the name, trade or business and the usual or last known place of abode or business of the judgment creditor and the judgment debtor respectively, so far as is known to the deponent; and
- (d) stating to the best of the information or belief of the deponent
  - (i) that the judgment creditor is entitled to enforce the judgment; and either
    - (A) that at the date of the application the judgment has not been satisfied; or
    - (B) the amount in respect of which it remains unsatisfied;

- (ii) that the judgment may be ordered to be registered for enforcement under any relevant enactment; and
- (iii) that the registration would not be or be liable to be, set aside under any relevant enactment.

### **72.3 Security for costs.**

The court may order the judgment creditor to give security for the costs of the application for registration and of any proceedings which may be brought to set aside the registration.

### **72.4 Order for registration.**

(1) An order giving leave to register a judgment must be drawn up by, or on behalf of, the judgment creditor.

(2) Except where the order is made following an application on notice, it need not be served on the judgment debtor.

(3) The order must state the period within which an application may be made to set aside the registration and contain a notification that execution on the judgment will not issue until after the expiration of that period.

(4) The court may, on an application made at any time while it remains competent for any party to apply to have the registration set aside, extend the period (either as originally fixed or as subsequently extended) within which an application to have the registration set aside may be made.

(5) The court hearing the application may order that notice of the application be given to any person.

### **72.5 Register of judgments.**

(1) A register of the judgments ordered to be registered must be kept in the court office.

(2) There must be included in each such register particulars of any execution issued on a judgment ordered to be so registered.

### **72.6 Notice of registration.**

(1) Notice of the registration of a judgment must be served on the judgment debtor by delivering it to the judgment debtor personally or in such other manner as the court may direct.

(2) Service of such a notice out of the jurisdiction is permissible without leave, and rules 7.8, 7.9 and 7.10 apply to such a notice as they apply to a claim form.

(3) The notice of registration must state

- (a) full particulars of the judgment registered and the order for registration;

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- (b) the name and address of the judgment creditor or of the legal practitioner or agent on whom any summons issued by the judgment debtor may be served;
- (c) the period within which an application to set aside the registration may be made; and
- (d) the right of the judgment debtor to apply to have the registration set aside.

**72.7 Application to set aside registration.**

(1) An application to set aside the registration of a judgment must be supported by affidavit evidence.

(2) If the court hearing an application to set aside the registration of a judgment is satisfied that

- (a) it is not just or convenient that the judgment should be enforced within the jurisdiction; or
- (b) the judgment falls within any of the cases in which a judgment may not be registered under the provisions of any relevant enactment;

it may order the registration of the judgment to be set aside on such terms as it directs.

**72.8 Issue of execution.**

(1) Execution may not issue on a judgment registered under the Act until after the expiration of the period which, in accordance with rule 72.4(3), is specified in the order for registration as the period within which an application may be made to set aside the registration or, if that period has been extended by the court, until after the expiration of the extended period.

(2) If an application is made to set aside the registration of a judgment, execution on the judgment may not issue until after the application is finally determined.

(3) Any party wishing to issue execution on a registered judgment must produce to the court office an affidavit of service of the notice of registration of the judgment and any order made by the court in relation to the judgment.

**72.9 Certified copy of High Court judgment for enforcement in another country.**

(1) An application under any relevant enactment for a certified copy of a judgment entered in the High Court for the purpose of enforcement in some other country must be made without notice supported by affidavit evidence.

(2) The certified copy of the judgment must be an office copy sealed with the seal of the Supreme Court and endorsed with a certificate signed by a master or registrar that it is a true copy of a judgment obtained in the High Court and that it is issued in accordance with the relevant enactment.

**PART 73 – TRANSITIONAL PROVISIONS****Contents of this Part**

Scope of this Part	Rule 73.1
New proceedings	Rule 73.2
Old proceedings	Rule 73.3
Exercise of discretion	Rule 73.4

**73.1 Scope of this Part.**

(1) This Part deals with the way in which actions, matters and other proceedings in existence at the commencement date become subject to these Rules.

(2) In this Part, “commencement date” means the date on which these Rules come into force.

**73.2 New proceedings.**

(1) Subject to paragraph (2), these rules apply to all proceedings commenced on or after the commencement date.

(2) Proceedings commenced after the commencement date but before 1st July 2001 under the Rules of the Supreme Court 1970 may continue under those rules until that date but will then be deemed to have commenced under these Rules and must proceed accordingly.

**73.3 Old proceedings.**

(1) These Rules do not apply to proceedings commenced before the commencement date in which a trial date has been fixed unless that date is adjourned.

(2) In proceedings commenced before the commencement date, an application to adjourn a trial date is to be treated as a pre-trial review and these Rules apply from the date that such application is heard.

(3) If a trial date has not been fixed in proceedings commenced before the commencement date

(a) the court office must fix a date, time and place for a case management conference under Part 27 after a defence has been filed and give all parties at least 28 days notice of the conference; and

(b) these Rules apply from the date of the case management conference.

**73.4 Exercise of discretion.**

If in proceedings commenced before the commencement date the court has to exercise its discretion, it may take into account the principles set out in these Rules and, in particular, Parts 1 and 25.

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## PART 74 – SCHEDULES

### Contents of this Part

Scope of this Part	Rule 74.1
Subject matter of schedules	Rule 74.2

#### 74.1 Scope of this Part.

This part deals with the making of Schedules which will form part of the Rules.

#### 74.2 Subject matter of schedules.

Schedules to the Rules may be made by authority in respect of the procedure to be followed when matters are to be dealt with under specific legislation of Member States or Territories.

## APPENDIX

### PRESCRIBED FORMS

#### Prescribed Forms

Form 1:	Claim Form
Form 1A:	Notes for Defendant
Form 2:	Fixed Date Claim Form
Form 3:	Application to Pay by Instalments
Form 4:	Acknowledgment of Service of Claim Form
Form 4A:	Acknowledgment of Service of Fixed Date Claim Form
Form 5:	Defence and Counterclaim
Form 6:	Application
Form 7:	Request for Default Judgment
Form 8:	Request for Entry of Judgment on Admissions
Form 9:	Ancillary Claim Form
Form 10:	Listing Questionnaire
Form 11:	List of Documents
Form 12:	Witness Summons
Form 13:	Notice to Non-Party Served With Order
Form 14:	Order for Oral Examination
Form 15:	Notice of Adjourned Examination
Form 16:	Financial Position Notice
Form 17:	Writ of Execution Against Goods ( <i>Fieri Facas</i> )
Form 18:	Writ of Possession
Form 19:	Writ of Delivery or Value
Form 20:	Writ of Specific Delivery
Form 21:	Judgment Summons

- Form 22: Writ of Habeas Corpus
- Form 23: Notice of Appeal
- Form 24: Certificate of Result of Appeal
- Form 25: Admiralty Claim *In Rem*
- Form 26: Admiralty Limitation Claim
- Form 27: Warrant of Arrest (Admiralty)

**Form 1: Claim Form**

*[Rule 8.1 (4)]*

The Eastern Caribbean Supreme Court

In the High Court of Justice

[State/Territory]

Claim No. of 20 .....

Between AB.

claimant

and

C.D.

Defendant

**Claim Form**

The claimant, A.B. (full names), of (full address)  
claims against

the defendant, C.D. (full names), of (full address)

(Set out briefly the nature of the claim and state any specific amount or remedy that you are claiming)

(to be completed only where the claim is for a specified amount)

Amount claimed \$.....

Court fees \$.....

Legal practitioner's fixed costs on issue \$.....

Together with interest from to date \$.....

(Daily rate thereafter=\$ per day)

Total Claim \$.....



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**NOTICE TO THE DEFENDANT – See the notes served with this claim form**

This claim form must contain or have served with it either a statement of claim or a copy of a court order entitling the claimant to serve the claim form without a statement of claim.

If you do not complete the form of acknowledgment of service served on you with this claim form and deliver or send it to the court office (address below) so that they receive it within 14/21 days of service of this claim form on you, the claimant will be entitled to apply to have judgment entered against you. The form of acknowledgment of service may be completed by you or a legal practitioner acting for you.

You should consider obtaining legal advice with regard to this claim.

This claim form has no validity if it is not served within 6 months of the date below unless it is accompanied by an order extending that time.

Dated

[SEAL]

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between [ ..... a.m.] and [ ... p.m.] ..... to ..... except public holidays.

The claimant's address for service is:

---

**Form 1A: Notes For Defendant**

[Rule 8.14 (1)]

**Notes for Defendant**

This form is important

When you get this document, you should consider getting legal advice.

**Action to be Taken on Receipt of this Form**

The claimant is making a claim against you in the court. If you do nothing judgment may be entered against you. That means that the claimant will be entitled to take steps to enforce payment from you of any money the claimant is claiming and you will have no right to be heard except as to the amount of any costs claimed or as to the way in which you can pay the judgment, unless you apply to set judgment aside.

**WHAT YOU CAN DO**

You can

A. Defend the claim

If you would like to do this you must:

- Complete the form of acknowledgment of service and return it to the court office so that they receive it within 14/21 days of the date on which you received this form.

- AND, if a statement of claim was served on you with the claim form –
- Complete the form of defence or submit some other form of defence showing why you dispute the claim giving full details of all the facts on which you intend to rely if there is a trial.
- Deliver or send the form of defence to the court office so that they receive it within 28/42 days of the date on which you received this form.
- Serve a copy of the form of defence on the claimant’s legal practitioner (or the claimant if the claimant has no legal practitioner) at the address given on the claim form.
- If no statement of claim is served with the claim form you need not file and serve a defence until twenty eight/forty two days after the statement of claim is served on you.
- After you have filed your defence you will be given details of the date, time and place of a case management conference at which a judge will decide what issues have to be determined by the court and give directions about what needs to be done before the case is tried.
- You must attend the case management conference.

**B. Admit the whole of the claim**

If you would like to do this you must:

- Complete the form of acknowledgment of service stating that you admit the claim and return it to the court office so that they receive it within 14/21 days of the date on which you received this form.
- If you can pay the amount stated on the claim form including fees, costs and interest you should pay this to the claimant within 8/21 days and no further steps can be taken against you. You must add interest at the daily rate shown from the date stated on the claim form.
- If you cannot pay this sum in full you may apply to the court to pay by instalments. If you wish to do so you must complete the Application to Pay by Instalments form and return it to the court with your acknowledgment of service.

**C. Admit part of the claim and defend the rest**

If you would like to do this you must:

- Complete the form of acknowledgment of service stating how much you admit and return it to the court office so that they receive it within 14/21 days of the date on which you received this form AND complete the form of defence as under section A above.
- You may also:
- Pay the amount that you admit direct to the claimant OR apply to pay that sum by instalments. If so you should follow the procedure indicated under B.

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D. Make a claim against the claimant

If you would like to do this you must:

- Complete the form of acknowledgment of service and return it to the court office so that they receive it within 14/21 days of the date on which you received this form.
- Complete the form of defence giving details of your defence (if any) to the claim as under A above and also the claim that you are making against the claimant and return it to the court office so that they receive it within 28/42 days of the date on which you received this form.
- If you admit the claim but wish to counterclaim you should say so. If your counterclaim is for a lower sum than the claim you may pay the difference between the amount that the claimant claims from you and the amount that you claim from him or her direct to the claimant OR apply (using the procedure indicated under B) to pay that sum by instalments. You will be given details of the date, time and place of a case management conference at which a judge will decide what issues have to be determined by the court and give directions about what needs to be done before the case is tried.

REMEMBER THAT IF YOU DO NOTHING, JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT ANY FURTHER WARNING.

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**Form 2: Fixed Date Claim Form**

*[Rule 8.1(5)]*

The Eastern Caribbean Supreme Court

In the High Court of Justice

[State/Territory]

Claim No.                      of 20 .....

Between

A.B.

Claimant

and

C.D.

Defendant

**Claim Form**

The claimant,                      A.B.              (full names), of              (full address)  
claims against

the defendant,                      C.D.              (full names), of              (full address)

(Set out briefly the nature of the claim and state any specific amount or remedy that you are claiming)

**Notice to the Defendant –**

The first hearing of this claim will take place at [xxx xxx xxx] on \_\_\_\_\_ day the day of 20, at a.m./p.m.

If you do not attend at that hearing, judgment may be entered against you in accordance with the claim.

If you do attend, the judge may

- (a) deal with the claim, or
- (b) give directions for the preparation of the case for a further hearing.

A statement of claim or an affidavit giving full details of the claimant's claim should be served on you with this claim form. If not and there is no order permitting the claimant not to serve the statement of claim or affidavit you should contact the court office immediately.

You should complete the form of acknowledgment of service served on you with this claim form and deliver or send it to the court office (address below) so that they receive it within 14/28 days of service of this claim form on you. The form of acknowledgment of service may be completed by you or a legal practitioner acting for you.

You should consider obtaining legal advice with regard to this claim. See the notes on the back of this form or on the next page.

This claim form has no validity if it is not served within 6 months of the date below unless it is accompanied by an order extending that time.

Dated \_\_\_\_\_

[SEAL]

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between [..... a.m.] and [.... p.m.]..... to ..... except public holidays.

The claimant's address for service is:

**NOTES FOR DEFENDANT (FIXED DATE CLAIM)**

The claimant is seeking an order from the court as set out in the claim form on the basis of the facts or evidence set out in the statement of claim or affidavit served with it. The claimant will not be entitled to enter judgment against you without a hearing.

You may:

- A. Admit the claim

If so, you should complete and return the form of acknowledgment of service to the court office within 14/28 eight days stating this. You may attend the first hearing if you wish to do so.

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**B. Dispute the claim**

If so, you should complete and return the form of acknowledgment of service as under A. You should also file at the court office and serve on the claimant’s legal practitioner (or the claimant if the claimant has no legal practitioner):

- (a) a defence if the claim form was accompanied by the claimant’s statement of claim, OR
- (b) an affidavit in answer if the claim form is accompanied by an affidavit sworn by or on behalf of the claimant

within 28/42 days of the day on which the claim form was served on you. Your defence or affidavit must set out briefly ALL the facts on which you will rely to dispute the claim made against you.

**You should also attend the first hearing. If you do not the judge may deal with the claim in your absence.**

**C. Make a claim against the claimant**

If so, you should complete and return the form of acknowledgment of service as under A. You must file a statement of claim (a counterclaim) setting out full details of what you claim against the claimant and the facts on which you will rely. This must be done within 28/42 days of the date on which the claim form was served on you. The statement of claim should set out ALL the facts on which you rely in disputing any part of the claimant’s claim against you.

You should also attend the first hearing. If you do not the judge may deal with the claim in your absence.

**Form 3: Application to Pay by Instalments**

---

*[Rule 8.14(1)]*

(Heading as in Form 6)

The Applicant, A.B. (full names), of (full address)

owes the claimant the amount of \$..... claimed on the claim form and cannot pay the amount in one lump sum.

The Applicant applies to the court for an order to pay the amount due by instalments of \$ \_\_\_\_\_ per week/month and provides the following information:

1. Marital status: Married  Single  Other  (*specify*)
2. Age:
3. Dependants: Children: (*state names and ages*)
4. Other Dependants (*state names and give details*)
5. If employed, state nature of employment and name and address of employer

- 6. If self-employed, give particulars of annual receipts of the business
  - 7. Give details of any job other than main job
  - 8. Give details of
    - (a) contracts and other work in hand and
    - (b) any sums due for work done
  - 9. If unemployed, say how long unemployed
  - 10. Pensioner: Yes/No
  - 11. List cash assets
  - 12. I live in my own property  jointly owned property  rented property  lodgings  other   
(specify)
    - (a) My usual take home pay is; or \$ .....
    - (b) My pension is \$ .....
    - (c) Other income \$ .....
    - Total Income \$ .....
  - 13. My regular expenses are as follows:
    - (a) Mortgage \$ .....
    - (b) Rent \$ .....
    - (c) Electricity \$ .....
    - (d) Water \$ .....
    - (e) Cooking gas \$ .....
    - (f) Telephone \$ .....
    - (g) Hire Purchase repayments \$ .....
    - (h) Food \$ .....
    - (i) School fees \$ .....
    - (j) Travelling expenses \$ .....
    - (k) Children's clothing \$ .....
    - (l) Maintenance payments \$ .....
    - (m) Others (do not include court orders  
and debts listed in 14, 15 and 16)  
..... \$ .....
    - ..... \$ .....
    - ..... \$ .....
    - ..... \$ .....
- Total expenses

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14. I am in arrears as follows:

- (a) Rent arrears \$ .....
- (b) Mortgage arrears \$ .....
- (c) Water arrears \$ .....
- (d) Electricity arrears \$ .....
- (e) Telephone arrears \$ .....
- (f) Maintenance arrears \$ .....
- (g) Others \$ .....
- ..... \$ .....
- ..... \$ .....
- ..... \$ .....
- ..... \$ .....

Total arrears

15. I am making court ordered payments  
as follows: (*specify particulars of case(s)  
and instalments or amounts ordered  
to be paid*) ..... \$ .....

16. I have loans and credit card debts as follows:  
..... \$ .....  
..... \$ .....  
..... \$ .....  
..... \$ .....

Of the above payments, I am behind with payments to (please list)

.....  
.....  
.....  
.....

I declare that the details I have given above are true to the best of my knowledge.

Dated .....

Signed ..... Applicant

**NOTICE:**

This application will be heard by [the Judge in Chambers] [Master xxxxx] on day the ..... day of ....., at ..... am/pm at [xxx xxx xxx]

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

**OR**

The [Judge in Chambers] [Master] will deal with this application by –

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

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between [..... a.m.] and [.... p.m.]..... to ..... except public holidays.

---

**Form 4: Acknowledgment of Service of Claim Form**


---

*Rule 9.2(1)*

(Heading as in Form 1)

**Acknowledgment of Service**

**WARNING:** If this form is not fully completed and returned to the court at the address below within 14/28 days of service of the claim form on you, the claimant will be entitled to apply to have judgment entered against you. If the claimant does so, you will have no right to be heard by the court except as to costs or the method of paying any judgment unless you apply to set judgment aside.

1. Have you received the claim form with the above claim number YES/NO
2. If so, when?—/—/—
3. Did you also receive the claimant's Statement of Claim? YES/NO
4. If so, when?—/—/—
5. Are your names properly stated on the claim form? YES/NO  
If not, what are your full names?
6. Do you intend to defend the claim? YES/NO  
If so you must file a defence within 28/42 days of the service of the claim form on you.
7. Do you admit the whole of the claim? YES/NO  
If you do you should either
  - (a) pay the claim direct to the claimant or the claimant's solicitor, or
  - (b) complete the application form to pay the claim by instalments.

If you pay the whole debt together with the costs and interest as shown on the claim form within 14/28 days you will have no further liability for costs.



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8. Do you admit any part of the claim? YES/NO  
If you do you may –
- (a) pay the money that you admit direct to the claimant or the claimant's legal practitioner, or
  - (b) complete the application form to pay the claim by instalments.
9. If so, how much do you admit?

.....  
If you dispute the balance of the claim you must also file a defence within 28/42 days of service of the claim form on you or judgment may be entered against you for the whole amount claimed.

10. What is your own address?

.....

11. What is your address for service? .....

If you are acting in person you must give an address within ... miles of the court office to which documents may be sent either from other parties or from the court. You should also give your telephone number and FAX number, if any.

Dated.....

Signed .....

[Defendant in person] [Defendant's legal practitioner]

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between [ ..... a.m.] and [ ... p.m.] ..... to ..... except public holidays.

---

#### FORM 4: A Acknowledgment of Service of Fixed Date Claim Form

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[Rule 9.2(1)]

(Heading as in Form 1)

#### Acknowledgment of Service of Fixed Date Claim Form

WARNING: This form should be completed and returned to the court at the address below within 14/28 days of service of the claim form on you. However, the claimant will not be entitled to have judgment entered against you except at the first or subsequent hearing of the claim.

- 1. Have you received the claim form with the above number? YES/NO
- 2. If so, when did you receive it?—/—/—
- 3. Did you also receive the claimant's statement of claim or affidavit in support? YES/NO

- 4. If so, on what date did you receive them?—/—/—
- 5. Are your names properly stated on the claim form?YES/NO  
If not, what are your full names?
- 6. Do you intend to defend the claim?YES/NO  
If so you must file a defence within 28/42 days of the service of the claim form on you.
- 7. Do you admit the whole claim?YES/NO
- 8. Do you admit any part of the claim?YES/NO
- 9. If so, what do you admit? .....
- 10. What is your own address? .....  
.....  
.....
- 11. What is your address for service?  
If you are acting in person you must give an address within ..... miles of the court office to which documents may be sent either from other parties or from the court. You should also give your telephone number and FAX number, if any.

Dated .....

Signed.....

[Defendant in person] [Defendant’s legal practitioner]

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between [..... a.m.] and [.... p.m.]..... to ..... except public holidays.

---

**Form 5: Defence and Counterclaim**

*[Rule 10.2 (1)]*

(Heading as in Form 1)

**Defence**

I dispute the claim on the following grounds:

I certify that all the facts set out in my defence are true to the best of my knowledge, information and belief.

My address for service is

Telephone no.

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Dated .....

Signed .....

[Defendant in person]

We are acting for the defendant; our address for service is:

Signed (Legal practitioner  
for the defendant)

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between [ ..... a.m.] and [ ... p.m.] ..... to ..... except public holidays.

### Counterclaim

I claim against the claimant

(set out details of the remedy or relief sought)

on the following grounds:

I certify that all the facts set out in my counterclaim are true to the best of my knowledge, information and belief and that I am entitled to the remedy claimed

Dated .....

Signed .....

[Defendant in person]

We are acting for the defendant; our address for service is:

Signed (Legal practitioner for the defendant)

Notes:

- (a) The defendant may set out the defendant's defence in another manner – it is not necessary to use this form.
- (b) the defendant must:
  - state which allegations in the claim are admitted
  - which are denied
  - which are neither admitted or denied because the defendant does not know whether they are true.
  - identify any documents considered necessary to the defendant's case.
- (c) The defendant must give reasons for denying any allegations made by the claimant.

- (d) The defendant must set out clearly all the facts on which the defendant relies to dispute the claim and must set out any different version of events on which the defendant relies.
- (e) The defendant may not be allowed to give evidence about any fact which is not set out in the defence.
- (f) If the defendant wishes to counterclaim the defendant must
  - specify any remedy that the defendant seeks against the claimant
  - include a short statement of all facts on which the defendant relies
  - identify any documents which the defendant considers necessary to the defendant’s case.
- (g) If the defendant is represented by a legal practitioner, the defendant must also sign the form and give the defendant’s address for service.

**Form 6: Application**

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*[Part 11.6(1)]*

The Eastern Caribbean Supreme Court

In the High Court of Justice

[State/Territory]

Claim No.                      of.

**Between**

**A.B.**

Applicant

and

**C.D.**

Respondent

**Notice of Application**

The Applicant,                      A.B.                      (full names), of                      (full address)  
applies to the court for an order that –



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- (c) the defendant has not paid any monies in settlement of the claim except such sum as is stated below;
- (d) (where appropriate) permission to enter judgment was given by the court on(date).

Judgment should be entered for:

Amount claimed	\$ .....
Court fees on claim	\$ .....
Legal practitioner’s fixed costs on issue	\$ .....
Together with interest from date of issue to today	\$ .....
Court fees on entering judgment	\$ .....
Legal practitioner’s fixed costs on entering judgment	\$ .....
Total	\$ .....
Less paid since issue of claim	\$ .....
Amount for which judgment is to enter	\$ .....

to be paid [forthwith] [on (state date)]  
 or by weekly/monthly instalments of \$ .....

Dated .....

Signed.....

[Legal practitioner for the] Claimant

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between [..... a.m.] and [... p.m.]..... to ..... except public holidays.

**Form 8: Request for Entry of Judgment on Admission**

*[Rule 14.6 (2)]*

(Heading as in Form 1)

**Request for Entry of Judgment on Admission**

I/We \_\_\_\_\_ the claimant/claimant’s legal practitioner request entry of judgment against the defendant on the defendant’s admission.

