





# Magistrates' Court

**1961-23**

35	Act.1961 No.24, s.91	94	31 & Act.1961 No.24,s.32
36	Act.1961 No.24, s.104	95	Act.1961 No.24,s.278
37	Act.1961 No.24, s.105	96	Act.1961 No.24,s.281
38	Act.1961 No.24, s.270	97	Act.1961 No.24,s.282
39	Act.1961 No.24, s.271	98	Act.1961 No.24,s.284
40	Act.1961 No.24, s.118	99	Act.1961 No.24,s.293
41	Act.1961 No.24, s.76	100	62 & Act.1961 No.24,s.295
101	64 & Act.1961 No.24,s.299	118	Act.1961 No.24,s.168
102	Act.1961 No.24,s.51	119	Act.1961 No.24,s.167
103	63	120	Act.1961 No.24,s.176
104	Act.1961 No.24,s.94	121	Act.1961 No.24,s.177
105	Act.1961 No.24,s.95	122	Act.1961 No.24,s.178
106	Act.1961 No.24,s.43	123	67
107	Act.1961 No.24,s.96	124	68
108	Act.1961 No.24,s.97	125	Act.1961 No.24,s.119
109	Act.1961 No.24,s.98	126	Act.1961 No.24,s.233
110	Act.1961 No.24,s.8	127	4
111	65	128	14
112	67	129	61
113	13	130	19
114	14	131	69
115	65 & Act.1961 No.24,s.110	First Sch.	Act.1961 No.24,Sch.2
116	Act.1961 No.24,s.47	Second Sch.	Act.1961 No.24,Sch.4
117	Act.1961 No.24,s.50	Third Sch.	Act.1961 No.24,Sch.5







AN ACT TO CONSOLIDATE THE LAW GOVERNING THE MAGISTRATES’ COURT AND TO PROVIDE FOR THE ESTABLISHMENT, POWERS, JURISDICTION AND PROCEDURE OF THE MAGISTRATES’ COURT, FOR THE APPOINTMENT OF JUSTICES OF THE PEACE, AND FOR MATTERS CONNECTED THEREWITH.

**Short title.**

1. This Act may be cited as the Magistrates’ Court Act.

**Interpretation.**

2.(1) In this Act, unless the context otherwise requires,—

“clerk of the court” and “clerk of the magistrates’ court” mean the person appointed to be clerk of the magistrates’ court under section 14;

“commit to custody” means commit to prison or, where any law authorizes or requires committal to some other place of detention instead of committal to prison to that other place;

“court house” means any building or place appointed to be a court house under the provisions of section 5;

“family proceedings” has the meaning assigned to it by section 45;

“guardianship order” means any order made under any law governing the guardianship of children;

“children” has the meaning given by the provisions of the Children Act 2009;

“impose imprisonment” means pass a sentence of imprisonment or fix a term of imprisonment for failure to pay any sum of money, or for want of sufficient distress to satisfy any sum of money, or for failure to do or abstain from doing anything required to be done or left undone;

“indictable offence” means an offence which, if committed by an adult, is triable on indictment, (whether or not it is also triable by the magistrates’ court) except an offence otherwise triable only by the magistrates’ court which, under section 108 of the Criminal Procedure Act<sup>1</sup> or any other law, is required to be tried on indictment at the instance of the accused or the prosecutor;

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<sup>1</sup> 1961-24















24. The court shall have such jurisdiction in civil matters and other matters not specified in section 21 as may be conferred upon it by this Act or by any other law.

**Complaints.**

25. The magistrates' court shall have jurisdiction to hear a complaint if the complaint relates to anything done within Gibraltar or anything left undone that ought to have been done in Gibraltar, or ought to have been done either in Gibraltar or elsewhere, or relates to any other matter arising within Gibraltar.

**Debt and breach of contract.**

26. *Revoked.*

**PART III.—WITNESSES AND EVIDENCE.**

**Evidence to be on oath.**

27. Subject to the provisions of any law authorizing the reception of unsworn evidence, evidence given before the magistrates' court shall be given on oath.

**Recalcitrant witnesses.**

28.(1) Where a justice of the peace is satisfied that any person in Gibraltar is likely to be able to give material evidence, or produce any document or thing likely to be material evidence, at an inquiry into an indictable offence by the magistrates' court or at the summary trial of an information or hearing of a complaint by the court and that that person will not voluntarily attend as a witness or will not voluntarily produce the document or thing, the justice shall issue a summons directed to that person requiring him to attend before the court at the time and place appointed in the summons to give evidence or to produce the document or thing.

(2) If a justice of the peace is satisfied by evidence on oath of the matters mentioned in subsection (1) and also that it is probable that a summons under subsection (1) would not procure the attendance of the person in question, the justice may, instead of issuing a summons, issue a warrant to arrest that person and bring him before the court at a time and place specified in the warrant :

Provided that a warrant shall not be issued under this subsection where the attendance is required for the hearing of a complaint.