(Admission of whole debt)

A. Judgment should be entered for:

Amount claimed	\$ .....
Court fees on claim	\$ .....
Legal practitioner’s fixed costs on issue	\$ .....
Together with interest from date of issue to today	\$ .....

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Court fees on entering judgment	\$ .....
Legal practitioner's fixed costs on entering judgment	\$ .....
Total	\$ .....
Less paid since issue of claim	\$ .....
Amount for which judgment is to enter	\$ .....

(Admission of part of debt)

B. Judgment should be entered for:

Amount admitted by defendant	\$ .....
Court fees on claim	\$ .....
Legal practitioner's fixed costs on issue	\$ .....

*(Legal practitioner's fixed costs must be the fees and costs appropriate to the amount admitted)*

Together with interest from date of issue to today	\$ .....
Court fees on entering judgment	\$ .....
Legal practitioner's fixed costs on entering judgment	\$ .....

*(Legal practitioner's fixed costs must be the fees and costs appropriate to the amount admitted)*

Total	\$ .....
Less paid since issue of claim	\$ .....
Amount for which judgment is to enter	\$ .....

C. (i) I/We accept the claimant's offer to pay the amount due –

on (date);  
or, by instalments of \$ per week/month and ask for judgment  
to be entered accordingly [the first payment to be on]

OR

(ii) I/We do not accept the claimant's proposals for payment of the amount due but  
would accept –

payment on(date);  
or, by instalments of \$per week/month  
the first payment to be on(date)

OR

(iii) I/We do not accept the defendant's proposals as to payment and ask for  
judgment to be entered for the balance due to be paid forthwith.

D. (in cases (ii) and (iii) above) My/our reasons for objecting to the defendant’s proposals are:

I/We do not accept that the defendant’s financial statement is correct in the following ways:

Dated .....

Signed.....

[Legal practitioner for the] Claimant

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between [..... a.m.] and [.... p.m.]..... to ..... except public holidays.

---

**Form 9: Ancillary Claim Form**

*[Rule 18.2(2)]*

(Heading as in Form 1)

**Ancillary Claim Form**

To \_\_\_\_\_ of \_\_\_\_\_

This claim has been brought by the claimant against the defendant in accordance with the claim form and statement of claim served with this notice. Copies of the defendant’s statement of claim (the defendant’s defence) and of all other statements of case that have been filed in the proceedings are also served with this notice.

The defendant claims against you  
on the grounds that

[The defendant will also ask the court to determine the following matters not only between the claimant and the defendant but also between defendant and you:

]

If you wish to dispute the claimant’s claim against the defendant or the defendant’s claim against you, you must –

- (a) send or deliver a completed form of acknowledgment of service to the court office (address below) so that it is received by them within 14/28 days; and
- (b) send or deliver a defence to this claim to the court office so that it is received by them within 28/42 days of the day on which this claim was served on you. You must also serve a copy of your defence on the defendant’s legal practitioners whose address is given below.



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If you do not file a defence you will –

- (a) be deemed to have admitted the defendant’s claim against you; and
- (b) be bound by any judgment or decision in the main proceedings in so far as it is relevant to any claim made against you and judgment may be entered against you.

Dated ..... (SEAL)

This claim was issued by

of [Legal practitioner for the] Defendant

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between [ ..... a.m.] and [ ... p.m.] ..... to ..... except public holidays.

---

**Form 10: Listing Questionnaire**

[Rule 27.9(1)]

(Heading as in Form 1)

**Listing Questionnaire**

**WARNING:** This is an important document. The information is required by the Court to list your case accurately. Inaccurate information may lead to a waste of court time and delays to other people’s cases. Failure to return the form to the court office within 21 days or to complete it fully will lead to a listing hearing being fixed. You may have to pay the costs of this hearing.

- 1. Have all the directions given by the court been carried out? YES/NO
- 2. If not, which directions have not been carried out?
  - Disclosure of documents YES/NO
  - Inspection of documents YES/NO
  - Service of witness statements YES/NO
  - Service of expert reports YES/NO
  - Other (state which) YES/NO
- 3. Why have they not been carried out?
- 4. When can the direction be complied with?
- 5. Will any application for relief be made by you? YES/NO
- 6. Has ADR\* been tried? YES/NO
- 7. If not, why not?
- 8. Is ADR likely to be tried? YES/NO

---

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6. Are you ready for trial? YES/NO
7. If not, why not?
8. How many witnesses do you intend to call? .....
9. What is your present estimate for trial length? ..... hours
10. What dates within the stated trial period will cause difficulty to
- the claimant/defendant
  - the claimant's/defendant's Legal practitioner
  - the claimant's/defendant's advocate
  - any non-expert witness
  - any expert witness
11. Please give names, addresses and telephone numbers of
- any trial Legal practitioner you propose to instruct
  - any expert witness whom you are entitled to call to give oral evidence
12. Please state the name of the legal practitioner (if any) who has conduct of this matter and give the legal practitioner's direct telephone number or Fax number.

Dated .....

Signed.....

[Legal practitioner for the] Claimant/Defendant

**This form must be returned to the court office within 21 days.**

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between [..... a.m.] and [... p.m.]..... to ..... except public holidays.

\* ADR means Alternative Dispute Resolution.

**Form 11: List of Documents**

---

*(Rule 28.7(2))*

(Heading as in Form 1)

**List of Documents**

This list is completed in accordance with an order for:

(a) Standard disclosure YES/NO

(b) Specific disclosure YES/NO

dated

and is served on behalf of the claimant/defendant/

[other].

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I, \_\_\_\_\_ [claimant] [defendant] [ \_\_\_\_\_ ]  
certify that I have had explained to me –

- (a) the duty of standard disclosure, and
  - (b) the terms of the order dated for specific disclosure
- and my duty to disclose documents in accordance with that order,  
and that I have complied with that duty.

(In the case of a list served by a company, firm, association or other organisation, the certificate must continue –)

I am the (capacity) \_\_\_\_\_ the \_\_\_\_\_ of the [claimant] [defendant] [other].

I accept responsibility for identifying any individuals who might be aware of any document which should be disclosed. I have asked the following individuals whether they are aware of any such documents:

NAME	POSITION
------	----------

Part 1 of Schedule 1 contains a list of ALL the documents which –

- (a) are or were in the physical possession of the [claimant] [defendant]; or
- (b) the [claimant] [defendant] has or has had a right to possession of; or
- (c) the [claimant] [defendant] has or has had a right to inspect or take copies of, and on which the [claimant] [defendant] relies or intends to rely in these proceedings, [together with such documents or classes of documents which the [claimant] [defendant] was ordered to disclose by the order of the court dated xx.xx.xxxx.

I/We claim a right to withhold disclosure and inspection of the documents listed in Part 2 of Schedule 1 on the basis stated in the Schedule.

The [claimant] [defendant] is not in physical possession of the documents listed in Schedule 2 and the Schedule states what has happened to those documents.

Neither the [claimant] [defendant] nor the [claimant's] [defendant's] legal practitioner nor anyone else on behalf of the [claimant] [defendant] now has or has ever had physical possession of, nor has the [claimant] [defendant] now or ever had the right to possession or the right to take copies of any document which should be disclosed and inspected under the terms of the court's order other than those listed in this List of Documents.

Dated .....

Signed .....

[Claimant] [Defendant]

[named representative for claimant/defendant]

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between [ ..... a.m.] and [ ... p.m.] ..... to ..... except public holidays.

**Schedule 1**

PART 1

No. Details of document or class of documents

PART 2

No. Details of document or class of documents Reason for claiming a right not to disclose

**Schedule 2**

No. Details of document or class of documents What has happened to the documents including (to the best of my/our information and belief) where they are.

No. Details of document or class of documents

**NOTICE TO INSPECT**

The Documents listed in Part 1 of Schedule 1 may be inspected at on any normal working day between the hours of \_\_\_\_\_ a.m and p.m. until \_\_\_\_\_ (date).

Dated .....

Signed.....

[Legal practitioner for the] [Claimant] [Defendant]

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between [..... a.m.] and [.... p.m.]..... to ..... except public holidays.

**Form 12: Witness Summons**

---

*[Rule 33.2(2)]*

(Heading as in Form 1)

**Witness Summons**

To \_\_\_\_\_ (witness' name)

of \_\_\_\_\_ (witness' address)



**Form 14: Order for Oral Examination**

[Rule 44.4(1)]

[Heading as Form 1]

**Order for Oral Examination**

To: CD, the examinee

The claimant obtained a judgment/order against [you/the defendant company] in this court on [date] [and (in the case of a company) it appears you are an officer of the defendant company].

You are ordered to attend before an examiner of this court on [date] ata.m. to be examined under oath as to your financial circumstances [in the case of a company, the financial circumstances of the defendant company] including what property or other assets you/it may have, and to produce at the examination any books or documents in your possession or power containing information about your/the defendant company’s financial circumstances.

And it is further ordered that the costs of this application and of the examination be in the discretion of the examiner.

**Dated**

[Seal]

This order was made on the application of

of [claimant/claimant’s legal practitioner]

**AND TAKE NOTICE that if you fail to comply with the terms of this order, proceedings may be commenced against you for contempt of court and you may be liable to be imprisoned.**

Amount due		\$ .....
Together with interest from	to date	\$ .....
(Daily rate thereafter =\$	per day)	\$ .....
Total		\$ .....
Less payments made to date		\$ .....
Amount now due		\$ .....

**Important Notes:**

1. It will not be necessary for you to attend the examination if you pay the amount now due to the claimant or the claimant’s Legal practitioner.
2. DO NOT bring or send payments to the court office. They will not be accepted.
3. You should allow at least 4 days for your payment to reach the claimant or the claimant’s Legal practitioner.

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- 4. Keep records and ensure that you can account for all payments made. Proof may be required if there is disagreement.
- 5. If payment is made too late, you may be liable for further costs.

Date

[SEAL]

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between [ ..... a.m.] and [ ... p.m.] ..... to ..... except public holidays.

**Form 15: Notice of Adjourned Examination**

[Rule 44.5(7)]

[Heading as Form 1]

**Notice of Adjourned Examination**

To: [CD, the examinee]

You were ordered to attend court on the [date] at ..... a.m. to be examined under oath before the examiner as to your financial circumstances (or as to the financial circumstances of the defendant company) and you failed to attend/refused to be sworn or affirmed/refused to answer a question(s).

TAKE NOTICE that your appointment for examination has been adjourned to [date] at ..... a. m. before a judge of the High Court when you are ordered to attend.

**Dated**

**AND TAKE NOTICE that if you fail to comply with the terms of this order, proceedings may be commenced against you for contempt of court and you may be liable to be imprisoned.**

Amount due		\$ .....
Together with interest from	to date	\$ .....
(Daily rate thereafter =\$	per day)	\$ .....
Total		\$ .....
Less payments made to date		\$ .....
Amount now due		\$ .....

**Important Notes:**

- 1. It will not be necessary for you to attend the examination if you pay the amount now due to the claimant or the claimant’s legal practitioner.
- 2. DO NOT bring or send payments to the court office. They will not be accepted.
- 3. You should allow at least 4 days for your payment to reach the claimant or the claimant’s legal practitioner.

4. Keep records and ensure that you can account for all payments made. Proof may be required if there is disagreement.
5. If payment is made too late, you may be liable for further costs.

Dated

[SEAL]

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between [..... a.m.] and [.... p.m.]..... to ..... except public holidays.

**Form 16: Financial Position Notice**

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*[Rule 44.7(1)]*

[Heading as Form 1]

**Financial Position Notice**

To:

An application has been made to orally examine you as to your income, assets and liabilities [the income, assets and liabilities of the [defendant] [claimant] company] and the means by which the judgment debt may be paid. There is served with this notice an order giving the date, time and place of the oral examination.

You are required to complete and return the attached questionnaire as to your means [the means of the company]. A copy will be sent to the judgment creditor and the judgment creditor may withdraw its application for an oral examination if satisfied with the information that you provide.

Unless you are notified by the court that your attendance is not required you must attend court on the date time and place stated in the attached order. If you fail to do so further proceedings may be taken which may result in your being imprisoned.

Dated

[SEAL]

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between [..... a.m.] and [.... p.m.]..... to ..... except public holidays.

**Form 17: Writ of Execution Against Goods (Fieri Facias)**

---

*[Part 46]*

(Heading as in Form 1)

**Request for Issue of Writ of Execution**

To the Court



Revision Date: 31 Dec 2002

[We] [I] of  
(Tel Fax) [Legal practitioners for the ]  
[ in person] apply for the issue of a Writ of Execution against the  
judgment debtor to recover the sum stated below.

Amount of judgment	\$ .....
Costs	\$ .....
Interest to date	\$ .....
Total sum due	\$ .....
Less: Paid since judgment	\$ .....
Balance of judgment now due	\$ .....
Plus: fee on issue	\$ .....
Legal practitioner's costs on issue	\$ .....
Amount for which writ to issue	\$ .....

[We] [I] certify that

- (a) the whole or part of any instalment due under the judgment has not been paid:
- (b) the balance of judgment now due is as shown above.

Dated .....

Signed: .....

[Legal practitioners for the] [Claimant] [Defendant]

**Writ of Execution**

To: The Marshal

You are required to levy the sum stated above together with interest at the rate of % per annum from the day of 20-, until payment together with the marshal's poundage fees, cost of levying and all other legal incidental expenses and to pay the amount levied in respect of the judgment debt, fees, costs and interest to the [claimant][defendant].

You are also required to endorse on this Writ immediately after execution a statement of the manner in which you have executed it and send a copy to the [claimant] [defendant].

Dated

[SEAL]

**Notice to Judgment Debtor**

Notice of levy

The marshal has levied on your goods. This means that you must not dispose of them as the marshal may have to take them and sell them, at a public auction.

Payment of the judgment debt

If you pay the total amount due under this Writ including the marshal’s poundage fees, costs of levying and any other legal incidental expenses, your goods will not be taken and you will not have to pay any more costs. You must pay the money to the marshal and will be given a receipt.

If you do not want the marshal to remove your goods

You can ask the marshal not to do so but you must sign the walking possession agreement below.

If your goods are removed

- you will be given a list of the goods removed
- the goods will not be sold for at least [     ] days unless they are perishable
- you will be given [ ] days notice of the date and place of sale
- further fees may be charged and added to the debt
- these fees could include the cost of removing the goods and the fees charged by the auctioneer.

When the goods are sold

You will be given a written statement as to the sale and the distribution of the proceeds of sale.

If the sale is stopped

You will normally have to pay a fee and any expenses incurred in removing the goods or advertising the sale.

**Walking Possession Agreement**

(request not to remove goods)

Please do not take my goods listed here –

I agree that until payment is made or the writ withdrawn, I will:

- not remove or damage the goods or allow anyone to do so
- show this form to anyone who calls and tries to take these goods
- tell you immediately if anyone tries to do so; and
- allow you to re-enter the premises at any time (and as often as you want) to see the goods or to complete the enforcement of this writ.

Dated .....

Signed.....

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between [..... a.m.] and [... p.m.]..... to ..... except public holidays.

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Revision Date: 31 Dec 2002

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**Form 18: Writ of Possession**

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[Part 46]

(Heading as in Form 1)

**Request for Issue of Writ of Possession**

To the Court

[We] [I] \_\_\_\_\_ of \_\_\_\_\_

(Tel \_\_\_\_\_ Fax) \_\_\_\_\_ [Legal practitioners for the \_\_\_\_\_]  
[ \_\_\_\_\_ in person] apply for the issue of a Writ of Possession against the  
judgment debtor to recover possession of the land and property known as (description of  
property) and also to recover the sum stated below.

Amount of judgment (if any)	\$ .....
Costs	\$ .....
Interest	\$ .....
Rent/mesne profits to date	\$ .....
Total sum due	\$ .....
Less: Paid since judgment	\$ .....
Balance of judgment now due	\$ .....
Plus: Fee on issue	\$ .....
Legal practitioner's costs on issue	\$ .....
Amount for which writ to issue	\$ .....

[We] [I] certify that

- (a) the claimant is entitled to possession and that the defendant has not complied with  
any conditions upon which the order for possession was suspended;
- (b) the balance of judgment and rent/mesne profits now due is as shown above.

Dated: .....

Signed: .....

[Legal practitioners for the] Claimant/Defendant

---

Revision Date: 31 Dec 2002

**Writ of Possession**

To: The Marshal

You are required to take possession of the property known as

(description of property)

and to deliver the same to the claimant/defendant or the claimant's/defendant's representative and also to levy the sum stated above together with interest at the rate of % per annum from the day of 20 until payment together with the marshal's poundage fees, cost of levying and all other legal incidental expenses and to pay the amount levied in respect of the judgment debt, fees, costs and interest to the [claimant][defendant].

You are also required to endorse on this Writ immediately after execution a statement of the manner in which you have executed it and send a copy to the [claimant] [defendant].

Dated

[SEAL]

**Notice to Judgment Debtor**

Notice of taking possession

You have failed to give up possession of the property described overleaf and the Marshal is authorised to enter the land to take possession of the property and deliver possession to the claimant.

Notice of levy

The Marshal has levied on your goods in order to discharge the judgment for [arrear of rent] [damages] [rent] [mesne profit] and [costs]. This means that you must not dispose of them as the Marshal may have to take them and sell them, at a public auction.

Payment of the money judgment

If you are able to pay the money judgment in full, the Marshal will not need to remove your goods. You will have to pay the full amount of the judgment plus interest and the costs of issuing this writ together with the Marshal's fees. You will be given a receipt for any money that you pay.

If your goods are removed

- you will be given a list of the goods removed
- the goods will not be sold for at least [ ] days – unless they are perishable
- you will be given [ ] days notice of the date and place of sale
- further fees may be charged and added to the debt
- these fees could include the cost of removing the goods and the fees charged by the auctioneer.

When the goods are sold

You will be given a written statement as to the sale and the distribution of the proceeds of sale.

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If the sale is stopped

You will normally have to pay a fee and any expenses incurred in removing the goods or advertising the sale.

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between [ ..... a.m.] and [ ... p.m.] ..... to ..... except public holidays.

**Form 19: Writ of Delivery or Value**

[Part 46]

(Heading as in Form 1)

**Request for Writ of Delivery or Value**

To the Court

[We] [I] \_\_\_\_\_ of \_\_\_\_\_

(Tel \_\_\_\_\_ Fax) \_\_\_\_\_ [Legal practitioners for the \_\_\_\_\_]  
[ \_\_\_\_\_ in person] apply for the issue of a Writ of Delivery against the  
judgment debtor to recover possession of \_\_\_\_\_ (description of goods)  
or to recover the assessed value of the goods, namely, \$ .....

And also to recover

Damages	\$ .....
Costs	\$ .....
Total sum due	\$ .....
Less: Paid since judgment	\$ .....
Balance of judgment now due	\$ .....
Plus: fee on issue	\$ .....
Legal practitioner's costs on issue	\$ .....
Amount for which writ to issue	\$ .....

[We] [I] certify that

- (a) the claimant is entitled to recover the goods which are the subject of the court's order or the value of \$, assessed by the court.
- (b) the balance of judgment now due is as shown above

Dated.....

Signed .....

[Legal practitioners for the] Claimant/Defendant

**Writ of Delivery or Value**

To: The Marshal

You are required to cause the goods (description of goods) to be delivered to the claimant/defendant, and if you are not able to do so to levy the sum of \$ the assessed value.

You are also required to levy the sum of \$ as stated above together with interest at the rate of % per annum from the day of 20, until payment together with the marshal's poundage fees, cost of levying and all other legal incidental expenses and to pay the amount levied in respect of the judgment debt, fees, costs and interest to the [claimant] [defendant].

You are also required to endorse on this Writ immediately after execution a statement of the manner in which you have executed it and send a copy to the [claimant] [defendant].

Dated

[SEAL]

**Notice to Judgment Debtor**

Notice of taking possession

You have failed to deliver up the goods described overleaf and the marshal is authorised to take possession of the goods and deliver them to the claimant. If the marshal is not able to take possession of the goods the marshal is authorised to levy the sum stated above being the value of the goods as assessed by the court.

Notice of levy

The Marshal has levied on your goods in order to

- (a) discharge the claim for the assessed value of the goods
- (b) discharge the judgment for [damages] and [costs].

This means that you must not dispose of them as the marshal may have to take them and sell them at a public auction.

Payment of the money judgment

If you are able to

- (a) deliver the goods described overleaf; or
- (b) pay the assessed value of the goods; and
- (c) pay the money judgment in full,

the Marshal will not need to remove your goods. You will have to pay the full amount plus interest and the costs of issuing this writ together with the marshal's fees. You will be given a receipt for any money that you pay.

---

**Revision Date: 31 Dec 2002**

If you do not want the marshal to remove your goods

You can ask the marshal not to do so but you must sign the walking possession agreement below.

If your goods are removed

- you will be given a list of the goods removed
- the goods will not be sold for at least [ ] days unless they are perishable
- you will be given [ ] days notice of the date and place of sale
- further fees may be charged and added to the debt
- these fees could include the cost of removing the goods and the fees charged by the auctioneer.

When the goods are sold

You will be given a written statement as to the sale and the distribution of the proceeds of sale.

If the sale is stopped

You will normally have to pay a fee and any expenses incurred in removing the goods or advertising the sale.

#### Walking Possession Agreement

(request not to remove goods)

Please do not take my goods listed here –

I agree that until payment is made or the writ withdrawn, I will:

- not remove or damage the goods or allow anyone to do so
- show this form to anyone who calls and tries to take these goods
- tell you immediately if anyone tries to do so; and
- allow you to re-enter the premises at any time (and as often as you want) to see the goods or to complete the enforcement of this writ.

Dated .....

Signed .....

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between [ ..... a.m.] and [ ... p.m.] ..... to ..... except public holidays.

**Form 20: Writ of Specific Delivery**

*[Part 46]*

(Heading as in Form 1)

**Request for Writ of Specific Delivery**

To the Court

[We] [I] \_\_\_\_\_ of \_\_\_\_\_  
(Tel \_\_\_\_\_ Fax) [Legal practitioners for the \_\_\_\_\_]  
[ \_\_\_\_\_ in person] apply for the issue of a Writ of Delivery  
against the judgment debtor to recover possession of the land and property known as  
(description of goods)

And also to recover

Damages	\$ .....
Costs	\$ .....
Total sum due	\$ .....
Less: Paid since judgment	\$ .....
Balance of judgment now due	\$ .....
Plus: fee on issue	\$ .....
Legal practitioner’s costs on issue	\$ .....
Amount for which writ to issue	\$ .....

[We] [I] certify that

- (a) the claimant is entitled to recover the goods which are the subject of the court’s order and that the court has given permission for the issue of a writ of specific delivery on (date);
- (b) the balance of judgment now due is as shown above.

Dated: .....

Signed:.....

[Legal practitioners for the] Claimant/Defendant

**Writ of Specific Delivery**

To: The Marshal

You are required to cause the goods \_\_\_\_\_ (description of goods)  
to be delivered to the claimant, A.B.



---

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You are also required to levy the sum of \$ \_\_\_\_\_ as stated above together with interest at the rate of \_\_\_\_\_ % per annum from the day of \_\_\_\_\_ 20 \_\_\_\_\_, until payment together with the Marshal's poundage fees, cost of levying and all other legal incidental expenses and to pay the amount levied in respect of the judgment debt, fees, costs and interest to the [claimant] [defendant].

You are also required to endorse on this Writ immediately after execution a statement of the manner in which you have executed it and send a copy to the [claimant] [defendant].

Dated \_\_\_\_\_ [SEAL]

### **Notice to Judgment Debtor**

#### Notice of taking possession

You have failed to deliver up the goods described overleaf and the marshal is authorised to take possession of the goods and deliver them to the claimant.

#### Notice of levy

The marshal has levied on your goods in order to discharge the judgment for [damages] and [costs].

This means that you must not dispose of them as the marshal may have to take them and sell them at a public auction.

#### Payment of the money judgment

If you are able to pay the money judgment in full, the marshal will not need to remove your goods. You will have to pay the full amount plus interest and the costs of issuing this writ together with the marshal's fees. You will be given a receipt for any money that you pay.

If you do not want the marshal to remove your goods (other than the goods which the court order you to deliver up to the claimant)

You can ask the marshal not to do so but you must sign the walking possession agreement below.

#### If your goods are removed

- you will be given a list of the goods removed
- the goods will not be sold for at least [ ] days unless they are perishable
- you will be given [ ] days notice of the date and place of sale
- further fees may be charged and added to the debt
- these fees could include the cost of removing the goods and the fees charged by the auctioneer.

#### When the goods are sold

You will be given a written statement as to the sale and the distribution of the proceeds of sale.

If the sale is stopped

You will normally have to pay a fee and any expenses incurred in removing the goods or advertising the sale.

Walking Possession Agreement

(request not to remove goods)

Please do not take my goods listed here –

I agree that until payment is made or the writ withdrawn, I will:

- not remove or damage the goods or allow anyone to do so
- show this form to anyone who calls and tries to take these goods
- tell you immediately if anyone tries to do so; and
- allow you to re-enter the premises at any time (and as often as you want) to see the goods or to complete the enforcement of this writ.

Dated .....

Signed.....

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between [..... a.m.] and [.... p.m.]..... to ..... except public holidays.

---

**Form 21: Judgment Summons**

*[Rule 52.2(1)]*

[Heading as Form 1]

**Judgment Summons**

To the defendant [if the summons is issued against only one or some of several defendants, name that defendant or those defendants]

On [date] the claimant obtained a judgment or order against you.

And as you have failed to pay as ordered, the claimant has requested this judgment summons be issued against you.

You are therefore summoned to appear [personally] in this court on ..... [date] at..... a.m. to be examined on oath as to the means you have had since the date of the judgment or order to comply with the terms of the judgment or order and also to give good reasons why you should not be committed to prison for failing to comply.

Amount for which judgment summons is to issue	\$ .....
Court fees on summons	\$ .....
Legal practitioner’s costs on summons	\$ .....

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Together with interest from	to date	\$ .....
(Daily rate thereafter=	\$ per day)	\$ .....
Total		\$ .....
Less payments made to date		\$ .....
Amount now due		\$ .....

AND TAKE NOTICE that if you fail to comply with the terms of this order, proceedings may be commenced against you for contempt of court and you may be liable to be imprisoned.

**Important Notes:**

1. It will not be necessary for you to attend the examination if you pay the amount now due to the claimant or the claimant's legal practitioner.
2. DO NOT bring or send payments to the court office. They will not be accepted.
3. You should allow at least 4 days for your payment to reach the claimant or the claimant's legal practitioner.
4. Keep records and ensure that you can account for all payments made. Proof may be required if there is disagreement.
5. If payment is made too late, you may be liable for further costs.

Dated

[SEAL]

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between [ ..... a.m.] and [ ... p.m.] ..... to ..... except public holidays.

**Form 22: Writ of Habeas Corpus**

---

[Rule 57.3(1)]

(Heading as in Form 10)

To: the Commissioner/Superintendent of Prisons:

You are required to produce to the High Court on the \_\_\_\_\_ day of at \_\_\_\_\_ a.m./p.m the body of \_\_\_\_\_ by whatsoever name that person is called, said to be detained in your custody, and be prepared to state the day and cause of that person's being taken and detained so that the court may then and there examine whether such cause is legal.

TAKE NOTICE that if you fail to produce the body of \_\_\_\_\_ before the court on the date and at the time stated above the court may commit you to prison for your contempt in not obeying the order.

**Revision Date: 31 Dec 2002**

Dated \_\_\_\_\_ (SEAL)

Issued by \_\_\_\_\_ of

Legal practitioners for the claimant

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between [..... a.m.] and [.... p.m.]..... to ..... except public holidays.

**Form 23: Notice of Appeal**

*[Rule 62.4(1)]*

The Eastern Caribbean Supreme Court

[State/Territory]

In the Court of Appeal

High Court/Magisterial

**Civil Appeal No.**

**Between**

**A.B.**

Appellant

and

**C.D.**

Respondent

**Notice of Appeal**

TAKE NOTICE that the appellant (being the [claimant] [defendant] in the court below) hereby appeals to the Court of Appeal against the decision of \_\_\_\_\_ ] contained in the order dated \_\_\_\_\_ [a copy of which is attached to this Notice].

- 1. Details of order appealed:
- 2. Details of –
  - (a) any finding of fact:
  - (b) any finding of law:

which are challenged.

- 3. Grounds of Appeal:
  - (a)
  - (b)
  - (c)

---

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4. Order sought:
5. Any specific power which the court is asked to exercise:
6. Details of the other parties to the proceedings in the court below:

Name Address for Service

Dated.....

Signed ..... [Legal practitioners for the] Appellant(s)

Date [SEAL]

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between [ ..... a.m.] and [ ... p.m.] ..... to ..... except public holidays.

Address for service of the Appellant(s) is:

---

**Form 24: Certificate of Result of Appeal**

[Rule 62.24]

(Heading as in Form 19)

**Certificate of Result of Appeal**

This appeal was heard on [date(s)] before..... in the presence of ..... for the Appellant(s) and..... for the Respondent(s).

I HEREBY CERTIFY that an Order was made as follows:

Dated [SEAL]

.....  
Chief Registrar

---

**Form 25: Admiralty Claim In Rem**

[Rule 70.4(1)]

**The Eastern Caribbean Supreme Court**

In the High Court of Justice

Claim No. of.

Admiralty

**Between**

**A.B.**

Claimant

and

**C.D.**

Defendant

**Claim Form In Rem**

Admiralty claim in rem against

[The ship "X" or other res]

The claimant, **A.B.** (full names), of (full address)

claims against

the defendant, **C.D.** (full names), of (full address)

Set out briefly the nature of the claim and state any specific sum that you are claiming

Amount claimed	\$ .....
Court fees	\$ .....
Legal practitioner's costs on issue	\$ .....
Together with interest from to date	\$ .....
(Daily rate thereafter =\$ per day)	\$ .....
Total Claim	\$ .....

**NOTICE TO THE DEFENDANTS being the owners of and other persons interested in the ship of the port of [or cargo or as may be]**

If you do not complete the form of acknowledgment of service served on you with this claim form and deliver or send it to xxx xxx xxx within 14/28 days of service of this claim form on you, the claimant will be entitled to apply to have judgment entered against you for the amount claimed. If the res described in this claim form is then under arrest of the court it may be sold by order of the court.

The form of acknowledgment of service may be completed by you or a solicitor acting for you.

You should consider obtaining legal advice with regard to this claim.

This claim form has no validity if it is not served within [12] months of the date below unless you are also served with an order that extends the time for service.

Dated [SEAL]

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between [..... a.m.] and [... p.m.]..... to ..... except public holidays.

Dated

The claimant's address for service is:



**Form 27: Warrant of Arrest (Admiralty)**

*[Rule 70.9(1)]*

(Heading as in Form 16)

**Request For Warrant Of Arrest**

We \_\_\_\_\_ of

[Legal practitioners for] the claimant request a warrant to arrest  
(description of property, giving name and port if a ship)

Dated .....

(Signed) .....

**Warrant Of Arrest**

To: the Marshal

You are required to arrest the ship \_\_\_\_\_ of the port of  
[and the cargo now or lately laden in her together with the freight due for the transportation  
of it,] or [and the freight due for the transportation of the cargo now or lately laden in her]  
and to keep the same under safe arrest until you receive further orders from the Court.

The claimant claims:

Date \_\_\_\_\_ [SEAL]

Taken out by \_\_\_\_\_ of \_\_\_\_\_ (Tel)  
(Fax \_\_\_\_\_ )

[Legal practitioners for] the claimant

[Marshal's endorsement as to service]



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Revision Date: 31 Dec 2002

**SCHEDULE 9 TO THE COURT ORDER**  
**STATE OF ST. CHRISTOPHER AND NEVIS.**  
**COURT OF APPEAL RULES**  
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**ADDENDUM**

Text of regulations 21, 28, 35 and 37 of the Federal Supreme Court Regulations, 1958;

**COURT OF APPEAL RULES****PART I – PRELIMINARY****1. Short title.**

(1) These Rules may be cited as the Court of Appeal Rules.

**2. Application.**

These Rules shall apply to the States as defined in Rule 3.

**Interpretation****3. Interpretation.**

(1) In these Rules, unless it is expressly provided to the contrary or the context otherwise requires,

“Act” means the Act, Ordinance or other enactment by which in any State jurisdiction is conferred upon the Court in respect of appeals from the High Court originating in that State, and until such enactment is passed by the Legislature of a State includes the Federal Supreme Court Regulations in so far as they are in force in that State;

“appellant” means the party appealing from a judgment, conviction, sentence or order and includes his or her legal representative;

“Central Registry” means the Central Registry of the Court situate in Grenada;

“Chief Justice” means the Chief Justice of the Supreme Court;

“Court” means the Court of Appeal;

“court below” means the court from which the appeal is brought;

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“Court Order” means the Supreme Court Order, 1967;

“Deputy Registrar” means any person appointed as such under the Courts Order in respect of the State in which an appeal is brought;

“Director of Public Prosecutions” means the Director of Public Prosecutions of the State in which the appeal is brought and, where the law of a State does not provide for the office of Director of Public Prosecutions, includes the Attorney-General of that State;

“file” means file in a Registry, and “filed” and “filing” have corresponding meanings;

“Government Gazette” means, in relation to a State, the *Gazette* published by the authority of the Government of the State and includes any supplement thereto and any *Gazette Extraordinary* so published;

“High Court” means the High Court established by section 4 of the Courts Order;

“Judge” includes the presiding officer of any court from which an appeal lies to the Court;

“legal representative” means any barrister, advocate, solicitor, attorney or legal practitioner admitted to practise as such in any of the States whether or not he or she has the right of audience in the Court;

“order” includes decree, judgment, sentence or decision of a court below or a Judge thereof;

“party” means any party to the appeal and includes his or her legal representative;

“Prison Authority” means the head or person in charge of Her Majesty’s Prisons in the State in which the appeal is brought and includes his or her deputy or other officer discharging his or her duties;

“proper officer of the court below” means the Registrar of the High Court in the State in which the appeal is brought;

“record” means the aggregate of papers relating to an appeal (including the pleadings, proceedings, evidence and judgments) and required by these Rules to be filed or laid before the Court on the hearing of the appeal;

“Registrar” means the Chief Registrar of the Supreme Court in his or her capacity of Registrar of the Court and includes a Deputy-Registrar or other officer for the time being discharging the duties of the Registrar or Deputy-Registrar;

“Regulations” means the Federal Supreme Court Regulations 1958;

“respondent”,

- (a) in a civil appeal, means any party (other than the appellant) directly affected by the appeal;
- (b) in a criminal appeal where the Crown is not an appellant, means the person who under the provisions of any law of the State in which an appeal is brought has the duty of appearing for the Crown or who undertakes the defence of the appeal;

“State” means any of the following with its dependencies (if any), that is to say,

Anguilla,  
Antigua,  
Dominica,  
Grenada,  
Saint Christopher and Nevis,  
Saint Lucia, and  
Saint Vincent;

“sub-Registry” means a Sub-Registry of the Court situate in a State;

“Supreme Court” means the Eastern Caribbean Supreme Court established by section 4 of the Courts Order.

(2) Where in these Rules reference is made to a regulation of the Federal Supreme Court Regulations and the Regulations are not in force in a State such reference shall be construed as a reference to the section of the Act which corresponds to the said regulation.

## PART II – APPEALS GENERALLY

### 4. **Forms in Appendices A and C to be used.**

The forms set out in Appendices A and C to these Rules, or forms as near thereto as circumstances permit, shall be used in all cases to which such forms are applicable.

### 5. **Times of sittings and vacation.**

(1) Sittings of the Court shall be held at such times between the second day of September and the twenty-second day of December and between the tenth day of January and the first day of August in each year as the Chief Justice may direct.

(2) The Court will be in vacation from the twenty-second day of December to the tenth day of January (both days inclusive) and from the first day of August to the second day of September (both days inclusive) and between the Wednesday before and the second Monday after Easter:



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Provided that

- (a) in urgent cases applications may be heard and determined during the vacations by the Court or a single Judge thereof;
- (b) the Chief Justice may direct any sitting of the Court to be held during the vacations for the purpose of hearing criminal and civil appeals.

(3) The Court will not sit on Sundays and will not sit in any State on days that are public holidays in that State, and on such other days as the Chief Justice may direct.

(4) The Central Registry of the Court shall be open on every day of the year except Sundays, Good Friday, Easter Eve, Monday and Tuesday in Easter week, Corpus Christi, Whit Monday, Christmas Day and the next following working day, and all other days appointed to be observed as public holidays in the State of Grenada, from the hours of 9 a.m. to 4 p.m. except Saturdays when the offices of the Registry will be closed at 12 noon.

(5) Each sub-Registry of the Court shall be open on every day of the year except such days on which the Registry of the High Court in the State in which such sub-Registry is situated is closed.

#### **6. Notice of sittings.**

(1) Notice of each sitting shall be published by the Registrar of the Court in the *Government Gazette* of the State in which each appeal arose at least one week before the date appointed for the commencement of the sitting.

(2) The Deputy-Registrar shall, on the publication of the said notice in the *Government Gazette*, post up on the notice board of the Court the cause list of the sitting:

Provided that the Court may, in its discretion, hear any appeal and deal with any other matter whether or not the same has been included in such cause list so published.

(3) This rule shall not apply to the hearing of any matter by a single Judge.

#### **7. Right of audience.**

(1) In all proceedings before the Court, the parties may appear in person or be represented on appeal by any person who is entitled to practise as a barrister in the State in which the appeal arose or is being heard.

(2) In all proceedings before the Registrar or the Registrar of the court below, and in all preliminary and interlocutory proceedings and applications except such as are heard before the Court, the parties thereto may be represented and appear by a barrister or by a solicitor entitled to practise in the State in which the proceeding arose or is being heard.

#### **8. Register of appeals brought.**

(1) The Registrar and the Deputy-Registrar in each State shall keep separate registers of all civil and criminal appeals brought before the Court including in the criminal appeal register notices of applications for leave to appeal.

- (2) Each register shall contain particulars of the date on which
- (a) the notice of appeal or of application for leave to appeal was lodged;
  - (b) any interlocutory order was made;
  - (c) the record of the appeal was received;
  - (d) the appeal was heard;
  - (e) judgment was delivered.

**9. Enlargement of time and departure from Rules.**

Subject to the provisions of regulation 28(2) of the Federal Supreme Court Regulations (relating to the time within which an appeal may be brought in a capital case), and to paragraph (3) of rule 14 of these Rules, the Court may enlarge or abridge the time appointed by these Rules, or fixed by an order enlarging time, for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require, and any such enlargement may be ordered, although the application for the same is not made until after the expiration of the time appointed or allowed, or the Court may direct a departure from these Rules in any other way where this is required in the interests of justice.

**10. Service of documents.**

(1) Subject to any provision contained in these Rules relating to the service of any particular document, service of the documents mentioned in the first column hereunder shall be executed by leaving a true copy thereof in the manner specified in the second column:

<b>Column 1</b>	<b>Column 2</b>
(a) all documents required to be served <ul style="list-style-type: none"> <li>(i) on parties to an action who have not filed an address for service; and</li> <li>(ii) on a person not a party to the appeal.</li> </ul>	by personal service on the party or his or her authorised agent, or on the person not a party.
(b) all documents required to be served on parties who have an address for service.	by leaving the document at the address for service with a person resident at or belonging to such place; or by registered post to such address, in which case, the time of service thereon shall be the time such document would be delivered in the ordinary course of post.

(2) If it be made to appear to a judge of the court below upon application supported by affidavit that prompt personal service of a document cannot be effected, he or she may make such order for substituted service by advertisement or otherwise as may be just.

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### **Waiver for non-compliance**

#### **11. Waiver for non-compliance with Rules.**

(1) Non-compliance on the part of an appellant in any criminal cause or matter with these Rules or with any rule of practice for the time being in force shall not prevent the further prosecution of his or her appeal if the Court considers that such non-compliance was not wilful, and that it is in the interests of justice that non-compliance be waived.

(2) The Court may, in such manner as it thinks right, direct the appellant to remedy such non-compliance, and thereupon the appeal shall proceed.

(3) The Registrar shall forthwith notify the appellant of any direction given by the Court under this rule where the appellant was not present at the time when such directions were given.

### **PART III – CIVIL APPEALS FROM THE HIGH COURT**

#### **Notices of appeal, cross-appeal and preliminary objection**

#### **12. Notice and grounds of appeal. Civil Form I.**

(1) All appeals shall be by way of re-hearing and shall be brought by notice (hereinafter called “the notice of appeal”), to be filed together with two copies thereof with the Deputy-Registrar in the State in which the appeal is brought, which shall set forth the grounds of appeal, state whether the whole or part only of the decision of the court below is complained of (in the latter case specifying such part), state also the nature of the relief sought and the names and addresses of all parties directly affected by the appeal, and be signed by the appellant or his or her legal representative.

(2) If the grounds of appeal allege mis-direction or error in law particulars of the mis-direction or error shall be clearly stated.

(3) The grounds of appeal shall set out concisely and under distinct heads the grounds upon which the appellant intends to rely at the hearing of the appeal without any argument or narrative and shall be numbered consecutively.

(4) No ground which is vague or general in terms or which discloses no reasonable ground of appeal shall be permitted, save the general ground that the judgment is against the weight of the evidence, and any ground of appeal or any part thereof which is not permitted under this rule may be struck out by the Court of its own motion or on application by the respondent.

(5) The appellant shall not, without the leave of the Court, urge or be heard in support of any ground of objection not mentioned in the notice of appeal, but the Court may, in its discretion, allow the appellant to amend the grounds of appeal upon payment of the fees prescribed for making such amendment and upon such terms as the Court may deem just.

(6) Notwithstanding the foregoing provisions, the Court in deciding the appeal shall not be confined to the grounds set forth by the appellant:

Provided that the Court shall not rest its decision on any ground not set forth by the appellant unless the respondent has had sufficient opportunity of contesting the case on that ground.

(7) The Deputy-Registrar shall send one copy of the notice of appeal to the Registrar and the other copy to the Registrar of the court below.

### **13. Appeal by leave only. Civil Form 2.**

(1) Where an appeal lies by leave only, any person desiring leave to appeal shall apply for leave within fourteen days either by notice of motion or by summons (whichever is appropriate) and such application shall be made to the Court or to the court below or to the Judge who made the Order, and the period of fourteen days shall run from the date of the decision against which leave to appeal is sought.

(2) If leave is granted, the appellant shall file a notice of appeal as provided by rule 12 of these Rules within fourteen days from the grant of leave and a copy of the order granting leave shall be annexed to the notice of appeal.

(3) Where an application has been refused by the court below, an application for a similar purpose may be made to the Court within seven days from the date of the refusal.

(4) If a respondent intends, upon the hearing of an application brought under this rule, to apply for leave to appeal in order to vary the decision of the court below, he or she shall within seven days of the service upon him or her of the summons or notice of motion (or within such time as may be prescribed by special order made on application) give written notice of such intention to any parties who may be affected by such contention, and in such notice shall clearly state the reasons on which he or she intends to rely, and within the same period he or she shall file a copy of such notice with the Deputy-Registrar.

(5) If, on the hearing of a motion or summons brought under this rule, the respondent is given leave to appeal in order to vary the decision of the court below, it shall not be necessary for him or her to comply with the provisions of rule 16 of these Rules.

(6) The provisions of paragraph (3) of rule 16 of these Rules shall apply to a notice given under paragraph (3) of this rule as it does to a notice under rule 16.

### **14. Time limits for appealing.**

(1) Subject to the provisions of this rule, no appeal shall be brought after the expiration of six weeks from the date of judgment delivered or order made, against which the appeal is brought, provided that, in the case of appeals

- (a) against an interlocutory order or judgment, the period shall be fourteen days, and where leave to appeal against such order or judgment is required, fourteen days from the grant of leave;

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- (b) against an order or judgment made in the matter of the winding up of a company, or in the matter of any bankruptcy, the period shall be twenty-one days.
- (2) An appeal shall be deemed to have been brought when the notice of appeal has been filed with the Deputy-Registrar in the State in which such appeal arose.
- (3) A Judge of the Court may, by order, extend the time prescribed in paragraph (1) of this rule within which an appeal may be brought, provided an application for this purpose is made within one month of the expiration of the time so prescribed.
- (4) In exceptional circumstances, the Court having power to hear and determine an appeal, may on application extend the time within which an appeal may be brought although the period delimited for an application to a Judge of the Court under this rule has expired.
- (5) Every application for enlargement of time when made to a Judge of the Court shall be made by summons, and when made to the Court shall be made by motion.
- (6) Every summons or notice of motion filed shall be supported by an affidavit setting forth good and substantial reasons for the application and by grounds of appeal which *prima facie* show good cause therefor.
- (7) Two copies of the summons and supporting affidavit and four copies of the notice of motion and supporting affidavit, in addition to the filed copies, shall be left with the Deputy-Registrar at the time of filing for transmission to the Registrar.
- (8) When time is so enlarged a copy of the order granting such enlargement shall be annexed to the notice of appeal.

**15. Service of notice of appeal.**

- (1) A true copy of the notice of appeal shall be served upon all parties directly affected by the appeal and it shall not be necessary to serve any party not so affected, but the Court may direct notice of appeal to be served on all or any parties to the action or other proceeding, or upon any person not a party and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may be just, and may give such judgment and make such order as might have been given or made if the persons served with such notice had been originally parties.
- (2) A true copy of the notice shall be served upon the respondent within seven days after the original notice has been filed.

**16. Notice by respondent of contention that judgment should be varied. Civil Form 4.**

- (1) If a respondent intends, upon the hearing of an appeal, to contend that the decision of the court below should be varied, he or she shall, within fourteen days after service of the notice of appeal, or within such time as may be prescribed by special order made on application, give written notice of such intention to any parties who may be affected by such contention, and in such notice shall clearly state the reason on which he or she intends to rely, and within the same period he or she shall file a copy of such notice with the Deputy-Registrar in the State in which the appeal is brought.

(2) A copy of such notice shall be included in the record but if the record has already been filed, the prescribed number of copies shall be prepared forthwith and left with the Deputy-Registrar in the State in which the appeal is brought by the appellant for transmission to the Judges and the Registrar.

(3) The omission to give notice shall not diminish the powers conferred upon the Court by the Act but may, in the discretion of the Court, be a ground for an adjournment of the appeal or for any special order as to costs.

**17. Amendment of notice of appeal and of respondent's notice.**

(1) A notice of appeal or respondent's notice may be amended

- (a) by or with the leave of the Court at any time;
- (b) without such leave, by supplementary notice served, before the date on which the appeal appears in the cause list published in accordance with rule 6 of these Rules upon each of the parties upon whom the notice of appeal or respondent's notice, as the case may be, was served.

(2) A party by whom a supplementary notice is served under this rule shall, within two days after service of the notice, furnish two copies of the notice to the Deputy-Registrar in the State in which the appeal is brought.

**18. Notice of preliminary objection to be filed. Civil Form 5.**

(1) A respondent intending to rely upon a preliminary objection to the hearing of the appeal shall give the appellant three clear days notice thereof before the hearing setting out the grounds of objection and shall file such notice together with four copies thereof with the Deputy-Registrar in the State in which the appeal is brought within the same time.

(2) If the respondent fails to comply with this rule, the Court may refuse to entertain the objection or may adjourn the hearing thereof at the cost of the respondent or may make such other order as it thinks fit.

**The Record**

**19. Settling record of appeal. Civil Form 6.**

(1) The Registrar shall, upon an appeal being brought, summon the parties before him or her to settle the documents (which expression shall include the order of the court below appealed from and any other matter which may form part of the record) to be included in the record and shall, whether any of the parties attend the appointment or not, settle and sign and in due course file a list of such documents.

(2) The Registrar, as well as the parties, shall endeavour to exclude from the record all documents (more particularly such as are merely formal) that are not relevant to the subject matter of the appeal and generally to reduce the bulk of the record as far as practicable, taking special care to avoid duplication of documents and unnecessary repetition of headings and other merely formal parts of documents, but the documents omitted to be copied shall be enumerated in a list at the end of the record.

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(3) If the Registrar or any party objects to the inclusion of a document on the ground that it is unnecessary or irrelevant and the other party nevertheless insists upon its being included, the document shall be included and the record shall, with a view to the subsequent adjustment of the costs of and incidental to the inclusion of such document, indicate in the index of papers or otherwise the fact that and the party by whom, the inclusion of the document was objected to.

**20. Evidence.**

When any question of fact is involved in an appeal, the evidence taken in the court below bearing on such question shall, subject to any special order of the Court, be brought before the Court as follows:

- (a) as to any evidence taken by affidavit, by the production of office copies of such affidavit;
- (b) as to evidence taken orally, by the production of a copy of the Judge's notes certified by the Registrar of the court below, or a transcript of the evidence taken by a shorthand writer and certified by him or her, or such other materials as the Court may deem expedient.

**21. Copies of proceedings in court below.**

(1) Where any notes of proceedings whether in shorthand or long hand have been taken by a person employed by any court or taken by the Judge of the court below, copies of such parts of these notes as are required for the record of appeal shall be supplied by the Registrar of the court below on payment of the fees prescribed in Appendix B.

(2) If no written decision is given by the Judge at the time of giving judgment such Judge shall communicate his or her reasons for the judgment in writing to the Registrar of the court below and such reasons shall be included in the record.

(3) On hearing of an appeal, the Court shall have power, if the notes of the Judge of the court below or a transcript of the evidence are not produced, or if there are no such notes or transcript, to hear and determine such appeal upon any other evidence or statement of what occurred before such Judge which the Court may deem sufficient.

**22. Printing or typing of record.**

(1) Every document or paper required by these Rules to be filed or left with the Registrar or the Registrar of the court below shall be legibly printed, cyclostyled or typewritten with black ink (excluding carbon copies) upon strong white foolscap paper of good quality with an inner margin of not less than two inches and an outer margin of about half-an-inch, and a space of not less than three eighths of an inch shall be left between every two lines.

(2) There shall be an index to the record and every page thereof shall be numbered consecutively, and every tenth line on a page shall be numbered in the margin, and correspondence and exhibits shall be arranged together at the end of the record.

(3) The Registrar or the Registrar of the court below may refuse to file or receive any document not strictly conforming to the requirements of paragraph (1) of this rule and the Court may disallow the costs of any such document which has been so filed or received.

**23. Copy of list of exhibits.**

(1) Any party may apply for and, on payment of the prescribed fee, obtain an office copy of the exhibits for the purpose of an appeal to the Court or otherwise.

(2) All original documents tendered in evidence to the court below at the trial shall remain in the custody of the court below until the record of appeal has been prepared, and shall then be forwarded with the record to the Deputy-Registrar in the State in which the appeal is to be heard and shall remain in the custody of the Court until the determination of the appeal:

Provided that the Deputy-Registrar shall permit a party for the purposes of preparing his or her record to take copies of all such documents and that the Court or Registrar may allow the return of any document to any party pending the hearing of the appeal and subject to such conditions as it or he or she may impose.

**24. Entering appeal.**

(1) The appellant shall, within six weeks from the date when the appeal is brought or within such extended time as may be granted by the Court or by a Judge thereof, or by a Judge of the court below under rule 28 of these Rules

- (a) file with the Deputy-Registrar
  - (i) the record;
  - (ii) an affidavit of service of the notice of appeal; and
- (b) leave four copies of the record for the use of the Judges and the Registrar of the Court.

(2) The Deputy-Registrar shall forthwith

- (a) send the four copies of the record to the Registrar for the use of the Judges of the Court and the Registrar;
- (b) send to the Registrar four copies of any notice or other document received by him or her after transmitting the record.

(3) The Registrar, upon receiving the record, shall set down the appeal for hearing by entering the same on the proper list of appeals and shall thereupon give notice in Form 8 in Appendix A to the appellant and to all parties upon whom the notice of appeal was served.

(4) The Registrar may require the appellant to pay the costs of transmitting to the Central Registry of the Court by surface mail or by air mail, the record and any document in the appeal received by him or her before or after the transmission thereof, and such costs shall be deemed part of the costs in the appeal.

**Withdrawal and non-compliance****25. Withdrawal of appeal. Civil Form 9.**

(1) If the appellant files with the Deputy Registrar a notice that he or she desires to withdraw his or her appeal, together with two copies thereof, the appeal shall stand dismissed with costs on the date on which such notice is filed.



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(2) The appellant at the same time shall serve copies of the notice of withdrawal on all or any of the parties with regard to whom the appellant wishes to withdraw his or her appeal, and any party so served shall be precluded from laying claim to any costs incurred by him or her after such service unless the Court shall otherwise order.

(3) The Deputy-Registrar shall send one copy of the notice of withdrawal to the Registrar and the other copy to the Registrar of the court below.

**26. Default in filing record and documents.**

(1) It shall be the duty of the Registrar to see that an appellant complies with the provisions of rule 24 of these Rules, and before the conclusion of each sitting he or she shall report to the Court any failure on the part of an appellant so to comply and the Court of its own motion may make any such order as it might make upon an application by the respondent under paragraph (2) of this rule.

(2) If the appellant has failed to comply with the requirements of paragraph (1) of rule 24 of these Rules or any part thereof the respondent may apply to the Court to dismiss the appeal for want of prosecution and the Court, if satisfied that the appellant has so failed, may dismiss the appeal or make such other order as the justice of the case may require.

(3) An appellant whose appeal has been dismissed under this rule may apply by notice of motion that his or her appeal be restored and the Court may in its discretion for good and sufficient cause order that such appeal be restored upon such terms as it may think fit.

### **Applications**

**27. Applications to single Judge.**

(1) In any cause or matter pending before the Court, a single Judge of the Court may, upon application, make orders for

- (a) giving security for costs to be occasioned by any appeals;
- (b) leave to appeal *in forma pauperis*;
- (c) a stay of execution on any judgment appealed from pending the determination of such appeal;
- (d) an injunction restraining the defendant in the action from disposing or parting with the possession of the subject matter of the appeal pending the determination thereof;
- (e) extension of time;

and may hear, determine and make orders on any other interlocutory application.

(2) Every order made by a single Judge of the Court in pursuance of this rule may be discharged or varied by any Judges of the Court having power to hear and determine the appeal.

**28. Applications to Judge of court below.**

(1) Applications referred to in the preceding rule shall ordinarily be made to a Judge of the Court, but, where this may cause undue inconvenience or delay, a Judge of the court below may exercise the powers of a single Judge of the Court under that rule.

(2) The Deputy-Registrar or the Registrar of the Court below shall send to the Registrar one copy of any application heard by a Judge of the court below and of the order made thereon.

(3) Every order made by a Judge of the court below in pursuance of this rule may be discharged or varied by the Court.

**29. Mode of application.**

(1) An application for leave to appeal *in forma pauperis* may be made *ex parte* by affidavit containing the grounds of the application, the matters referred to in paragraph (1)(a) of rule 32, and the order asked for.

(2) Any other application under these Rules shall be made by way of summons or motion on notice, and such application shall be supported by affidavit, a copy of which shall be served with the summons or notice of motion.

(3) Where an application is made *ex parte* under paragraph (1) of this rule, an order may be made requiring any party affected to be served with notice of the application.

(4) Where an application under these Rules is made by summons, an order may be made adjourning the hearing into open court.

(5) Where an application made by summons is heard by the Court, it shall be treated as if it were a motion, and it shall be heard in open court.

**30. Appeal no stay except by order.**

(1) An appeal shall not operate as a stay of execution or of proceedings under the judgment appealed from, except so far as the court below or the Court may order, and no intermediate act or proceedings shall be invalidated, except so far as the Court may direct.

(2) On an appeal, interest for such time as execution has been delayed by the appeal shall be allowed unless the Court otherwise orders, and the Registrar may compute such interest without any order for that purpose.

**31. Application for security for costs.**

(1) Before an application for security for costs is made, a written demand shall be made by the respondent and if the demand is refused or if an offer of security be made by the appellant and not accepted by the respondent, the Court or the court below shall, in dealing with the costs of the application, consider which of the parties has made the application necessary.

(2) An application for security for costs may be made at any time after the appeal has been brought and must be made promptly thereafter.

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(3) An order for security for costs shall direct that in default of the security being given within the time limited therein, or any extension thereof, the appeal shall stand dismissed with costs.

(4) A bond with sureties for securing the costs of an appeal shall be in Civil Form 10.

**32. Application for leave to appeal in forma pauperis.**

(1) An application for leave to appeal *in forma pauperis* shall be accompanied by

- (a) an affidavit stating
  - (i) that the appellant is not worth \$120 excepting his or her wearing apparel and tools of trade and his or her interest in the subject matter of the intended appeal;
  - (ii) that his or her usual income from all sources does not exceed \$10.00 a week;
- (b) a certificate of counsel that the appellant has reasonable grounds of appeal.

(2) Where an appellant obtains leave to appeal *in forma pauperis* he or she shall not be required to lodge security for the costs of the respondent or to pay any registry fees or any fees for copies of the Judge's notes of evidence or the documents required for compiling the record.

### Hearing and Judgments

**33. Dismissal of appeal in default of appearance.**

If the appellant fails to appear when his or her appeal is called on for hearing the appeal may be struck out or dismissed with or without costs.

**34. Application to re-enter appeal dismissed under rule 33.**

When an appeal has been struck out owing to the non-appearance of the appellant the Court may, on application by the appellant by notice to the Court, if it thinks fit, and on such terms as to costs or otherwise as it may deem just, direct the appeal to be re-entered for hearing:

Provided that no application under this rule shall be made after the expiration of twenty-one days from the date of the judgment or order sought to be set aside.

**35. Non-appearance of respondent.**

If the respondent fails to appear when the appeal is called on for hearing the Court may proceed to hear the appeal *ex parte*.

**36. Application to set aside *ex parte* judgment.**

(1) Where an appeal has been heard *ex parte* under rule 35 of these Rules and any judgment has been given therein adverse to the respondent he or she may apply by motion to the Court to set aside such judgment and re-hear the appeal and the Court may, if it thinks fit and on such terms as to costs or otherwise as it may deem just, direct the appeal to be re-entered for hearing.

(2) No application to set aside any judgment or order and re-hear the appeal under this rule shall be made after the expiration of twenty-one days from the date of the judgment or order sought to be set aside.

(3) Any such application shall be by motion accompanied by an affidavit setting forth the reasons and grounds for the application and the Court may thereupon, in its discretion, set aside the judgment or order and order that the appeal be re-heard at such time and upon such conditions as to costs or otherwise as it may think fit.

**37. Execution of judgment by court below. Civil Form 11.**

A certificate under the seal of the Court and the hand of the Registrar setting forth the judgment of the Court shall be transmitted to the Registrar of the High Court who shall file the same in the Registry of that Court and the judgment shall be enforced by the High Court.

**Fees and Costs****38. Court Fees.**

(1) Save as hereinafter provided, the fees prescribed in Appendix B shall be charged in respect of the matters to which they are respectively assigned, and shall be paid in stamps.

(2) Where an appeal is brought by or against a State or any person who sued or was sued on behalf of a State, no fees shall be payable by such State or person under Part I of Appendix B:

Provided that a judgment in favour of such State or person whether as appellant or respondent for costs to be paid by any other party to the appeal shall, unless the Court otherwise orders, include the amount of any fees which would have been payable if the appeal had been brought by or against a private person.

**39. Legal practitioner's fees.**

(1) Subject to the provisions of this rule, a Taxing Officer when taxing the fees for professional legal services shall

- (a) unless the Court when awarding costs orders otherwise, allow all such costs, charges and expenses as shall appear to him or her to have been necessary or proper for the attainment of justice or for defending the rights of any party, but save as against the party who incurred the same, no costs shall be allowed which appear to the Taxing Officer to have been incurred or increased through over-caution, negligence or

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mistake, or by payment of special fees to counsel or special charges or expenses to witnesses or other persons, or by other unusual expenses;

(b) adhere to the Schedule of Allowances in Part II of Appendix B.

(2) In taxing party and party costs, the Taxing Officer shall also, unless the Court when awarding costs orders otherwise, allow

(a) the reasonable fees consequent upon the engagement of counsel:

Provided that he or she may disallow the fee of more than one counsel in unopposed matters and in matters in which counsel has not appeared on the other side;

(b) in any matter which does not conclude upon the first day, reasonable refreshers for each day subsequent to the first;

(c) junior counsel's fee on the basis of two-thirds of the fee allowed to leading counsel (excluding travelling expenses and any special fee allowed to leading counsel) where fees to leading and junior counsel are allowed.

(3) The Taxing Officer may, in exceptional cases and for good and sufficient reason, depart from any of the provisions of the Schedule of Allowances contained in Part II of Appendix B and, in particular, in the taxation of solicitor and client bills of costs, where strict adherence to such provisions would be inequitable.

#### 40. **Fees of interpreters, commissioners etc.**

The fees and allowances to be charged and allowed for interpreters, witnesses, special commissioners, assessors and examiners shall be those from time to time in force in the High Court in the State in which the appeal arises.

#### 41. **Taxation of costs.**

(1) Where the costs of an appeal are allowed they may either be fixed by the Court at the time when the judgment is given or may be ordered to be taxed.

(2) The Registrar or in his or her absence the Deputy-Registrar shall be the Taxing Officer.

(3) Three days notice of taxing costs, together with a copy of the bill of costs, shall be given by the solicitor of the party whose costs are to be taxed to the other party or his or her solicitor in all cases where a notice to tax is necessary.

(4) Any party who may be dissatisfied with the allowance or disallowance by the Taxing Officer, in any bill of costs taxed by him or her, of the whole or any part of any items, may, at any time before the certificate or allocatur is signed, or such earlier time as may in any case be fixed by the Taxing Officer, deliver to the other party interested therein, and carry in before the Taxing Officer, an objection in writing to such allowance or disallowance, specifying therein by a list, in a short and concise form the items or parts thereof objected to, and the grounds and reasons for such objections and may thereupon apply to the Taxing Officer to review the taxation in respect of the same.

(5) The Taxing Officer may, if he or she shall think fit, issue, pending the consideration of such objections, a certificate of taxation or allocatur for or on account of the remainder of the bill of costs and such further certificate or allocatur as may be necessary shall be issued by the Taxing Officer after his or her decision upon such objections.

(6) Upon such application, the Taxing Officer shall reconsider and review his or her taxation upon such objections, and he or she may, if he or she shall think fit, receive further evidence in respect thereof, and, if so required by either party, he or she shall state either in his or her certificate of taxation or allocatur, or by reference to such objection, the grounds and reasons of his or her decision thereon, and any special facts or circumstances relating thereto, and the Taxing Officer may tax the costs of such objections and add them to or deduct them from any sum payable by or to any party to the taxation.

(7) Any person aggrieved by any order, decision or ruling of the Taxing Officer may apply to the Court to set aside such order, decision or ruling and to make such further order as it may think fit.

(8) Any application to the Court under the foregoing paragraph shall be by motion accompanied by an affidavit in support and notice of such motion shall be served upon the Taxing Officer and upon all parties having interest therein.

#### PART IV – APPEALS AGAINST CONVICTION ON INDICTMENT

##### **Institution of Appeals**

#### **42. Obligation on appellant to fill up forms of appeal notices and answer questions thereon. Criminal Forms 1 and 2.**

(1) A person desiring to appeal to the Court against conviction or sentence shall commence his or her appeal by sending to the Registrar a notice of appeal or notice of application for leave to appeal or notice of application for extension of time within which such notice shall be given, as the case may be, in the form of such notices set forth in Forms 1 or 2 in Appendix C, and, in the notice or notices so sent, shall answer the questions and comply with the requirements set forth thereon, subject to the provisions of rule 11 of these Rules.

(2) The answers to the questions which an appellant is by this rule required to make in support of his or her request to be present at the hearing of his or her appeal shall be deemed to be applications to the Court in such matter.

#### **43. Judge's certificate under regulation 21(b). Criminal Form 3.**

(1) The certificate of the Judge of the court below under regulation 21(b) of the Regulations may be in Form 3 in Appendix C.

(2) The Judge of the court below may, in any case in which he or she considers it desirable so to do, inform the person convicted before or sentenced by him or her that the case is in his or her opinion one fit for an appeal to the Court under regulation 21(b) of the Regulations and may give to such person a certificate to that effect in the Form 3 in Appendix C.

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**44. Notices to be signed by appellant.**

(1) Every notice of appeal or notice of application for leave to appeal or notice of application for extension of time within which such notice shall be given shall be signed by the appellant himself or herself, except under the provisions of paragraphs (5) and (6) of this rule.

(2) Any other notice required or authorised to be given by the Act or these Rules shall be in writing and signed by the person giving the same or by his or her legal representative, and all notices required or authorised to be given shall be addressed to the Registrar of the Court.

(3) Where an appellant or applicant is a prisoner in prison it shall be sufficient service to deliver the document at the prison to the officer in charge or person appearing to be the officer in charge thereof, who shall cause the same to be served on such prisoner.

(4) Where an appellant or any other person authorised or required to give or send any notice of appeal or notice of any application is unable to write, he or she may affix his or her mark thereto in the presence of a witness who shall attest the same, and thereupon, such notice shall be deemed to be duly signed by such appellant.

(5) Where, on the trial of a person entitled to appeal, it has been contended that he or she was not responsible according to law for his or her actions on the ground that he or she was insane at the time the act was done or the omission made by him or her, any notice required to be given and signed by the appellant himself or herself may be given and signed by his or her legal representative.

(6) In the case of a body corporate, where any notice or other document is required to be signed by the appellant himself or herself, it shall be sufficient compliance therewith if such notice or other document is signed by the secretary, clerk, manager or legal representative of such body corporate.

**45. Time for appealing against conviction or sentence to run from sentence.**

The time within which a person convicted shall give notice of appeal or notice of his or her application for leave to appeal to the Court against his or her conviction or his or her sentence, shall commence to run from the day on which the court of trial shall have passed sentence or pronounced final judgment upon him or her.

**46. Notice of application for extension of time for appealing. Criminal Form 2.**

(1) An application to the Court for an extension of time within which notices may be given, shall be in Form 2 in Appendix C.

(2) Every person making an application for such extension of time, shall send to the Registrar together with the proper form of such application, a form, duly filled up of notice of appeal, or of notice of application for leave to appeal, appropriate to the ground or grounds upon which he or she desires to question his or her conviction or sentence, as the case may be.

**Copies of Proceedings, etc.****47. Forwarding of proceedings in court below to Registrar.**

(1) The Registrar when he or she has received a notice of appeal or a notice of application for leave to appeal, or a notice of application for extension of time within which under the Act such notice shall be given, or when the Governor or Administrator (as the case may be) shall exercise his or her powers under the Act to refer a case to the Court of Appeal, shall require the Registrar of the court below to furnish him or her with four copies of the proceedings in the court below and if any record has been made of the summing up or direction of the Judge of the court below, four copies thereof or if no such record has been made, a statement giving to the best of such Judge's recollection the substance of the summing up or direction.

(2) The Registrar of the court below shall also forward the original exhibits in the case as far as practicable and any original depositions, information, inquisition, plea, or other documents usually kept by him or her, or forming part of the record of the court below.

(3) One copy of the proceedings and one copy of the summing up shall be sent by the Registrar of the court below to the Director of Public Prosecutions at the same time he or she complies with paragraph (1) of this rule.

(4) For the purposes of this rule, copies of proceedings shall contain

- (a) the indictment or inquisition and the plea;
- (b) the verdict, any evidence given thereafter, and the sentence;
- (c) notes of any particular part of the evidence or cross-examination relied on as a ground of appeal; and
- (d) such other notes of evidence as the Registrar may direct to be included in the copies of proceedings:

Provided

- (i) in capital cases, copies of the notes of all the evidence shall be supplied; and
- (ii) upon application by either party to an appeal, a single Judge of the Court or the Court itself may direct that copies of any particular part, or the whole, of the evidence be supplied to the Court and to the Director of Public Prosecutions.

**48. Records of summing-up.**

(1) Where under any law in force or by direction of the Judge of the court below, notes in long hand or shorthand or typewritten or by any other means have been taken of the summing up or direction of the Judge and of such parts of the proceedings as the Judge of the court below may consider expedient, such record shall be accepted by the Court as accurate unless the Court has reason to doubt its accuracy.



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(2) Where no record exists of the summing up or direction given by the Judge of the court below, his or her statement giving his or her recollection of the summing up or direction shall be accepted as accurate unless the Court sees reason to the contrary.

(3) The shorthand writer shall sign the shorthand notes taken by him or her of any trial or proceedings, or of any part of such trial or proceedings, and certify the same to be a complete and correct shorthand note thereof, and such shorthand note shall be kept in such custody as the Registrar of the court below shall, either specially or generally, direct.

(4) The shorthand writer shall, on being directed by the Registrar of the court below, furnish to him or her for the use of the Court a transcript of the whole, or of any part, of the shorthand note taken by him or her of any trial or proceedings in reference to which an appellant has appealed under the Act.

(5) A transcript of the whole or any part of the shorthand note relating to the case of any appellant which may be required for the use of the Court shall be typewritten and verified by the person making the same by a statutory declaration in the Form 4 in Appendix C to these Rules that the same is a correct and complete transcript of the whole, or of such part, as the case may be, of the shorthand note purporting to have been taken, signed and certified by the shorthand writer who took the same.

(6) Where no notes in long hand or in shorthand have been taken by direction of the Judge of the court below of any other parts of the proceedings required for the purpose of an appeal, the Judge of the court below shall furnish to the Registrar of the court below his or her notes of the trial or such part thereof as may be required for such purpose.

(7) On the application of a party interested in a trial or other proceedings in relation to which a person may appeal under the Act, the Registrar of the court below shall direct the shorthand writer to furnish to such party, and to no other person, a transcript of the whole, or of any part of the shorthand notes of any such trial or other proceedings, on payment to the proper officer of the court below of such fees as may be prescribed by rules of court in the State in which the trial or other proceedings have taken place for copies of proceedings required on appeal in any criminal cause or matter.

(8) A party interested in an appeal under the Act may obtain from the Registrar of the court below a copy of the transcript of the whole or of any part of such shorthand note as relates to the appeal on payment to the proper officer of the court below of such fees as may be prescribed by rules of court in the State in which the appeal is brought for copies of proceedings required on appeal in any criminal cause or matter.

(9) For the purposes of this rule, "a party interested" shall mean the prosecutor or the person convicted, or any other person named in, or immediately affected by, any order made by the Judge of the court below, or other person authorised to act on behalf of a party interested, as herein defined, but shall not include the Director of Public Prosecutions, to whom a copy of such transcript shall be furnished free of charge.

(10) A transcript of the shorthand notes taken of the proceedings at the trial (or a copy of the Judge's notes of the trial) of any appellant shall not be supplied free of charge except by an order of the Court or a Judge thereof, upon an application made by an appellant or by his or her counsel or solicitor assigned to him or her under the Act.

### **Judge's Report**

#### **49. Report of Judge of court below.**

(1) The Registrar shall, if in relation to any appeal the Court directs him or her so to do, request the Judge of the court below to furnish him or her with a report in writing, giving his or her opinion upon the case generally or upon any point arising upon the case of the appellant, and such Judge shall furnish the same to the Registrar.

(2) The report of the Judge shall be made to the Court, and, the Registrar shall, on request, furnish a copy thereof to the appellant and to the respondent.

#### **50. Furnishing Judge of court below with materials for report.**

When the Registrar requests the Judge of the court below to furnish a report under these Rules, he or she shall send to such Judge a copy of the notice of appeal or notice of application for leave to appeal or any other document or information which he or she shall consider material, or which the Court at any time shall direct him or her to send or with which such Judge may request to be furnished by the Registrar, to enable such Judge to deal in his or her report with the appellant's case generally or with any point arising thereon.

### **Copies of documents for use of Appellant or Respondent**

#### **51. How appellant or respondent may obtain from Registrar of court below copies of documents or exhibits.**

(1) At any time after notice of appeal or notice of application for leave to appeal has been given under the Act or these Rules, an appellant or respondent, or the solicitor or other person representing either of them, may obtain from the Registrar of the court below copies of any documents (other than notes of proceedings) or exhibits in his or her possession under the Act or these Rules for the purposes of such appeals.

(2) Such copies shall be supplied by the Registrar on payment to the proper officer of the court below of such fee as may be prescribed by rules of court in the State in which the appeal is brought for copies of proceedings required on appeal in any criminal cause or matter.

(3) Where solicitor and counsel, or counsel only, are assigned to an appellant under the Act, copies of any such documents or exhibits which they or he or she may request the Registrar to supply shall, without charge, be supplied unless the Registrar thinks that they are not necessary for the purpose of the appeal.

(4) Where an appellant who is not legally represented requires from the Registrar a copy of any such document or exhibit in his or her custody for the purposes of his or her appeal, he or she may obtain it, free of charge, if the Registrar thinks, under all the circumstances, it is desirable or necessary to supply the same to him or her.

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### **Conduct of Prosecution and Defence**

**52. Registrar to notify Director of Public Prosecutions or Prosecutor, if a private person, of receipt of notice of appeal.**

(1) When the Registrar has received a notice of appeal or where leave to appeal is granted to any appellant, he or she shall

- (a) notify the Director of Public Prosecutions; or
- (b) if the prosecutor is a private person, inquire if he or she intends to defend the appeal and, if the answer is in the negative, so inform the Director of Public Prosecutions.

(2) It shall be the duty of a prosecutor, who declines to defend an appeal, and of his or her counsel or solicitor, to furnish to the Registrar and the Director of Public Prosecutions, or either of them, any information, documents, matters and things in his or her possession or under his or her control connected with the proceedings against the appellant, which the Registrar or Director of Public Prosecutions may require for the purposes of their duties under the Act.

### **Legal Aid to Appellants**

**53. Lists of counsel and solicitors for purposes of the Act.**

(1) The Registrar shall cause to be prepared in such form as he or she thinks most convenient for each State a separate list of counsel who are willing to act as counsel for appellants if and when nominated under the Act.

(2) The Registrar shall also cause to be prepared in such form as he or she thinks most convenient a list of solicitors who are willing to act as solicitors on behalf of appellants if and when nominated so to do under the Act.

(3) When legal aid is assigned to an appellant, the Court may give such directions as to the stage of the appeal at which such legal aid shall commence and whether counsel only, or counsel and solicitor, shall be assigned or otherwise as it may think right.

(4) The Registrar shall thereupon, subject to any special order of the Court, select from such lists or otherwise a counsel and a solicitor or a counsel only for the purpose of affording legal aid to an appellant under the directions of the Court, having regard in so doing to the place at which the appellant was tried and the counsel and solicitor, if any, who represented the appellant at his or her trial and the nature of the appeal.

### **Proceedings before a single Judge**

**54. Procedure on decision of application to single Judge. Criminal Forms 5 and 6.**

(1) Where any application has been dealt with by a single Judge, the Registrar shall notify to the appellant the decision in Form 5 in Appendix C.

(2) In the event of such Judge refusing all or any of such applications the Registrar on notifying such refusal to the appellant shall forward to him or her Form 6 in Appendix C.

(3) If the appellant does not desire to have the said application or applications determined by the Court as duly constituted for the hearing of appeals under the Act or does not return within five days to the Registrar Form 6 duly filled up by him or her the refusal of his or her application or applications by such Judge shall be final.

(4) If the appellant desires that his or her said application or applications shall be determined by the Court duly constituted as aforesaid and is not legally represented he or she may, if the Court gives him or her leave, be present at the hearing and determination by the Court of his or her said application or applications, provided that an appellant who is legally represented shall not be entitled to be present without special leave of the Court.

(5) When an appellant duly fills up Form 6 and returns it within the prescribed time to the Registrar expressing a desire to be present at the hearing and determination by the Court of the applications mentioned in this rule, such form shall be deemed to be an application by the appellant for leave to be so present.

(6) The Registrar, on receiving the form, shall take the necessary steps for placing the application before the Court.

(7) If the application to be present is refused by the Court, the Registrar shall notify the appellant, and if the application is granted, the Registrar shall notify the appellant and the officer in charge of the prison wherein the appellant is in custody, as provided by these Rules.

(8) For the purpose of constituting a Court, the Judge who has refused any such application may sit as a member of such Court, and take part in determining such application.

(9) Except where otherwise provided in these Rules, any application to the Court may be made by the appellant or respondent, or by counsel on their behalf, orally or in writing, but in regard to such applications, if the appellant is unrepresented and is in custody and is not entitled or has not obtained leave to be present before the Court, he or she shall make any such application by forwarding the same in writing to the Registrar who shall take the proper steps to obtain the decision of the Court thereon.

(10) Save as is otherwise provided in subparagraph (b) of this paragraph, the parties to the following matters may be represented and appear by a solicitor alone;

- (a) in all proceedings before a Judge of the Court in the exercise of his or her jurisdiction
  - (i) to give leave to appeal,
  - (ii) to extend the time within which notice of appeal or of an application for leave to appeal may be given,
  - (iii) to assign legal aid to an appellant,
  - (iv) to allow the appellant to be present at any proceedings where he or she is not entitled to be present without leave, or
  - (v) to admit an appellant to bail;

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- (b) in all preliminary and interlocutory proceedings and applications except such as are heard before the Court.

**55. Notice of application for leave to appeal deemed to be notice of appeal if application granted.**

Where the Court has, on a notice of application for leave to appeal duly served and in Form 1 in Appendix C, given an appellant leave to appeal, it shall not be necessary for such appellant to give any notice of appeal but the notice of application for leave to appeal shall in such case be deemed to be a notice of appeal.

**Suspension of Orders and Admission to Bail**

**56. When fine imposed on conviction to be retained pending appeal.**

(1) Where a person has, on his or her conviction, been sentenced to payment of a fine, and in default of payment to imprisonment, the person lawfully authorised to receive such fine shall, on receiving the same, retain it until the determination of any appeal in relation thereto.

(2) If such person remains in custody in default of payment of the fine, he or she shall be deemed, for all purposes of the Act or these Rules, to be a person sentenced to imprisonment.

(3) Where any person has been convicted and is thereupon sentenced to the payment of a fine, and, in default of such payment, to imprisonment, and he or she intimates to the Judge of the court below that he or she is desirous of appealing to the Court against his or her conviction, such Judge may, if he or she thinks right so to do, order such person forthwith to enter into recognizances in such amount, and with or without sureties in such amount, as such Judge may think right, to prosecute his or her appeal, and, subject thereto, may order that payment of the fine shall be made at the final determination of his or her appeal, if the same be dismissed, to the Registrar of the court below, or as the Court may then order.

(4) The recognizances under this rule shall be in Forms 7 and 8 in Appendix C.

(5) The Registrar of the court below shall forward the recognizances of the appellant and his or her surety or sureties to the Registrar of the Court.

(6) If an appellant to whom paragraphs (3), (4) and (5) of this rule applies does not serve in accordance with these Rules a notice of appeal or of abandonment of his or her appeal within fourteen days from the date of his or her conviction or sentence, the Registrar of the court below shall report such omission to the Court, who may, after notice in Forms 9 and 10 in Appendix C has been given to the appellant and his or her sureties, if any, order an estreat of the recognizances of the appellant and his or her sureties, and the manner of such estreat shall be that provided for estreating recognizances under the law of the State in which the appeal is brought, and may issue a warrant for the apprehension of the appellant and may commit him or her to prison in default of payment of his or her fine, or may make such other order as it may think right.

(7) An appellant who has been sentenced to the payment of a fine, and has paid the same or part thereof in accordance with such sentence, shall, in the event of his or her appeal being successful, be entitled, subject to any order of the Court, to the return of the sum or any part thereof so paid by him or her.

**57. Temporary suspension of orders made on conviction as to money, awards, costs, etc.**

(1) Where, on the conviction of a person, the Judge of the court below makes an order condemning such person to the payment of the whole or of any part of the costs and expenses of the prosecution for the offence of which he or she shall be convicted out of any moneys taken from such person on his or her apprehension or otherwise, or where such Judge lawfully makes on the conviction of any person before him or her any order for the payment of money by such convicted person or by any other person or any order affecting the rights of property of such convicted person, the operation of such orders shall in any of such cases be suspended until the expiration of fourteen days after the day on which any of such orders were made.

(2) In cases where notice of appeal or notice of application for leave to appeal is given within fourteen days from and after the date of the pronouncement of sentence against such person such orders shall be further suspended until the determination of the appeal against the conviction in relation to which they were made.

(3) The Court may, by order, annul any order to which this rule refers on the determination of any appeal or may vary such order, and such order, if annulled, shall not take effect, and, if varied, shall take effect as so varied.

(4) The proper officer of the court below shall keep a record of any orders to which this rule refers.

(5) Where, upon the conviction of any person of any offence, the trial court orders that any disqualification, forfeiture or disability attach to such person, and notice of appeal or notice of application for leave to appeal is given in respect of such conviction, sentence or order, the Court may, upon application, suspend such disqualification, forfeiture or disability until the determination of the proceedings upon appeal.

(6) Where the Judge of the court below makes any such order on a person convicted before him or her as in this rule mentioned, he or she shall give such directions as he or she thinks right as to the retention, by any person, of any money or valuable securities belonging to the person so convicted and taken from such person on his or her apprehension or of any money or valuable securities at the date of his or her conviction in the possession of the prosecution for the period of fourteen days, or in the event of an appeal, until the determination thereof by the Court.

(7) The proper officer of the court below shall keep a record of any directions given under this rule.

(8) When the Judge of the court below on the conviction of a person before him or her makes any order for the payment of money by such person or by any other person upon such conviction, and, by reason of this rule, such order would otherwise be suspended, such Judge may, if he or she thinks right so to do, direct that the operation of

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such order shall not be suspended unless the person on whom such order has been made shall, in such manner and within such time as the Judge shall direct, give security by way of undertaking or otherwise for the payment to the person in whose favour such order shall have been made of the amount therein named.

(9) Such security may be to the satisfaction of the person in whose favour the order for payment shall have been made or of any other person as such Judge shall direct.

(10) Where, on a conviction, any property, matters or things, the subject of the prosecution or connected therewith, are to be or may be ordered to be destroyed or forfeited under the provisions of any rule, regulation, statute, Act or other law, the destruction or forfeiture or order for destruction or forfeiture thereof shall be suspended for the period of fourteen days from and after the date on which the verdict on the indictment was returned, and in the event of an appeal shall be further suspended until the determination thereof by the Court.

(11) Where, upon conviction of any person of any offence, any claim may be made or any proceedings may be taken under any rule, regulation, statute or other law against such person or any other person in consequence of such conviction, such proceedings shall not be taken until after the period of fourteen days from the date on which the verdict against such person was returned nor in the event of an appeal to the Court until the determination thereof.

(12) Any person affected by any orders which are suspended under this rule may, with the leave of the Court, be heard on the final determination of any appeal, before any such orders are varied or annulled by the Court.

### **Procedure on application for bail. Right of Sureties. Estreat of Recognizances**

#### **58. Appellant and surety's recognizances before whom to be taken.**

(1) Where the Court admits an appellant to bail pending the determination of his or her appeal on an application by him or her duly made, the Court shall specify the amounts in which the appellant and his or her surety or sureties (unless the Court directs that no surety is required) shall be bound by recognizance, and shall direct, if it thinks right so to do, before whom the recognizances of the appellant and his or her surety or sureties (if any) may be taken.

(2) The Registrar shall notify the appellant and the officer in charge of the prison within which he or she is confined, of the terms and conditions on which the Court shall admit the appellant to bail under the Act.

(3) In the event of the Court not making any special order or giving any special directions under this rule, the recognizances of the appellant and of his or her surety or sureties (if any) may be taken before a Magistrate or Justice of the Peace and shall be sent to the Deputy-Registrar of the Court.

(4) The recognizances provided for in this rule shall be in Forms 11 and 12 in Appendix C.

(5) The Deputy-Registrar, on being satisfied that the recognizances of the appellant and his or her surety or sureties (if any) are in due form and in compliance with

the order of the Court admitting the appellant to bail shall forward the recognizances of the appellant and his or her surety or sureties to the Registrar and shall send in Form 13 in Appendix C a notice to the officer of the prison in which the appellant shall then be confined.

(6) This notice, when received by the said officer, shall be a sufficient authority to him or her to release the appellant from custody.

(7) An appellant who has been admitted to bail shall be personally present at each and every hearing of his or her appeal and at the final determination thereof.

(8) The Court may, in the event of such appellant not being present at any hearing of his or her appeal, if it thinks right so to do, decline to consider the appeal, and may proceed summarily to dismiss the same, and may issue a warrant for the apprehension of the appellant in Form 14 in Appendix C:

Provided that the Court may consider the appeal in his or her absence, or make such other order as it may think fit.

(9) When an appellant is present before the Court, the Court may, on an application made by any person or, if it thinks right so to do, without any application, make an order admitting the appellant to bail, or revoke or vary any such order previously made, or enlarge from time to time the recognizances of the appellant or of his or her sureties or substitute any other surety for a surety previously bound as it thinks right.

(10) At any time after an appellant has been released on bail, the Court may, if satisfied that it is in the interest of justice so to do, revoke the order admitting to bail, and issue a warrant in Form 14 in Appendix C for his or her apprehension, and order him or her to be committed to prison.

(11) The Court may, on any breach of the recognizances of the appellant, if it thinks right so to do, order such recognizances and those of his or her surety or sureties to be estreated, and the manner of such estreat shall be similar to that provided under the law of the State in which the appeal is brought.

(12) Where the surety or sureties for an appellant upon whose recognizances such appellant has been released on bail by the Court suspects or suspect that the appellant is about to depart out of the State, or in any manner to fail to observe the conditions of his or her recognizances on which he or she was so released, such surety or sureties may lay an information before a magistrate acting in and for the judicial district in which the appellant is, or is by such surety or sureties believed to be, or in which such surety or sureties may then be and such magistrate shall thereupon issue a warrant for the apprehension of the appellant.

(13) The appellant shall, on being apprehended under the warrant, be brought before the court in and for which the magistrate acts, before whom the said information was laid or some other magistrate's court specified in the warrant.

(14) The court shall, on verification of the information by oath of the informant, by warrant of commitment, commit him or her to the prison to which persons charged with indictable offences before such court are ordinarily committed.



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(15) The officer in charge of such prison shall, unless such prison was the prison from which the appellant was released on bail under these Rules, notify the Prison Authority of such commitment, as in this rule mentioned.

(16) Where the appellant is by such court committed to a prison which was not the prison from which he or she was released on bail after his or her conviction the Prison Authority, subject to any order of the Court, may transfer him or her to the prison from which he or she was so released.

(17) The clerk of the court on the commitment of any such appellant, shall forthwith notify the Registrar to that effect, and forward to him or her the information and the deposition in verification thereof taken before such court together with a copy of the warrant of commitment.

(18) When an appellant has been released on bail and has, under a warrant under these Rules or by his or her surety or sureties, been apprehended and is in prison, the officer in charge thereof shall forthwith notify the Registrar who shall take steps to inform the Court thereof, and the Court may give to the Registrar such directions as to the appeal or otherwise as it shall think right.

### **Abandonment of Appeal**

#### **59. Abandonment of appeal. Criminal Form 15.**

(1) An appellant at any time after he or she has duly served notice of appeal or of application for leave to appeal, or of application for extension of time within which such notice shall be given, may abandon his or her appeal by giving notice of abandonment thereof in Form 15 in Appendix C to the Registrar, and upon such notice being given, the appeal shall be deemed to have been dismissed by the Court.

(2) Upon receipt of a notice of abandonment duly completed and signed or marked by the appellant or the party authorised to sign notices under rule 44, the Registrar shall give notices thereof in Form 16 in Appendix C to the respondent, the Prison Authority and the Registrar of the court below, and in the case of an appeal against a conviction involving a sentence of death, shall in like manner give notice to the Governor, or the Administrator, as the case may be, and the Registrar shall also return to the Registrar of the court below any original documents and exhibits received from him or her.

### **Determination of Appeal**

#### **60. Varying order of restitution of property.**

Where, upon the trial of a person entitled to appeal against his or her conviction, an order of restitution of any property to any person has been made by the Judge of the court below, the person in whose favour or against whom the order of restitution has been made, and, with the leave of the Court, any other person, shall, on the final hearing by the Court of an appeal against the conviction on which such order of restitution was made, be entitled to be heard by the Court before any order annulling or varying such order of restitution is made.

**61. Judgments of the Court.**

Unless the Court directs to the contrary in cases where, in the opinion of the Court, the question for decision is a question of law on which it would be convenient that separate judgments should be pronounced by the Judges of the Court, the judgment of the Court shall be pronounced by the presiding Judge or such other Judge of the Court hearing the appeal as he or she may direct, and no judgment with respect to the determination of any question shall be separately pronounced by any other member of the Court.

**62. Notification on final determination of appeals. Criminal Forms 17 to 20.**

(1) On the final determination of any appeal or of any application to the Court, the Registrar shall give to the appellant, if he or she be in custody and has not been present at such final determination, and to the respondent and the Prison Authority notice of such determination in Forms 17 to 20 in Appendix C.

(2) In any case of an appeal in relation to a conviction involving a sentence of death, the Registrar shall, on receiving the notice of appeal or of any application for leave to appeal, send copies thereof to the Governor or the Administrator, as the case may be, and to the Prison Authority, and on the final determination of any such appeal by the Court, shall forthwith notify the appellant, the Governor or the Administrator, as the case may be, the respondent and the Prison Authority.

**63. Notification of result of appeal. Criminal Form 20.**

(1) The Registrar, at the final determination of an appeal, shall notify in such manner as he or she thinks most convenient to the Registrar of the court below the decision of the Court in relation thereto and also any orders or directions made or given by the Court in relation to such appeal or any matter connected therewith.

(2) The Registrar of the court below shall, on receiving the notification referred to in this rule, enter the particulars thereof on the records of such Court.

**64. Restrictions on issue of certificate of conviction.**

The Registrar of the court below shall not issue, under any law authorising him or her so to do, a certificate of conviction of any person convicted in the court below if notice of appeal or notice of application for leave to appeal is given, until the determination or abandonment thereof.

**65. Return of original depositions, etc.**

Upon the final determination of an appeal for the purposes of which the Registrar has obtained from the Registrar of the court below any original depositions, exhibits, information, inquisition, plea, or other documents usually kept by such Registrar, or forming part of the record of the court below, the Registrar shall, where practicable, cause the same to be returned to the Registrar of the court below.

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### **Procedure as to Witnesses before Court and their examination before examiner**

#### **66. Attendance of witness before the Court. Criminal Form 21.**

(1) Where the Court has ordered any witness to attend and be examined before the Court an order in Form 21 in Appendix C shall be served upon such witness specifying the time and place at which to attend for such purpose.

(2) Such order may be made on the application, at any time, of the appellant or respondent, but if the appellant is in custody and not legally represented the application shall be made in Form 22 in Appendix C.

(3) Where the Court orders the examination of any witness to be conducted otherwise than before the Court itself, such order shall specify the person appointed as examiner to take, and the place of taking, such examination and the witness or witnesses to be examined thereat.

(4) The Registrar shall furnish to the person appointed to take such examination any documents or exhibits and any other material relating to the said appeal as and when requested to do so.

(5) Such documents and exhibits and other material shall, after the examination has been concluded, be returned by the examiner, together with any depositions taken by him or her under this rule, to the Registrar.

(6) When the examiner has appointed the day and time for the examination he or she shall request the Registrar to notify the appellant or respondent and their legal representatives, if any, and when the appellant is in prison, the Prison Authority thereof.

(7) The Registrar shall cause to be served on every witness to be examined a notice in Form 23 in Appendix C.

(8) Every witness examined before an examiner under this rule shall give his or her evidence upon oath or on affirmation to be administered or taken by such examiner, except where any such witness is giving evidence as a witness on a trial on indictment need not be sworn.

(9) The examination of every such witness shall be taken in the form of a deposition and unless otherwise ordered shall be taken in private.

(10) The caption in Form 24 in Appendix C shall be attached to any such deposition.

(11) Where any witness shall receive an order or notice to attend before the Court or an examiner, the Registrar may, if it appears to him or her necessary so to do, pay to such witness a reasonable sum for his or her expenses.

(12) The appellant and his or her legal representative (if any) and the respondent shall be entitled to be present at and take part in any examination of any witness to which this rule relates.

**67. Proceedings on reference.**

(1) When an order of reference is made by the Court to a special commissioner, the question to be referred, and the person to whom as special commissioner the same shall be referred, shall be specified in such order.

(2) The Court may in such order, or by giving directions as and when it from time to time shall think right, specify whether the appellant or respondent or any person on their behalf may be present at any examination or investigation or at any stage thereof as may be ordered, and specify any and what powers of the Court may be delegated to such special commissioner, and may require him or her from time to time to make interim reports to the Court upon the question referred to him or her, and may, if the appellant is in custody, give leave to him or her to be present at any stage of such examination or investigation and give the necessary directions to the Prison Authority accordingly, and may give directions to the Registrar that copies of any report made by such special commissioner shall be furnished to the appellant and respondent.

**Case stated or question of law reserved under regulation 37 of the Regulations****68. Judge to forward special case to Registrar and copies to be supplied to appellant and respondent.**

(1) Where, in pursuance of regulation 37 of the Regulations, a Judge of the High Court states a case or reserves a question of law for the consideration of the Court in respect of a person convicted on indictment before him or her, he or she shall forward such case to the Registrar who shall, on receiving the same, send a copy thereof to the appellant and respondent respectively.

(2) Where, under the provisions of regulation 37 of the Regulations, a Judge of the court below states a case for the consideration of the Court, the person convicted shall, for the purposes of these Rules, be deemed to be an appellant who has appealed under the Regulations:

Provided however, that in these circumstances the Registrar shall not be empowered to refer the case stated to the Court for summary determination.

(3) Where a case is stated or a question of law reserved for consideration of the Court under regulation 37 of the Regulations paragraph (1) of rule 69 of these Rules shall apply.

**Duties of Registrar****69. Duties of Registrar with respect to notices of appeal, etc.**

Subject to the provisions of rule 68,

- (a) the Registrar shall take all necessary steps for obtaining a hearing under Part III of the Regulations of any appeal or application, notice of which is given to him or her under that Part and shall obtain and lay before the Court in proper form all documents, exhibits, and other things relating to the proceedings in the Court before which the appellant or applicant was tried which appear necessary for the proper determination of the appeal or application;

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- (b) the Registrar shall furnish the necessary forms and instructions in relation to notices of application under Part III of the Regulations to any person who demands the same, and to officers of courts, the Prison Authority and such other officers or persons as he or she thinks fit, and the Prison Authority shall cause these forms and instructions to be placed at the disposal of prisoners desiring to appeal or to make any application under Part III of the Regulations and shall cause any such notices given by a prisoner in his or her custody to be forwarded on behalf of the prisoner to the Registrar; and
- (c) other duties of the Registrar are set out in regulation 35 of the Regulations.

### **Costs in Criminal Appeals**

#### **70. Expenses payable to solicitor or counsel.**

(1) The expenses of any solicitor or counsel assigned to an appellant by the Court in criminal appeals shall be allowed as follows:

- (a) in respect of
  - (i) a notice of appeal or application for leave to appeal, or
  - (ii) a notice of application for extension of time within which to appeala fee not exceeding \$15.12 for a solicitor and \$25.20 for counsel;
- (b) in respect of any appeal, a fee not exceeding \$50.40 for a solicitor and a fee for counsel not exceeding \$75.60:

Provided that the Court, after the conclusion of the appeal, may, if it thinks fit, certify that the case was one of exceptional length or difficulty and thereupon the fee may be increased to such sum as the Court, having regard to the length and difficulty of the case, may direct, but not exceeding \$100.80 for a solicitor and \$151.20 for counsel.

(2) In addition to such fee as aforesaid, counsel and solicitor may be allowed, subject to taxation, such travelling expenses as have been actually and reasonably incurred.

#### **71. Expenses of witnesses.**

The expenses of any witnesses attending on the order of the Court or examined in any proceedings incidental to the appeal shall be allowed at the same rate as those of a witness in a case of felony tried at the Criminal Sessions of the State where the Court is sitting.

#### **72. Expenses of appearance of appellant.**

The expenses of the appearance of an appellant not in custody on the hearing of his or her appeal or on any proceeding preliminary or incidental to the appeal may be allowed at the same rate as those of an ordinary witness in a case of felony tried at the Criminal Sessions of the State where the Court is sitting.

**73. Expenses of examiner.**

(1) Where any examination of witnesses is conducted by a person appointed by the Court for the purpose, the person so appointed shall be allowed if he or she be a Magistrate or other person in the service of a State, the actual expenses of travelling, the actual cost of hiring a room of the examination, if no court or public room is available, and such other incidental expenses as in the opinion of the Court are necessarily and reasonably incurred.

(2) If the person appointed is not a Magistrate or other such person he or she shall be allowed such expenses as aforesaid, and in addition such fee, not exceeding \$50.40 a day, as the Court may allow.

**74. Expenses of special commissioner or assessor.**

Where any question is referred to a special commissioner appointed by the Court, or where any person is appointed as assessor to the Court, he or she shall be allowed such fee as the Court, having regard to his or her qualifications and ordinary professional remuneration, may think reasonable, not exceeding \$50.40 a day.

**PART V – APPEALS FROM DECISIONS OF COURTS OF SUMMARY JURISDICTION****75. Appeals from Summary Courts. Modifications of Rules.**

(1) The provisions of Parts I, II and III of these Rules shall apply *mutatis mutandis* to appeals from decisions of the Court of Summary Jurisdiction established by the laws of the States of Antigua, Dominica and St. Christopher and Nevis, respectively, subject to the following modifications.

(2) References to the Registrar of the High Court shall include the Registrar of the High Court in his or her capacity of clerk of the Court of Summary Jurisdiction.

(3) In sub-rule (1) of rule 14 (time limits for appealing), the words “four weeks” shall be substituted for the words “six weeks”.

(4) Rule 19 (settling the record) shall not apply.

(5) For sub-rule (1) of rule 24 (entering appeal), the following shall be substituted:

“(1) The appellant shall, within six weeks from the date when the appeal is brought or within such extended time as may be granted by the Court or by a Judge thereof, or by a Judge of the court below under rule 28 of these Rules

(A) file with the Deputy-Registrar

(a) an affidavit of service of the notice of appeal;

(b) the record, consisting of copies of the following documents and papers:

(i) the notice of appeal;

(ii) the judgment or order appealed from;

(iii) the pleadings;

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- (iv) all necessary affidavits;
- (v) the Judge's notes at the trial;
- (vi) the judgment or reasons for judgment delivered by the trial Judge;
- (vii) all other documents including the correspondence and exhibits required for the hearing of the appeal; and

(B) leave four copies of the record for the use of the Judges and the Registrar of the Court.”

(6) In taxing party and party costs the Taxing Officer shall not, unless the Court when awarding costs orders otherwise, allow more than one hundred and twenty dollars in respect of counsel.

(7) In sub-rule (1) of rule 38 (Court fees) the words “Appendix D” shall be substituted for the words “Appendix B”; and in sub-rule (2) thereof the words “Appendix D” shall be substituted for the words “Part I of Appendix B”.

(8) The provisions of this Part shall not apply to a State where it is provided by the law of that State that the Court of Summary Jurisdiction shall be presided over by a Magistrate.

#### PART VI – CRIMINAL APPEALS FROM MAGISTRATES’ DECISIONS

##### **76. Copies of notices and grounds of appeal to be filed.**

(1) Where the appellant under any law regulating appeals from magistrates gives a written notice of his or her intention to appeal, five copies thereof shall also be filed by him or her for the use of the Judges of the Court and the Director of Public Prosecutions or other respondent.

(2) Together with the grounds of appeal required to be filed by such law, four copies thereof shall also be filed by the appellant for the use of the Judges of the Court and the Director of Public Prosecutions or other respondent.

##### **77. Copies of proceedings, etc.**

Five copies of the proceedings and of the notes of evidence for the use of the Judges of the Court and the Director of Public Prosecutions or other respondent, shall be provided by the clerk of the Magistrate's Court from which the appeal is taken, and shall be forwarded by him or her together with the copies of the notice of appeal, if any, and of the grounds of appeal, to the Registrar with the record.

#### PART VII – APPEALS (OTHER THAN CRIMINAL APPEALS) FROM MAGISTRATES’ DECISIONS

##### **78. Preliminary objection by respondent.**

(1) Upon receiving the documents directed to be transmitted by any law regulating appeals from magistrates, the Registrar shall forthwith, by notice in writing,

require the respondent to draw up and lodge with him or her for the information of the Court and the appellant, a written statement of any preliminary objections he or she may propose to take to the hearing of the appeal.

(2) A copy of the said statement shall be sent by the respondent to the appellant not later than three clear days before the day of hearing of the appeal.

(3) Any failure on the part of the respondent to comply with this rule may render him or her liable to be deprived of his or her costs or part thereof.

**79. Evidence relating to preliminary objection.**

Evidence relating to a preliminary objection shall ordinarily be by affidavit, but the Court may in its discretion hear oral evidence in lieu of or in addition to written evidence.

**80. Amendment of grounds of appeal.**

Grounds of appeal may be amended at any time upon such terms as the Court shall think just.

**81. Copies of notice and grounds of appeal.**

(1) Where the appellant under any law regulating appeals from magistrates gives a written notice of appeal, four copies thereof shall also be filed by him or her for the use of the Judges of the Court.

(2) Together with the grounds of appeal required to be filed by such law, four copies thereof shall also be filed by the appellant for the use of the Judges of the Court.

**APPENDIX A – CIVIL FORMS**

**INDEX TO FORMS**

Form No.	Appeal Rules No.	Description of Form
1	Rule 12(1)	Notice of Appeal.
2	" 13(1)	Notice of Motion for special leave to appeal.
3	" 13(4)	Application by Respondent for leave to appeal.
4	" 16(1)	Notice by Respondent of intention to contend that decision of Court below be varied.
5	" 18(1)	Notice by Respondent of intention to rely upon preliminary objection.
6	" 19(1)	Summons to Parties by Registrar to settle Record.
7	" 24(1)(i)(b)	Affidavit of Service of Notice of Appeal.
8	" 24(3)	Notice to the parties of filing of Record and of setting down of Appeal for hearing.
Form No.	Appeal Rules No.	Description of Form
9	" 25	Notice of Withdrawal of Appeal.
10	" 31(4)	Bond for Costs on Appeal.
11	" 37	Certificate of the Order of the Court.
12	" 41(3)	Notice of Taxation.



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**CIVIL FORM 1**

(Rule 12(1))

IN THE COURT OF APPEAL

**NOTICE OF APPEAL**

(State) .....

Civil Appeal No. .... of 20 .....

Between

..... (Plaintiff/Defendant)\* Appellant(s)

and

..... (Plaintiff/Defendant) \*Respondent(s)

TAKE NOTICE that the (Plaintiff/Defendant) Appellant being dissatisfied with the decision/that part of the decision\* more particularly stated in paragraph 2 hereof of the ..... (Court) contained in the judgment/order\* of ..... dated the ..... day of ..... 20 ..... doth hereby appeal to the Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

And the Appellant further states that the names and addresses including his or her own of the persons directly affected by the appeal are those set out in paragraph 5.

2. (Insert here whole or part of decision complained of)

3. Grounds of Appeal.

(1)

(2)

(3), etc.

4. (Insert here the relief sought from the Court of Appeal)

5. Persons directly affected by the appeal:

**Name**

**Address**

(1)

(2)

(3), etc.

DATED this.....day of ..... 20.....

.....

*Appellant(s)*

*or Solicitor for the Appellant(s)*

\* Strike out words inapplicable.

If appealing against the whole decision insert "Whole decision".

**CIVIL FORM 2**

(Rule 13(1))

IN THE COURT OF APPEAL

**NOTICE OF MOTION FOR SPECIAL LEAVE TO APPEAL**

(State) .....

Civil Appeal No. .... of 20 .....

Between

..... (Plaintiff/Defendant)\* Appellant(s)

and

..... (Plaintiff/Defendant) \*Respondent(s)

TAKE NOTICE that the Court of Appeal at ..... will be moved on the  
..... day of ..... 20 ..... at ..... o'clock in the  
forenoon or as soon thereafter as counsel can be heard on the hearing of an application for special  
leave to appeal against the decision of the ..... (Court) given on the  
..... day of ..... 20 .....

AND further take notice that the grounds of this application are:

DATED this ..... day of ..... 20 .....

.....  
*Applicant or his or her Solicitor*

To

The Registrar,  
Court of Appeal.

And # .....

\* Strike out words inapplicable.

# Insert name of respondent.

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**CIVIL FORM 3**

(Rule 13(4))

IN THE COURT OF APPEAL

**APPLICATION BY RESPONDENT FOR LEAVE TO APPEAL**

(State) .....

Civil Appeal No. .... of 20 .....

Between

..... (Plaintiff/Defendant)\* Appellant(s)

and

..... (Plaintiff/Defendant) \*Respondent(s)

TAKE NOTICE that upon the hearing of the application for leave to appeal the Respondent herein intends to apply for leave to appeal and to contend that the decision of the (Court below) dated the ..... day of .....20..... should be varied as follows:

#

AND TAKE NOTICE that the grounds on which the Respondent intends to rely are as follows:

- 1.
- 2.
- 3, etc.

DATED this.....day of.....20.....

.....

(Respondent(s))

To .....(Appellant)

and to the Registrar.

\* Strike out words inapplicable.

# State the variation which will be asked for.

\_\_\_\_\_

**CIVIL FORM 4**

(Rule 16(1))

IN THE COURT OF APPEAL

**NOTICE BY RESPONDENT OF INTENTION TO CONTEND THAT DECISION  
OF COURT BELOW BE VARIED**

(State) .....

Civil Appeal No. .... of 20 .....

Between

..... (Plaintiff/Defendant)\* Appellant(s)

and

..... (Plaintiff/Defendant) \*Respondent(s)

TAKE NOTICE that upon the hearing of the application for leave to appeal the Respondent herein intends to apply for leave to appeal and to contend that the decision of the (Court below) dated the..... day of..... 20 .....should be varied as follows:

#

AND TAKE NOTICE that the grounds on which the Respondent intends to rely are as follows:

- 1.
- 2.
- 3, etc.

DATED this ..... day of ..... 20 .....

.....  
(Respondent(s))

To..... (Appellant)

and to the Registrar.

\* Strike out words inapplicable.

# State the variation which will be asked for.

\_\_\_\_\_

Revision Date: 31 Dec 2002

**CIVIL FORM 5**

(Rule 18(1))

IN THE COURT OF APPEAL

**NOTICE BY RESPONDENT OF INTENTION TO RELY UPON PRELIMINARY  
OBJECTION**

(State) .....

Civil Appeal No. .... of 20 .....

Between

..... (Plaintiff/Defendant)\* Appellant(s)

and

..... (Plaintiff/Defendant) \*Respondent(s)

TAKE NOTICE that the Respondent herein named intends, at the hearing of this appeal, to rely upon the following preliminary objection notice whereof is hereby given to you, viz.

AND TAKE NOTICE that the grounds of the said objection are as follows:

- 1.
- 2.
- 3, etc.

DATED this.....day of.....20.....

.....  
(Plaintiff/Defendant)\* Respondent(s)

To the above-named (Plaintiff/Defendant)\* Appellant(s)

\* Strike out words inapplicable.

**CIVIL FORM 6**

(Rule 19(1))

IN THE COURT OF APPEAL

**SUMMONS TO PARTIES BY REGISTRAR TO SETTLE RECORD**

(State) .....

Civil Appeal No. .... of 20 .....

Between

..... (Plaintiff/Defendant)\* Appellant(s)

and

..... (Plaintiff/Defendant) \*Respondent(s)

**Revision Date: 31 Dec 2002**

TAKE NOTICE that all parties concerned are required to attend before me at the Registry of the Supreme Court ..... on the ..... day of ..... 20..... at the hour of in thenoon to settle the record of appeal herein.

DATED this ..... day of ..... 20 .....

.....  
*Registrar*

TO:

\* Strike out words inapplicable.

\_\_\_\_\_

**CIVIL FORM 7**

(Rule 24(1)(i)(b))

**IN THE COURT OF APPEAL**

**AFFIDAVIT OF SERVICE OF NOTICE OF APPEAL**

(State) .....

Civil Appeal No. .... of 20 .....

Between

..... (Plaintiff/Defendant)\* Appellant(s)

and

..... (Plaintiff/Defendant) \*Respondent(s)

I, ..... of ..... (occupation) do make oath and say:

That notice of appeal in the above appeal filed herein on the ..... day of ..... 20 ..... was duly served upon ..... the Respondent herein, (here state mode of service) ..... on the ..... day of ..... 20 ..... in accordance with the Court of Appeal Rules.

Sworn to at the .....

(address)

on the ..... day of

..... 20 .....

}  
}

Before me

*Commissioner of Affidavits*

This affidavit is filed on behalf of .....

\* Strike out words inapplicable.

\_\_\_\_\_

Revision Date: 31 Dec 2002

**CIVIL FORM 8**

(Rule 24(3))

IN THE COURT OF APPEAL

**NOTICE TO THE RESPONDENT OF FILING OF RECORD AND OF SETTING  
DOWN OF APPEAL FOR HEARING**

(State) .....

Civil Appeal No. .... of 20 .....

Between

..... (Plaintiff/Defendant)\* Appellant(s)

and

..... (Plaintiff/Defendant) \*Respondent(s)

TAKE NOTICE that the above named Appellant has duly filed the record and documents required to be filed pursuant to rule 24(1) of the Court of Appeal Rules and that I have set down the appeal for hearing before the Court of Appeal.

DATED this.....day of.....20.....

.....

*Registrar*

To the Appellant, Respondent, etc.

\* Strike out words inapplicable.

**CIVIL FORM 9**

(Rule 25)

IN THE COURT OF APPEAL

**NOTICE OF WITHDRAWAL OF APPEAL**

(State) .....

Civil Appeal No. .... of 20 .....

Between

..... (Plaintiff/Defendant)\* Appellant(s)

and

..... (Plaintiff/Defendant) \*Respondent(s)

TAKE NOTICE that the Appellant(s) herein intend(s) and doth hereby wholly withdraw his or her /their appeal against (all) the Respondent(s) in the above-mentioned appeal.

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DATED this ..... day of ..... 20 .....

.....  
*Appellant(s)*

.....  
The Registrar,  
Court of Appeal.

And to Respondent(s)  
and the Registrar of the Court below.

\* Strike out words inapplicable.

-----  
**CIVIL FORM 10**

(Rule 31(4))

**IN THE COURT OF APPEAL**  
**BOND FOR COSTS ON APPEAL**

(State) .....  
Civil Appeal No. .... of 20 .....

Know all men, by these presents, that we ..... of ..... and  
..... of ..... and ..... of  
..... are jointly and severally held and firmly  
bound to ..... of ..... in the sum  
of ..... dollars of lawful money to be paid to the  
said ..... his or her executors, administrators, or  
assigns, for which payment well and truly to be made, we bind ourselves, and each of us for himself  
or herself, in the whole our and every of our heirs, executors and administrators, firmly by these  
presents,

(Signed) ..... (*Appellant*)  
..... (*Surety*)  
..... (*Surety*)

DATED the ..... day of ..... in the year of Our Lord, 20.....

WHEREAS a suit is now depending in the Court at ..... wherein  
the above-bounden ..... is ..... and the said  
..... is .....

AND WHEREAS a judgment was given by the Court below therein, on the ..... day of  
for the said ..... and the ..... has filed Notice of Appeal from the said judgment:

AND WHEREAS it is by law provided that the party appealing shall give security to the  
satisfaction of the Registrar of the Court below for the due prosecution of the appeal and for the  
payment of any costs which may be ordered to be paid by the appellant:



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AND WHEREAS the above-named ..... and .....  
at the request of the said ..... have agreed  
to enter into this obligation for the purposes aforesaid:

Now the condition of this obligation is such, that if the said ..... shall duly  
prosecute the appeal and if the above-bounden ..... and .....  
any or either of them shall pay any costs which may be ordered to be paid by the appellant this  
obligation shall be void, otherwise remain in full force.

Signed, sealed and delivered in the } (L.S.)  
presence of } (L.S.)  
} (L.S.)

CIVIL FORM 11

(Rule 37)

IN THE COURT OF APPEAL  
CERTIFICATE OF THE ORDER OF THE COURT

(State) .....

Civil Appeal No. .... of 20 .....

Appeal from the ..... in the State of .....  
dated the ..... day of ..... 20 .....

..... Motion

..... Appeal No.

..... (Plaintiff/Defendant)\* Appellant(s)

..... (Plaintiff/Defendant)\* Respondent(s)

This appeal coming on for hearing on the ..... day of ..... 20 .....  
Before ..... in the presence of ..... for the Appellant(s) and  
..... for the Respondent(s).

I HEREBY CERTIFY that an Order was made as follows:

Given under my hand and the Seal of the Court this ..... day of ..... 20 .....

Registrar

\* Strike out words inapplicable.

**CIVIL FORM 12**

(Rule 41(3))

**IN THE COURT OF APPEAL  
NOTICE OF TAXATION**

(State) .....

Civil Appeal No. .... of 20 .....

Between

..... (Plaintiff/Defendant)\* Appellant(s)

and

..... (Plaintiff/Defendant) \*Respondent(s)

TAKE NOTICE that the Bill of Costs of the..... herein,  
will be taxed on..... 20....., at the hour of..... o'clock  
in the noon.

Your absence notwithstanding.

DATED at ..... this ..... day of ..... 20 .....

.....  
*Solicitor for*

To the above-named Appellant/Respondent of .....

\* Strike out words inapplicable.

**APPENDIX B**

**PART I – FEES OF COURT IN CIVIL APPEALS FROM THE HIGH COURT**

- 1. On filing notice of appeal against a final judgment or decision, entering the appeal for hearing and on judgment thereunder an inclusive fee of..... 12.00
- 2. On filing respondent’s notice of intention to contend that decision of court below be varied ..... 5.00
- 3. For entering a special case, case stated, point of law or demurrer for argument, entering same for hearing and on judgment thereunder an inclusive fee of ..... 7.00
- 4. On filing notice of appeal against an interlocutory order or decision, entering the appeal for hearing and on judgment thereunder an inclusive fee of..... 7.00
- 5. On making any application not otherwise specifically provided for, and for filing judgment or order thereunder an inclusive fee of..... 5.00
- 6. On filing bond to secure costs of appeal ..... 2.50
- 7. On filing motion for leave to appeal to the Judicial Committee of the Privy Council ..... 2.50

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8.	On filing every bond where the appeal is to the Judicial Committee of the Privy Council .....	2.50
9.	On filing order for leave to appeal to the Judicial Committee of the Privy Council.....	2.50
10.	On appointment to settle record on appeal to the Judicial Committee of the Privy Council .....	1.25
11.	On sealing record on appeal to the Judicial Committee of the Privy Council	2.50
12.	On filing every document or exhibit for which no special fee is provided...	0.60
13.	On taxation of bill of costs including certificate .....	2.50
14.	On certifying any document as an office copy .....	1.25
15.	If in a foreign language, the actual cost of making and examining the copy, and, in addition, for marking and sealing the copy as an office copy.....	1.25
16.	For an office copy of a plan, map, section, drawing, photograph or diagram the actual cost of making and examining the copy, and, in addition, for marking and sealing the copy as an office copy .....	1.25
17.	For a copy of reasons for judgment per folio of 100 words .....	0.15
	But with a minimum fee, for one set of reasons, of .....	1.25
	And with a maximum fee for one set of reasons of.....	25.00
18.	For a copy of a report of the Registrar per folio of 100 words .....	0.15
19.	On perusing and allowing by a Judge or Registrar of any bond.....	1.25
20.	On sealing a writ of subpoena not exceeding three persons .....	1.25
21.	For a certificate of the Registrar for which no special fee is provided .....	1.25
22.	On obtaining appointment for examination of a witness before an officer of the Court or other person .....	1.25
23.	In respect of every witness examined by an officer or other person in his or her office, for each hour or part of an hour .....	1.25
24.	For an examination of witnesses away from the office of the examiner, the reasonable travelling and other expenses in addition to the fee chargeable under Item 23 .....	
25.	For making every search .....	1.00
26.	For an office copy of any document filed in the Registry, per folio of 100 words, for the first folio .....	0.25
	For every other folio or part thereof .....	0.15
27.	On office copies of any document to be included in record – including judges’ notes of evidence, for the first folio to consist of 100 words .....	0.25
	For every other folio or part thereof .....	0.15
28.	On certifying any document as an office copy .....	1.25

The fees to be taken in the offices of the Sheriff or Bailiff are the same as those which are required to be taken by the Sheriff or Bailiff of the State in which the appeal arises in respect of a like proceeding or act in a cause pending in the High Court.

**PART II – LEGAL PRACTITIONERS’ FEES IN CIVIL APPEALS**

**Schedule of Allowances**

(Save in respect of item 19, a folio shall consist of one hundred words (or figures) or parts thereof; four figures to count as a word.)

**Instructions**

1. Instructions to file notice of appeal (including grounds of appeal).....	12.00
2. Instructions to file notice of cross appeal (including grounds of appeal).	12.00
3. Instructions to file any application relative to an appeal.....	7.00
4. Instructions to appear for the respondent to any application to an appeal	7.00
5. Instructions to file case stated or special case having regard to the amount involved in the appeal, its nature, importance and difficulty, the interest of the parties, the other costs to be allowed, the general conduct of the proceedings and all other relevant circumstances.....	12.00
6. Instructions for affidavit and for any other interlocutory matter, the charge for which is not specified in these scales .....	3.00
7. Instructions for brief to counsel to advise or to settle pleadings. This will be allowed where justifiable under the circumstances of the particular case.....	7.00
8. Drawing notice of appeal including grounds of appeal .....	per folio for the first 10 folios, \$1;
9. Drawing notice of motion.....	per folio for the next 10 folios 75c,
10. Drawing a case stated .....	and thereafter per folio 36c. (The
11. Drawing notice of cross appeal, including grounds of appeal .....	minimum charge
12. Drawing any order .....	under these items
13. Drawing any petition, affidavit, any notice except a formal notice, summons, further particulars or request for further particulars .....	shall be \$7.00 save
14. Drawing any writs of execution, arrest or attachment and any other important document not otherwise provided for	that the minimum shall not apply in the case of verifying affidavits of service and other formal affidavits.
15. Drawing index of record or any index to brief.....	0.75
16. Drafting instructions to Counsel with brief on any matter.....	per folio
17. Drawing any subpoena or any formal notice – each document .....	1.50
18. Drafting a letter or telegram .....	2.00
If more than one folio, for each additional folio .....	0.40
Copy to keep, where necessary, per folio .....	0.15
19. Drawing Bill of Costs, per folio .....	0.75

NOTE: A folio is to comprise 72 words, every figure comprised in a column or authorised to be used being counted as one word.

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**Copying**

- 20. Copies of the record on appeal, if prepared by the appellant’s attorney or solicitor, such fee for the first copy and such fee for additional copies as the Registrar may consider reasonable.  
(If not prepared by the appellant’s attorney or solicitor the reasonable cost of the record as a disbursement).
- 21. Copies of any matter required for the Court, for counsel, for the attorney or for service or for any other necessary purpose for the first copy per folio..... 0.25  
For each additional copy per folio ..... 0.15

**Attendances**

- 22. At the Registry (clerk’s attendance)..... 2.00
- 23. On the Registrar in chambers at the rate per hour or part thereof (to be increased at the discretion of the Taxing Officer) ..... 5.50
- 24. On an opposite party, if necessary and proper, the like as under the preceding items
- 25. On a Judge in chambers – at the rate per hour or part thereof (to be increased at the discretion of the Taxing Officer) ..... 8.50
- 26. In Court where matter listed but not reached, on any day for each hour or part thereof necessarily and justifiably spent ..... 5.50
- 27. Attendance on receipt of letter or telegram ..... 1.50
- 28. Attendance on receipt of formal acknowledgment..... 1.00
- 29. Other merely formal attendances including attendances to file, to swear affidavits or to bespeak copies ..... 2.00
- 30. Attendances not purely formal and including attendances on witnesses and others to obtain statements and other materials for brief on trial or for use at trial but not including attendances to represent parties at hearing in Court or chambers; such fee as may be reasonable according to circumstances with a minimum fee of ..... 7.00  
in respect of each hour or part thereof
- 31. Attendance to inspect or produce pursuant to notice per hour or part thereof..... 5.50
- 32. Attendance before a Registrar in chambers on taxation matters for each hour or part thereof ..... 5.50
- 33. Attending at hearing as solicitor of an appeal or any other matter in Court for each day as may be necessary such sum as may, in the opinion of the Taxing Officer be reasonable not being less than ..... 17.00
- 34. Attending Court to hear reserved judgment per hour..... 5.50
- 35. Attendance upon a shorthand writer to obtain copy of transcript for appellate purposes..... 3.00
- 36. Attending to issue writ of execution ..... 3.00
- 37. Any attendance not specifically provided for..... 2.00

38. Journeys necessarily undertaken.

An allowance for the time necessarily occupied on the journey and, in the case of a journey to attend the trial, to include an allowance for the time which, in the opinion of the Taxing Officer, a legal representative is necessarily detained at the place of trial. Such sum per day, including Sundays, as the Taxing Officer may think reasonable, not to exceed ..... 28.00

Disbursements for fares, hotel and transport expenses are also to be allowed, but not for normal out of pocket expenses other than board and lodging.

The disbursement allowed for travelling by motor car shall be at the rate of 25c per mile provided the total distance travelled exceeds three miles. For journeys under three miles no allowance shall be made for travelling by motor car.

39. Agency correspondence if shown to the satisfaction of the Taxing Officer that such correspondence has been necessary and reasonable. Such sums as would be allowed under items 18 or 40.

40. Letters, messages, etc. Such fee including letters not otherwise allowed between party and party as the Taxing Officer may consider reasonable not exceeding..... 3.00

**Perusals**

- 41. Perusals of any necessary documents for the first 10 folios – per folio ..... 0.50
- for each subsequent folio ..... 0.15

**Disbursements**

- 42. All Court fees, counsel’s fees and other fees and payments which, in the opinion of the Taxing Officer have been properly paid, shall be allowed.

**Maps, Plans and Models**

- 43. The Taxing Officer may allow such fees for maps, plans and models for use at the trial or hearing as he or she considers reasonable.

**Marshal, Sheriff and Bailiff’s Fees**

- 44. There shall be paid to Sheriffs, Marshals and Bailiffs, such fees and travelling and subsistence allowances as are by rules of Court or other law prescribed for the service or execution of any summons, warrant, writ, or other process of the High Court in the State in which the execution or service is sought to be levied or effected.
-

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APPENDIX C  
**CRIMINAL FORMS**  
INDEX TO FORMS

Form No.	Appeal Rules No.	Description of Form
1	Rule 42	Notice of appeal or application for leave to appeal against conviction or sentence.
2	" 42	Notice of application for extension of time within which to appeal.
3	" 43	Judge's certificate.
4	" 48(5)	Declaration verifying transcript of shorthand notes.
5	" 54	Notification to appellant of a single Judge's decision.
6	" 54	Notice of appeal by appellant from refusal of a single Judge.
7	" 56(3)	Recognizance of appellant sentenced to payment of a fine.
8	" 56(3)	Recognizance of sureties for appellant sentenced to a fine.
9	" 56(4)	Notice of breach of his or her recognizances to appellant sentenced to a fine.
10	" 56(4)	Notice to surety for appellant of estreat of recognizances.
11	" 58(3)	Recognizance of bail of appellant convicted on indictment.
12	" 58(3)	Recognizance of appellant's sureties.
13	" 58(5)	Notice to Officer in Charge of Prisons to release appellant on bail.
14	" 58(6) & (8)	Warrant for arrest of appellant on bail.
15	" 59(1)	Notice of abandonment.
16	" 59(2)	Notification of abandonment of appeal.
17	" 62(1)	Notification to appellant of result of application.
18	" 62(1)	Notice to authorities of result of application.
19	" 62(1)	Notification to appellant of the result of his or her appeal.
20	Rule 62(1) & 63(1)	Notice to authorities of result of appeal.
21	" 66(1)	Order to witness to attend court for examination.
22	" 66(2)	Appellant's application for further witness.
23	" 66(5)	Notice to witness to attend before an examiner.
24	" 66(7)	Caption for deposition of witness examined before examiner.

**CRIMINAL FORM 1**

(Rule 42)

IN THE COURT OF APPEAL

NOTICE OF APPEAL OR APPLICATION FOR LEAVE TO APPEAL AGAINST  
CONVICTION OR SENTENCE

(State).....

Criminal Appeal No. .... of 20 .....

**TO THE REGISTRAR OF THE COURT OF APPEAL**

Name of Appellant .....

Convicted at the Assizes held at .....

.....

(1) e.g. Larceny, Forgery. Offence of which convicted.....  
Sentence .....

(2) Set out the actual date Date when convicted .....

upon which the appellant Date when sentence passed .....

was convicted and  
sentenced.

(3) If not in custody here set Name of Prison.....  
out appellant’s address in  
full.

(4) If the appellant wishes to I the above-named appellant hereby give you notice that I desire  
appeal against conviction to appeal to the Court of Appeal against my (4)  
he or she must write the .....

word “conviction”. If he or on the grounds hereinafter set forth on page 2 of this notice.  
she wishes to appeal

against sentence he or she  
must write the word  
“sentence”. If he or she  
wishes to appeal against  
both conviction and  
sentence he or she must  
write the words  
“conviction” and  
“sentence”

(5) This notice must be signed (Signed) (5).....  
by the appellant. If he or  
she cannot write he or she  
must affix his or her mark  
in the presence of a  
witness. The name and  
address of such attesting  
witness must be given.

*Appellant*

(6) If this notice is signed Dated this (6)..... day of.....20.....  
more than fourteen days  
after sentence the  
appellant must also fill in  
Form 2 and send it with  
this notice.



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(7) The appellant must answer each of these questions.

QUESTIONS (7)

1. Did the judge before whom you were tried grant you a certificate that it was a fit case for appeal? .....

2. Do you desire the Court of Appeal to assign you legal aid? .....

If your answer to this question is "Yes" then answer the following questions:

(a) What was your occupation and what wages, salary or income were you receiving before your conviction? .....

(b) Have you any means to enable you to obtain legal aid for yourself? .....

3. Is any solicitor now acting for you? .....

If so, give his or her name and address. ....

(8) An appellant is not entitled to be present on the hearing of an application for leave to appeal.

4. Do you desire to be present when the Court considers your appeal? (8) .....

5. Do you desire to apply for leave to call any witnesses on your appeal? .....

If your answer to this question is "Yes", you must also fill in Form 22 and send it with this notice.

(9) These must be filled in before the notice is sent to the Registrar. The appellant must here set out the grounds or reasons he or she alleges why his or her conviction should be quashed or his or her sentence reduced.

Grounds of Appeal or Application (9)

N.B. If one of the grounds set out is "misdirection" by the judge, particulars of such alleged misdirection must be set out in this notice.

The appellant can also, if he or she wishes, set out, in addition to his or her above reasons, his or her case and argument fully.

---

**CRIMINAL FORM 2**

(Rule 42)

IN THE COURT OF APPEAL

NOTICE OF APPLICATION FOR EXTENSION OF THE TIME  
WITHIN WHICH TO APPEAL

(State).....

Criminal Appeal No. .... of 20 .....

**TO THE REGISTRAR OF THE COURT OF APPEAL**

Here state the offence  
e.g. larceny, murder,  
forgery, etc

I, ..... having been convicted of the  
offence of ..... in the High Court of Justice,  
Criminal Assizes, held at ..... on the ..... day of  
..... 20 ....., and being now a prisoner  
in Her Majesty’s Prison at ..... \*(or now living  
at.....), give you notice  
that I hereby apply to the Court for an extension of time within which I  
may give Notice of Appeal (or Notice of Application for leave to Appeal)  
on the grounds following:

\* When applicant for  
any reason not in  
custody.

Here set out clearly and  
concisely the reasons  
for the delay in giving  
such notice and the  
grounds on which you  
submit the Court should  
extend the time

(Signed)  
(or mark) .....  
*Applicant*

Signature and address of  
witness attesting mark

DATED this ..... day of ..... 20 .....

You are required to send to the Registrar of the Court, duly  
filled up Form 1, together with this Notice.

**CRIMINAL FORM 3**

(Rule 43)

IN THE COURT OF APPEAL

JUDGE’S CERTIFICATE

(State).....

Criminal Appeal No. .... of 20 .....

THE QUEEN v.

In the High Court of Justice, Criminal Assizes, holden at .....

WHEREAS the said ..... was tried  
and convicted before me, the undersigned, in the said Court on the .....

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State shortly the offence, day of ..... on a charge of .....  
e.g. larceny, murder,  
forgery, etc

I DO HEREBY CERTIFY that the case is a fit case for an  
appeal by the said.....to the Court upon the  
following grounds:  
Here specify in general terms the grounds on  
which certificate granted

.....  
*Judge*  
DATED this ..... day of .....20.....

**CRIMINAL FORM 4**

(Rule 48(5))

IN THE COURT OF APPEAL

DECLARATION VERIFYING TRANSCRIPT OF SHORTHAND NOTES

(State) .....

Criminal Appeal No. .... of 20 .....

THE QUEEN v.

I, .....

Of .....

do solemnly and sincerely declare that, having been required by the Registrar of the High Court to furnish him or her a transcript of the shorthand note relating to the trial (or other proceeding) in relation to ..... which shorthand note is now produced and shown to me marked ..... and purporting to have been signed and certified by me, I have made a correct and complete transcript thereof to the best of my skill and ability in pursuance of the said requirement, which said transcript is now shown to me marked "B". And I make this declaration conscientiously believing the same to be true and I am aware that if there is any statement in this declaration which is false in fact, which I know or believe to be false or do not believe to be true, I am liable to fine and imprisonment.

DATED this ..... day of ..... 20 .....

(Signed) .....

\_\_\_\_\_

**CRIMINAL FORM 5**

(Rule 54)

IN THE COURT OF APPEAL

NOTIFICATION TO APPELLANT OF A SINGLE JUDGE’S DECISION

(State) .....

Criminal Appeal No. .... of 20 .....

THE QUEEN v.

I hereby give you notice that a Judge of the Court of Appeal having considered your application (s) for

- (a) leave to appeal;
- (b) extension of time within which notice of appeal or of application for leave to appeal may be given;
- (c) permission to be present during the hearing of any proceedings in your appeal;
- (d) admission to bail;

has refused the application (s) marked ..... (and has granted your application (s) marked .....

If you desire to have the above-mentioned application (s), which have been refused, determined by the Court, you are required to fill up the enclosed form and return it to me forthwith.

DATED this ..... day of ..... 20 .....

*Registrar,*  
*Court of Appeal*

To the above-named.

**CRIMINAL FORM 6**

(Rule 54)

IN THE COURT OF APPEAL

NOTICE OF APPEAL BY APPELLANT FROM REFUSAL OF A SINGLE JUDGE

(State) .....

Criminal Appeal No. .... of 20 .....

THE QUEEN v.

TO THE REGISTRAR OF THE COURT OF APPEAL

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I, ..... having received  
your notification that my application (s) for

- (a) leave to appeal;
- (b) extension of the time within which notice of appeal or application for leave to appeal may be given
- (c) permission to me to be present during the hearing of any proceedings in my appeal;
- (d) admission to bail;

has/have been refused;

DO HEREBY GIVE YOU NOTICE that I desire that the said application (s) shall be considered and determined by the Court (and that as I am not legally represented I desire to be present at the determination of my said application (s))\*

(Signed)  
(or mark)

.....  
*Appellant*

Signature and address of  
witness attesting mark.

DATED this.....day of.....20.....

If you desire to state any reasons in addition to those set out by you in your original notice upon which you submit that the Court should grant your said application (s) you may do so in the space below.

\* Strike out if you do not desire to be present.

**CRIMINAL FORM 7**

(Rule 56(3))

IN THE COURT OF APPEAL

RECOGNIZANCE OF APPELLANT SENTENCED TO PAYMENT OF A FINE

(State) .....

Criminal Appeal No. .... of 20 .....

THE QUEEN v.

TO WIT: Be it remembered that whereas .....  
of .....  
was on the ..... day of ..... 20 .....

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convicted of ..... and was thereupon sentenced to pay the sum of \$ ..... as a fine for his or her said offence by the High Court (Criminal Jurisdiction) at ..... and has intimated to the said Court that he or she desires to appeal against his or her said conviction on a question of law alone (or upon a certificate of the Judge of the said Court that his or hers is a fit case for appeal). And whereas the said Court considers that the said Appellant may, in lieu of payment at and upon his or her said conviction of the said sum, be ordered to enter into recognizance of bail himself or herself in the sum \$ ..... and with ..... sureties, each in the sum of \$ ..... to prosecute his or her said appeal before the Court of Appeal.

This said ..... doth hereby acknowledge himself or herself to owe to Our Lady the Queen the said sum of \$ ..... of good and lawful money, to be made and levied of his or her goods and chattels, land and tenements, to the use of Our said Lady the Queen, her heirs and successors, if he or she the said ..... fail in the condition endorsed.

Taken and acknowledged this ..... day of ..... 20 ..... ,  
at the said Court.

Before me

(Signed) .....  
*Registrar of the High Court*

**CONDITION**

The condition of the within written recognizance is such that if the said ..... of ..... shall personally appear and be present at and before the Court of Appeal at each and every hearing of his or her appeal to such Court and at the final determination thereof and then and there prosecute his or her said appeal and abide by the judgment of such Court, and not depart or be absent from such Court at any such hearing without leave of such Court, and pay the said sum of \$ ..... or such sum as such Court may order to the Registrar thereof, then this recognizance shall be void, otherwise of full force and effect.

(Signed) .....  
*Appellant*

\_\_\_\_\_

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**CRIMINAL FORM 8**

(Rule 56(3))

IN THE COURT OF APPEAL

RECOGNIZANCE OF SURETIES FOR APPELLANT SENTENCED TO A FINE

(State) .....

Criminal Appeal No. .... of 20 .....

THE QUEEN v.

TO WIT: Be it remembered that on the ..... day of  
20 ..... of ..... and .....  
personally came before the High Court (Criminal Jurisdiction) at .....  
and severally acknowledged themselves to owe to Our Lady the Queen the several sums following  
that is to say; the said ..... the sum of \$ .....  
and the said..... the sum of \$ .....  
of good and lawful money, to be made and levied of their goods and chattels, lands and tenements,  
respectively, to the use of Our said Lady the Queen, her heirs and successors if  
..... now before the said Court fail in the  
condition hereon endorsed.

Taken and acknowledged before the said Court on the day and year first above-mentioned.

(Signed) .....

*Registrar of the High Court*

**CONDITION**

The condition of the within written recognizance is such that whereas the said .....  
..... having been convicted of .....  
and having been sentenced to pay a fine of \$ ..... for his or her said offence,  
and having now intimated his or her desire to appeal on a question of law alone (or with the  
certificate of the Judge of this Court) to the Court of Appeal against the said conviction, and having,  
in lieu of payment at and upon his or her said conviction of the said sum of \$ .....  
ordered to enter into recognizance of bail himself or herself in the sum of \$ ..... and with  
been ..... sureties in the sum of \$ ..... if the said  
..... shall personally appear and be present at and before the  
Court of Appeal at each and every hearing of his or her appeal to such Court and at the final  
determination thereof, and then and there prosecute his or her said appeal and abide by the judgment  
of such Court, and not depart or be absent from such Court at any such hearing without the leave of  
such Court, then this recognizance shall be void, otherwise of full force and effect.

(Signed) .....

*Surety*

(Signed) .....

*Surety*

\_\_\_\_\_

**CRIMINAL FORM 9**

(Rule 56(4))

IN THE COURT OF APPEAL

NOTICE OF BREACH OF HIS OR HER RECOGNIZANCES TO APPELLANT  
SENTENCED TO A FINE

(State) .....

Criminal Appeal No. .... of 20 .....

THE QUEEN v.

TO THE ABOVE-NAMED ..... APPELLANT

WHEREAS you were convicted on the ..... day of  
..... 20 ....., of the offence of .....  
.....  
and were sentenced to the payment of \$ ..... and in default of such payment  
to imprisonment, and you entered into recognizances in the sum of .....  
with ..... sureties in the sum of ..... each, to prosecute  
your appeal, and whereas fourteen days have elapsed since your said conviction, and no notice of  
appeal has been served by you, NOW I HEREBY GIVE you notice that unless you attend at the  
sitting of the Court to be holden on the ..... day of .....  
20 ..... and then show good cause to the contrary, the Court may order an estreat of  
your recognizances and those of your sureties, or may otherwise deal with you according to law.

(Signed) .....

*Registrar,  
Court of Appeal*

**CRIMINAL FORM 10**

(Rule 56(4))

IN THE COURT OF APPEAL

NOTICE TO SURETY FOR APPELLANT OF ESTREAT OF RECOGNIZANCES

(State) .....

Criminal Appeal No. .... of 20 .....

TO .....

of .....



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WHEREAS you the above-named, became duly bound in recognizances as surety, for that the said ..... having been convicted of ..... and for his or her said offence fined the sum of \$ ..... should duly prosecute an appeal in relation to the said conviction before the Court, and whereas the said ..... has not so prosecuted his or her appeal, now I hereby give you notice that at the sitting of the Court on ..... next your recognizances may be ordered to be estreated, unless you then show good cause to the contrary.

(Signed) .....  
*Registrar, Court of Appeal*

**CRIMINAL FORM 11**

(Rule 58(3))

IN THE COURT OF APPEAL

RECOGNIZANCE OF BAIL OF APPELLANT CONVICTED ON INDICTMENT

(State) .....  
Criminal Appeal No. .... of 20 .....

THE QUEEN v.

BE IT REMEMBERED THAT WHEREAS ..... was convicted of ..... on the ..... day of ..... 20 ..... (and was thereupon sentenced to ..... ) and now is in lawful custody in Her Majesty's Prison at ..... and has duly appealed against his or her conviction (and sentence) to the Court, and has applied for bail pending the determination of his or her appeal, and has been granted bail on entering into his or her own recognizances in the sum of ..... with ..... sureties, each in the sum of ..... the said ..... personally cometh before me the undersigned, being the ..... and acknowledges himself or herself to owe to Our Lady the Queen the said sum of ..... of good and lawful money, to be made and levied of his or her goods and chattels, lands and tenements to the use of Our said Lady the Queen, her heirs and successors, if he or she the said fail in the condition endorsed.

Taken and acknowledged this ..... day of ..... 20 ..... ,  
at ..... before me.

(Signed) .....  
Office: *Magistrate, etc.*

**CONDITION**

The condition of the within written recognizance is such that if the said ..... shall personally appear and surrender himself or herself at and before the Court of Appeal at each and every hearing of his or her appeal to such Court and at the final determination thereof and then and there abide by the judgment of such Court and not depart or be absent from such Court at any such hearing without the leave of such Court, and in the meantime not depart from his or her usual place of abode without the leave of such Court, then this recognizance shall be void, otherwise of full force and effect.

The following to be filled up by the Appellant and signed by him or her:

When released on bail my residence, to which any Notices, etc. are to be addressed, will be as follows:

(Signed) .....  
*Appellant*

**CRIMINAL FORM 12**

(Rule 58(3))

**IN THE COURT OF APPEAL**

**RECOGNIZANCE OF APPELLANT'S SURETIES**

(State) .....

Criminal Appeal No. .... of 20 .....

THE QUEEN v.

BE IT REMEMBERED that on this ..... day of ..... 20 ..... ,  
..... and ..... of ..... of  
..... personally came before me the undersigned being the  
..... of .....  
and severally acknowledged themselves to owe to Our Lady the Queen the several sums following,  
that is to say, the said ..... the sum of  
\$ ..... and the said ..... the sum of  
\$ ..... of good and lawful money, to be made and levied of their goods  
and chattels, lands and tenements respectively, to the use of Our said Lady the Queen, her heirs and  
successors, if ..... now in lawful custody in Her Majesty's Prison at  
..... fail in the condition hereon endorsed.

Taken and acknowledged before me the undersigned, the day and year first above-mentioned.

.....  
*Magistrate, etc.*

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**CONDITION**

The condition of the within written recognizance is such that whereas the said ..... having been convicted of ..... and now in such lawful custody as before mentioned (under a sentence of ..... for such offence), has duly appealed to the Court of Appeal against his or her said conviction (and sentence) and having applied to such Court for bail, pending the determination of his or her said appeal, has been granted bail on his or her entering into recognizances in the sum of \$ ..... if the said ..... shall personally appear and surrender himself or herself at and before such Court at each and every hearing of his or her said appeal to such Court and at the final determination thereof, and then and there abide by the judgment of such Court, and not depart or be absent from such Court at any such hearing without the leave of such Court, and in the meantime not depart from his or her usual place of abode without the leave of such Court, then this recognizance shall be void, otherwise of full force and effect.

(Signed) .....

*Surety*

.....

*Surety*

**CRIMINAL FORM 13**

(Rule 58(5))

IN THE COURT OF APPEAL

NOTICE TO OFFICER IN CHARGE OF PRISONS TO RELEASE APPELLANT  
ON BAIL

(State) .....

Criminal Appeal No. .... of 20 .....

THE QUEEN v.

TO THE OFFICER IN CHARGE OF PRISONS

WHEREAS ..... was convicted of ..... on the ..... day of ..... 20 ..... (and was thereupon sentenced to ..... ) and now is in lawful custody in Her Majesty's Prison at .....

AND WHEREAS ... having duly appealed to the Court of Appeal against such conviction (and/or sentence) and having duly applied to that Court, has been granted bail by the said Court pending the determination of his or her said appeal on entering into recognizances himself or herself in the sum of \$ ..... , (and with ..... sureties each in the sum of \$ ..... ), in the forms provided under these Rules:

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AND WHEREAS I, the Deputy-Registrar of the said Court of Appeal, have been given to understand that the said ..... is now in your lawful custody in the said prison under the said conviction and sentence:

AND WHEREAS I have received a recognizance of the said ..... and recognizances from ..... sureties for the said ..... and the said recognizances are in due form and in compliance with the order of the said Court of Appeal admitting the said ..... to bail:

Now I do give you notice that if the said ..... do remain in your custody under the said conviction (and sentence) and for no other cause you shall on receipt of this notice suffer him or her to go at large. And this notice shall be your authority in that behalf.

DATED this ..... day of ..... 20 .....

(Signed) .....

Deputy-Registrar,  
Court of Appeal

**CRIMINAL FORM 14**

(Rule 58(6) and (8))

IN THE COURT OF APPEAL

WARRANT FOR ARREST OF APPELLANT ON BAIL

(State) .....

Criminal Appeal No. .... of 20 .....

THE QUEEN v.

TO THE CONSTABLES OF THE POLICE FORCE,

(a)  
State Office.  
Head of Prisons

AND TO THE (a) ..... OF  
HER MAJESTY'S PRISON AT .....

WHEREAS ..... an Appellant in the Court has been released on bail, and it has now been ordered by the said Court that a Warrant be issued for the apprehension of the said ..... :

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These are therefore to command you the said Constables forthwith to apprehend the said ..... and to bring him or her to the (a) ..... of the said prison and there deliver him or her with this warrant into the custody of the said (a) ..... and you the said (a) ..... are hereby required to receive the said ..... into your custody in the said prison and there safely to keep him or her until further order of the said Court.

(a)  
State Office.  
Head of Prisons

.....  
*Presiding Judge*

DATED this..... day of..... 20.....

**CRIMINAL FORM 15**

(Rule 59(1))

IN THE COURT OF APPEAL  
NOTICE OF ABANDONMENT

(State) .....

Criminal Appeal No. .... of 20 .....

THE QUEEN v.

TO THE REGISTRAR OF THE COURT OF APPEAL.

I, ..... having been convicted of ..... in the High Court (Criminal Jurisdiction) at ..... and having been desirous of appealing to the Court against my said conviction (or the sentence of ..... passed upon me on my said conviction) do hereby give you notice that I do not intend further to prosecute my appeal, but that I hereby abandon all further proceedings in regard thereto as from the date hereof.

(Signed)  
(or mark)

Signature and address of  
witness attesting mark.

DATED this.....day of.....20.....

**CRIMINAL FORM 16**

(Rule 59(2))

IN THE COURT OF APPEAL

NOTIFICATION OF ABANDONMENT OF APPEAL

(State) .....

Criminal Appeal No. .... of 20 .....

THE QUEEN v.

TO THE DIRECTOR OF PUBLIC PROSECUTIONS.

\* This is to give you notice that I have this day received from the above-named ..... a notice of abandonment of all proceedings in regard to his or her appeal to the Court. The said notice is dated the ..... day of ..... 20 .....

By Rule 59(1) of the Court of Appeal Rules, upon the notice of abandonment being given the appeal shall be deemed to have been dismissed by the Court.

DATED this ..... day of ..... 20 .....

.....  
*Registrar of the Court of Appeal*

\* Send copies addressed to:

- (a) The Governor or the Administrator, if the conviction involved a sentence of death.
- (b) Any other respondent.
- © The Prison Authority, and
- (d) The Registrar of the court below.

**CRIMINAL FORM 17**

(Rule 62(1))

IN THE COURT OF APPEAL

NOTIFICATION TO APPELLANT OF RESULT OF APPLICATION

(State) .....

Criminal Appeal No. .... of 20 .....

THE QUEEN v.

To the above-named Appellant.

This is to give you notice that the Court has considered the matter of your application for:

- (a) leave to appeal to the said Court;
- (b) leave to extend the time within which you may give notice of appeal or of application for leave to appeal;

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- © permission to be present during the proceedings in your appeal;
- (d) admission to bail;
- (e) insert here nature of any other application that may have been made;

and has finally determined the same and has this day given judgment to the effect following:

.....  
*Registrar of the Court of Appeal*

DATED this.....day of.....20.....

**CRIMINAL FORM 18**

(Rule 62(1))

IN THE COURT OF APPEAL

NOTICE TO AUTHORITIES OF RESULT OF APPLICATION

(State) .....

Criminal Appeal No. .... of 20 .....

THE QUEEN v.

To the Registrar of the High Court\*

To .....

This is to give you notice that the above-mentioned having applied for:

- (a) leave to appeal to the said Court;
- (b) leave to extend the time within which he or she may give notice of appeal or of application for leave to appeal;
- (c) permission to be present during the proceedings in his or her appeal;
- (d) admission to bail;
- (e) insert here nature of any other application that may have been made.

the Court has this day finally determined his or her said applications and has given judgment to the effect following:

Here set out  
the decision  
of the Court

.....  
*Registrar of the Court of Appeal*

\* Send copies addressed to:

- (a) The Governor or the Administrator, if sentence of death has been passed.
- (b) The Director of Public Prosecutions or other respondent, and
- © The Prison Authority.

**CRIMINAL FORM 19**

(Rule 62(1))

IN THE COURT OF APPEAL

NOTIFICATION TO APPELLANT OF THE RESULT OF HIS OR HER APPEAL

(State) .....

Criminal Appeal No. .... of 20 .....

THE QUEEN v.

to the above-named Appellant.

This is to give you notice that the Court, having considered the matter of your appeal, has finally determined the same and has this day given judgment to the effect following:

.....  
*Registrar of the Court of Appeal*

DATED this ..... day of ..... 20 .....

**CRIMINAL FORM 20**

(Rules 62(1) and 63(1))

IN THE COURT OF APPEAL

NOTICE TO AUTHORITIES OF RESULT OF APPEAL

(State) .....

Criminal Appeal No. .... of 20 .....

THE QUEEN v.

To the Registrar of the High Court\*

To.....

This is to give you notice that the above-named having appealed against his or her conviction of the offence of ..... before the Court, and/or the sentence of ..... passed upon him or her for the offence of ..... by the High Court (Criminal Jurisdiction) at ..... the Court has finally determined the said appeal, and has this day given judgment therein to the effect following:



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Here set out  
the decision  
of the Court

.....  
*Registrar of the Court of Appeal*

DATED this ..... day of ..... 20 .....

\* Send copies addressed to:

- (a) The Governor or the Administrator, if sentence of death is involved.
- (b) The Director of Public Prosecutions or other respondent,
- (c) The Prison Authority.

\_\_\_\_\_

**CRIMINAL FORM 21**

(Rule 66(1))

IN THE COURT OF APPEAL

ORDER TO WITNESS TO ATTEND COURT FOR EXAMINATION

(State) .....

Criminal Appeal No. .... of 20 .....

THE QUEEN v.

Name,  
etc. of  
witness

To .....  
of .....

WHEREAS on good cause shown to the Court you have been ordered to attend and be examined as a witness before such Court upon the appeal of the above-named:

This is to give you notice to attend before the said Court at .....  
on the ..... day of ..... 20 .....  
at ..... o'clock in the ..... noon.

You are also required to have with you at the said time and place any books, papers or other things relating to the said appeal of which you may have had notice so to produce.

.....  
*Registrar of the Court of Appeal*

DATED this ..... day of ..... 20 .....

**CRIMINAL FORM 22**

(Rule 66(2))

IN THE COURT OF APPEAL

APPELLANT’S APPLICATION FOR FURTHER WITNESS

(State) .....

Criminal Appeal No. .... of 20 .....

THE QUEEN v.

I, .....  
having appealed to the Court, hereby request you to take notice that I desire that the said Court shall  
order the witnesses hereinafter specified to attend the Court and be examined on my behalf.

(Signed) .....  
(or mark) *Appellant*

Signature and address of  
witness attesting mark.

DATED this ..... day of ..... 20 .....

You are required to fill up the following and sign the same:

1. Names and addresses of witnesses.
2. Whether such witnesses have been examined at trial.
3. If not, state the reason why they were not so examined.
4. On what matters do you wish them to be examined on the appeal.

State shortly the evidence you think they can give.

**CRIMINAL FORM 23**

(Rule 66(5))

IN THE COURT OF APPEAL

NOTICE TO WITNESS TO ATTEND BEFORE AN EXAMINER

(State) .....

Criminal Appeal No. .... of 20 .....

THE QUEEN v.

To .....

of .....

WHEREAS on good cause shown to the Court you have been ordered to  
be examined as witness upon the appeal of the above-named, and your deposition to  
be taken for the use of the said Court:

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(a) Specify This is to give you notice to attend at (a) ..... on the  
place of ..... day of ..... 20..... before  
examination. (b) ..... at ..... o'clock in the noon.

(b) Fill in  
examiner's  
name.

You are also required to have with you at the said time and place any books, papers  
or other things relating to the said appeal of which you may have had notice so to  
produce.

.....  
*Registrar of the Court of Appeal*

DATED this ..... day of ..... 20 .....

**CRIMINAL FORM 24**

(Rule 66(7))

IN THE COURT OF APPEAL

CAPTION FOR DEPOSITION OF WITNESS EXAMINED BEFORE EXAMINER

(State) .....

Criminal Appeal No. .... of 20 .....

THE QUEEN v.

The deposition (on oath) taken before me the undersigned, being an examiner duly  
appointed by the Court in that behalf of ..... of ..... and  
..... of ..... witnesses,  
examined before me under an order of the said Court dated the ..... day of .....  
20 ..... in the presence of the said .....  
Appellant (or of his or her professional representative) and the Respondent at .....  
on the ..... day of ..... 20 ..... which said Appellant (or his or her  
professional representative) and Respondent had full opportunity of asking questions of the said  
witnesses, to whom the depositions following were read by me before being signed by them the said  
witnesses, respectively.

The deposition of .....  
of ..... who (upon oath duly administered by me) said as follows:

\_\_\_\_\_

APPENDIX D

FEEES OF COURT IN CIVIL APPEALS FROM COURTS OF SUMMARY  
JURISDICTION

	\$	¢
On entering an appeal .....	5.00	
On filing every document or exhibit .....	0.25	
On every judgment.....	5.00	
On amending or adding to grounds of appeal by leave or direction of Court at the hearing .....	1.00	
Provided that the Court shall have power to reduce or waive the fee.		
On inspection of any document or judgment .....	0.25	
On filing motion for re-entering appeal struck out.....	10.00	
On office copies of any documents for the first folio of 100 words .....	0.25	
For every other folio or part of a folio .....	0.15	
Every taxation of bill of costs including certificate.....	2.50	

ADDENDUM

TEXT OF FEDERAL SUPREME COURT REGULATIONS 21, 28, 35, 37

(Note! This Addendum does not form part of the Rules.)

**Reg. 21. Right of appeal in criminal cases.**

A person convicted on indictment in a superior court of a Territory on a date after this Part of these Regulations have effect in that Territory may appeal under this Part of these Regulations to the Federal Supreme Court

- (a) against his or her conviction on any ground of appeal which involves a question of law alone; and
- (b) with the leave of the Federal Supreme Court or upon the certificate of the judge who tried him or her that it is a fit case for appeal against his or her conviction on any ground of appeal which involves a question of fact alone, or a question of mixed law and fact, or any other ground which appears to the Court or judge to be a sufficient ground of appeal; and
- (c) with the leave of the Federal Supreme Court against the sentence passed on his or her conviction, unless the sentence is one fixed by law.

**Reg. 28. Time for appealing.**

(1) Where a person convicted desires to appeal under this Part of these Regulations to the Federal Supreme Court, or to obtain the leave of that court to appeal, he

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or she shall give notice of appeal or notice of his or her application for leave to appeal in such manner as may be directed by rules of court within fourteen days of the date of conviction.

(2) Except in the case of a conviction involving sentence of death, the time within which notice of appeal or notice of an application for leave to appeal may be given, may be extended at any time by the Federal Supreme Court.

**Reg. 35. Duties of Registrar with respect to notices of appeal, etc.**

(1) The Registrar shall take all necessary steps for obtaining a hearing under this Part of these Regulations of any appeal or application, notice of which is given to him or her under this Part, and shall obtain and lay before the Federal Supreme Court in proper form all documents, exhibits, and other things relating to the proceedings in the court before which the appellant or applicant was tried which appear necessary for the proper determination of the appeal or application.

(2) If it appears to the Registrar that any notice of an appeal against a conviction, purporting to be on a ground of appeal which involves a question of law alone, does not show any substantial ground of appeal, the Registrar may refer the appeal to the Court for summary determination, and, where the case is so referred, the Court may, if they consider that the appeal is frivolous and vexatious, and can be determined without adjourning the same for a full hearing, dismiss the appeal summarily, without calling on any person to attend the hearing or to appear for the Crown thereon.

(3) Any documents, exhibits, or other things connected with the proceedings on the trial of any person on indictment, who, if convicted, is entitled or may be authorised to appeal under this Part of these Regulations, shall be kept in the custody of the court of trial in accordance with rules of court made for the purpose for such time as may be provided by the rules, and subject to such power as may be given by the rules for the conditional release of any such documents, exhibits, or things from that custody.

(4) The Registrar shall furnish the necessary forms and instructions in relation to notices of appeal or notices of application under this Part of these Regulations to any person who demands the same, and to officers of courts, the Superintendents of Prisons or other officers in charge of prisons in each Territory and such other officers or persons as he or she thinks fit, and the Superintendent or other officer in charge of prisons in each Territory shall cause those forms and instructions to be placed at the disposal of prisoners desiring to appeal or to make any application under this Part and shall cause any such notice given by a prisoner in his or her custody to be forwarded on behalf of the prisoner to the Registrar.

(5) The Registrar shall report to the Federal Supreme Court or some judge thereof any case in which it appears to him or her that, although no application has been made for the purpose, a solicitor and counsel, or counsel only, ought to be assigned to an appellant under the powers given to the Court by this Part of these Regulations.

**Reg. 37. Case stated or question of law reserved.**

(1) Where any person is convicted in a superior court of a Territory on indictment, the judge may state a case or reserve a question of law for the consideration of

the Federal Supreme Court and the Federal Supreme Court shall consider and determine such case stated or question of law reserved and may either

- (a) confirm the judgment given upon the indictment;
- (b) order that such judgment be set aside and quash the conviction and direct a judgment and verdict of acquittal to be entered;
- (c) order that such judgment be set aside, and give instead thereof the judgment which ought to have been given at the trial;
- (d) require the judge by whom such case has been stated or question has been reserved to amend such statement or question when specially entered on the record; or
- (e) make such other order as justice requires.

(2) The Federal Supreme Court, when a case is stated or a question of law reserved for their opinion, shall have power, if they think fit, to cause the case or certificate to be sent back for amendment and thereupon the same shall be amended accordingly.

### **SCHEDULE 10 TO THE COURT ORDER**

(Section 17)

#### SUPREME COURT (QUEEN'S COUNSEL) RULES

1. **Short Title.**

These Rules may be cited as the Supreme Court (Queen's Counsel) Rules.

2. **Application.**

These Rules shall apply to the States as defined in rule 3.

3. **Interpretation.**

In these Rules, unless it is expressly provided to the contrary or the context otherwise requires,

“Court Order” means the Supreme Court Order 1967;

“State” means any of the following with its dependencies (if any), that is to say,

Anguilla,  
 Antigua,  
 Dominica,  
 Grenada,  
 Saint Christopher and Nevis,  
 Saint Lucia, and  
 Saint Vincent;

“Supreme Court” means the Eastern Caribbean Supreme Court established by section 4 of the Court Order.

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**4. Right of audience of Queen's Counsel.**

Queen's Counsel appointed in any of the States, in Montserrat or in the Virgin Islands, by letters patent issued on or after the twenty-fourth day of April One thousand nine hundred and sixty-seven shall have the right to practise as such and the customary right of preaudience before the Supreme Court in all the States.

**SCHEDULE 11 TO THE COURT ORDER**

(Section 12.(1))

**SUPREME COURT (MASTERS) ORDER**

**Organisation of Eastern Caribbean States Supreme Court**

**ARRANGEMENT OF SECTIONS**

Section

1. Citation.
2. Interpretation.
3. Establishment of the office of Master.
4. Functions of Master.
5. Number of Masters.
6. Variation of number of Masters.
7. Abolition of office of Master only with consent of incumbent.
8. Appointment of Masters.
9. Discipline.
10. Qualifications.
11. Tenure of office of Masters.
12. Retirement.
13. Pension.
14. Status of acting Masters.
15. Posting.
16. Assignments.
17. Salary.
18. Housing Allowance.
19. Travel Allowance.
20. Accommodation.
21. Telephone.

- 22. Relocation expenses.
- 23. Vacation leave.
- 24. Medical leave.
- 25. Medical fitness.
- 26. Oaths.



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## **SUPREME COURT (MASTERS) ORDER**

### **1. Short Title.**

This Order may be cited as the Supreme Court (Masters) Order.

### **2. Interpretation.**

In this Order,

“Courts Order” means the Eastern Caribbean Supreme Court Order;

“Master” means the office established by section 3 and, where the context so admits, includes the holder of the office and, unless otherwise stated, includes a person appointed to act in the office;

“State” means

- (a) Antigua and Barbuda,
- (b) Grenada,
- (c) Saint Christopher and Nevis,
- (d) Saint Lucia,
- (e) Saint Vincent and the Grenadines;
- (f) The Commonwealth of Dominica;

“Territory” means

- (a) Anguilla,
- (b) Montserrat, and
- (c) The British Virgin Islands.

### **3. Establishment of the office of Master.**

There is established as an office of the Supreme Court the office of Master of the Supreme Court.

### **4. Functions of Master.**

(1) A Master shall perform the duties and exercise the functions conferred upon Masters by the Rules of Court made pursuant to subsections (1) and (2) of section 17 of the Courts Order.

(2) A Master may exercise such functions, as may be conferred upon Masters in relation to any State or Territory, by any law in force in that State or Territory.

### **5. Number of Masters.**

There shall be two Masters.

**6. Variation of Number of Masters.**

The number of Masters may be varied by order of the Chief Justice made with the concurrence of the Prime Ministers of all the States.

**7. Abolition of office of Master only with consent of incumbent.**

No office of Master shall, without the consent of the holder of the office, be abolished while there is a substantive holder of that office.

**8. Appointment of Masters.**

The appointment of Masters is provided for in section 12.(2) of the Courts Order.

**9. Discipline.**

The discipline of Masters is provided for in section 12.(2) of the Courts Order..

**10. Qualifications.**

(1) A person shall not be qualified to be appointed as a Master unless that person

- (a) is qualified to practice as a barrister in a court of unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in a court having jurisdiction in appeals from such court and has so practiced for a period of or for periods amounting in the aggregate to not less than seven years; or
- (b) has been serving in the office of judge in such court for a period of or for periods amounting in the aggregate to not less than seven years.

(2) For the purposes of subsection (1), a reference to a period or periods during which a person has practiced as an advocate shall be construed as including periods during which a person has served in a public office in some part of the Commonwealth

- (a) in the office of magistrate;
- (b) in the office of registrar of a court of unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth; or
- (c) as an officer the functions of whose office includes appearing as an advocate in such court.

(3) For the purposes of subsection (1), a reference to a period or periods during which a person has served in a court of unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in a court having jurisdiction in appeals from such a court shall be construed as including periods during which a person has served

- (a) as case management master with functions comparable to those of a Master;
- (b) as master with functions comparable to those of a Master.

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**11. Tenure of office of Masters.**

(1) Subject to subsection (2), persons holding the office of Master, other than acting Master, hold office until attaining the age of sixty-five years.

(2) The Judicial and Legal Services Commission may remove a Master from office for cause at any time.

(3) In subsection (2), “cause” means

- (a) inability to discharge the functions of the office, whether arising from
  - (i) infirmity of body or mind;
  - (ii) failure in the due execution of the office;
  - (iii) having been placed, by his or her conduct or otherwise, in a position incompatible with the due execution of the office; or
  - (iv) any other cause;
- (b) misconduct.

**12. Retirement.**

(1) A Master shall retire upon attaining the age of sixty-five years.

(2) A Master may retire upon attaining an age that is less than sixty-five years where, the Master is eligible for retirement under the pension laws of the State or Territory of which, by direction of the Chief Justice made pursuant to section 13.(1) of the Courts Order, the Master shall be deemed to be in the service for the purpose of the grant of a pension.

**13. Pensions.**

(1) A Master shall be entitled to pension in accordance with section 13 of the Courts Order.

(2) The pension of a Master shall not attract or be liable to income tax or any other charge or levy.

**14. Status of Acting Master.**

(1) A person appointed by the Judicial and Legal Services Commission to act as a Master shall, unless that person earlier resigns from the office or is removed from the office by the Judicial and Legal Services Commission, continue to act in that office for the period, if any, for which that person was appointed or until a person has been appointed to and assumed or has resumed the functions of that office, as the case may be.

(2) Sections 11 and 13 shall not apply to a person appointed to act as a Master in respect of that person’s appointment.

**15. Posting.**

A Master shall reside in the State or Territory to which the Chief Justice, from time to time, posts the Master.

**16. Assignments.**

A Master shall serve the States or Territories to which the Chief Justice, from time to time, assigns to the Master.

**17. Salary.**

(1) A Master shall be paid a salary equivalent to eighty-five percent of the salary specified for a Puisne Judge in Schedule 3 to the Courts Order, as amended from time to time.

(2) The salary of a Master shall not attract or be liable to income tax or any other charge or levy.

**18. Housing Allowance.**

(1) Subject to subsection (2), a Masters shall be paid the housing allowance set out in Schedule 1 to this Order.

(2) If the Master is ordinarily resident in the State or Territory to which the Master is posted, the housing allowance shall be fifty percent of the amount prescribed in Schedule 1 for that State or Territory.

**19. Travel Allowance.**

(1) A Masters who owns a car shall be paid the travel allowance set out in Schedule 2 to this Order.

(2) A Master who does not own a car may, at the discretion of the Chief Justice, be reimbursed transportation costs incurred within the State or Territory to which the Master is posted, up to a maximum amount of travel allowance specified in Schedule 2 for that State or Territory.

**20. Accommodation.**

(1) Subject to subsections (3), (4) and (5), a Master is entitled to be paid for each calendar day while on duty outside the State or Territory to which the Master is posted an accommodation and subsistence allowance based on the United Nations Daily Subsistence Allowance.

(2) A Master may, at the discretion of the Chief Justice, be paid a supplementary allowance where, for reasons beyond the control of the Master, the actual costs of accommodation are significantly higher than the average hotel costs used in calculating the daily accommodation component of the United Nations Daily Subsistence Allowance.

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(3) Where a Master's travel on duty outside the State or Territory to which the Master is posted does not involve an overnight stay, the Master is entitled to be paid forty percent of the accommodation and subsistence allowance.

(4) Where a Master on duty outside the State or Territory to which the Master is posted elects to stay in private accommodation, the Master is entitled to be paid fifty percent of the accommodation and subsistence allowance.

(5) Where a Master on duty outside the State or Territory to which the Master is posted

(a) is accommodated free of charge by the Eastern Caribbean Supreme Court or by the Government of the State or Territory, the Master is entitled to be paid fifty percent of the accommodation and subsistence allowance;

(b) is accommodated and provided with meals free of charge by the Eastern Caribbean Supreme Court or by the Government of the State or Territory, the Master is entitled to be paid twenty percent of the subsistence allowance.

#### 21. **Telephone.**

(1) A Master shall be provided with local residential telephone service at the Master's residence in the State or Territory to which the Master is posted, at no cost to the Master.

(2) A Master is entitled to be reimbursed for business related long – distance telephone calls.

#### 22. **Relocation Expenses.**

Masters are entitled to have their personal effects and household goods moved, at the expense of the Eastern Caribbean Supreme Court, from the State or Territory of their former posting or their place of residence immediately prior to their appointment, as the case may be, to the State or Territory of current posting, by packers, shippers and freight forwarders selected by the Chief Justice.

#### 23. **Vacation Leave.**

(1) A Master is entitled to forty-two calendar days vacation leave annually of which not less than twelve must be taken annually either in one period or in series of periods according to the requirements of the Judicial and Legal Services Commission.

(2) Vacation leave may be accumulated up to a maximum of one hundred and twenty calendar days.

(3) Leave in excess of one hundred and twenty calendar days is forfeited.

(4) There is no entitlement to remuneration for leave forfeited.

**24. Medical Leave.**

A Master is entitled to two working days per month of uncertified medical leave, and to a reasonable period of certified medical leave annually.

**25. Medical Fitness.**

A Master shall, before appointment, be certified by a Medical practitioner, who is duly registered in the State or Territory, as being in good health and free from any ailment likely to adversely affect the discharge of the functions and duties of the office of Master.

**26. Oaths.**

A Master shall, before entering upon the functions of the office, take the oaths set out in Schedule 1 to the Courts Order.

**SCHEDULES****SCHEDULE 1**

(Section 18)

Housing Allowance

EC\$ 24,000.00 per year

**SCHEDULE 2**

(Section 19)

**Travel Allowance**

<b>COLUMN ONE</b> <b>State or Territory to which Master is posted</b>	<b>COLUMN TWO</b> <b>Allowance</b>
SAINT LUCIA	EC\$6,960.00 per year

*[Schedule inserted by SRO 50 of 2008]*