(3) On the failure of any person to attend before the magistrates' court in answer to a summons under this section, if—





and by any other law and in default thereof in conformity with the law and practice for the time being observed in England in magistrates' courts.

*Complaints.*

**Issue of summons on complaint.**

34. Subject to the provisions of this Act, where a complaint is made to a justice of the peace upon which the magistrates' court has power to make an order against any person, the justice may issue a summons directed to that person requiring him to appear before the magistrates' court to answer to the complaint.

**Non-appearance of complainant.**

35. Where at the time and place appointed for the hearing or adjourned hearing of a complaint the defendant appears but the complainant does not, the court may dismiss the complaint or, if evidence has been received on a previous occasion, proceed in the absence of the complainant.

**Non-appearance of defendant.**

36.(1) Where at the time and place appointed for the hearing or adjourned hearing of a complaint the complainant appears but the defendant does not, the court may, subject to subsection (3) proceed in his absence.

(2) Where the court, instead of proceeding in the absence of the defendant, adjourns, or further adjourns, the hearing, the court may, if the complaint has been substantiated on oath, and subject to the following provisions of this section, issue a warrant for his arrest.

(3) The court shall not begin to hear the complaint in the absence of the defendant or issue a warrant under this section unless either it is proved to the satisfaction of the court, on oath, or in such other manner as may be prescribed, that the summons was served on him within what appears to the court to be a reasonable time before the hearing or adjourned hearing or the defendant has appeared on a previous occasion to answer to the complaint.

(4) Where the defendant fails to appear at an adjourned hearing, the court shall not issue a warrant under this section unless it is satisfied that he has had adequate notice of the time and place of the adjourned hearing.

(5) Where the defendant is arrested under a warrant issued under this section, the court may, on any subsequent adjournment of the hearing, but subject to the provisions of subsection (6), remand him.





















(6) The magistrates' court shall not impose imprisonment in respect of a default to which a complaint under this section relates unless the court has inquired in the presence of the defendant whether the default was due to the defendant's wilful refusal or culpable neglect, and shall not impose imprisonment if it is of opinion that the default was not so due; and, without prejudice to the foregoing provisions of this subsection, the court shall not impose imprisonment—

- (a) in a case in which the court has power to make an attachment of earnings order under the Maintenance Act unless the court is of opinion that it is inappropriate to make such an order;
- (b) in any case, in the absence of the defendant.

(7) Notwithstanding anything in section 52(3), the period for which a defendant may be committed to prison under a warrant of commitment issued in pursuance of a complaint under this section shall not exceed six weeks.

(8) Be imprisonment or other detention of a defendant under a warrant of commitment issued as aforesaid shall not operate to discharge the defendant from his liability to pay the sum in respect of which the warrant was issued.

**Money found on defaulter.**

58.(1) Where the Court has Ordered the enforcement of a sum due from a person under a maintenance order, the court may order him to be searched.

(2) Any money found on the arrest of a person ordered to pay such a sum, or on a search or on his being taken to a prison or other place of detention in default of payment of such a sum or for want of sufficient distress to satisfy such a sum, may, unless the court otherwise directs, be applied towards payment of the said sum; and the balance, if any, shall be returned to him.

(3) The court shall not allow the application of any money found on a person if it is satisfied that the money does not belong to him or that the loss of the money would be more injurious to his family than would be his detention.

**Effect of committal on arrears.**

59. Where a person is committed to custody under this Part for failure to pay a sum due under a maintenance order, then, unless the court otherwise directs, no arrears shall accrue under the order while he is in custody.







**Rules of court.**

69. The Chief Justice may make rules of court for the carrying out of the purposes of this Act and in particular, but without prejudice thereto, may make such rules providing for—

- (a) the practice and procedure of justices in exercising functions preliminary or incidental to proceedings before the court;
- (b) the service and execution of process issued by or for the purposes of the court;
- (c) the practice and procedure to be followed in proceedings under section 26;
- (d) the keeping of records of proceedings before the court and the manner in which things done in the course of, or as preliminary or incidental to, any such proceedings, or any proceedings on appeal from the court to the Supreme Court, may be proved in any legal proceedings;
- (e) the forms to be used and matters connected therewith;
- (f) the court fees to be paid;
- (g) the amount of the costs and expenses to be paid to prosecutors, complainants, parties and witnesses in proceedings before the court;
- (h) the functions of the Registrar for the purposes of securing the attendance of persons bound over conditionally by examining justices to attend a trial on indictment;
- (i) the furnishing by any person having custody of the depositions or copies thereof, and of copies of the information if it is in writing, to a person committed for trial;
- (j) the matters additional to those specified in section 38 on complaint for which the court shall have power to make an order with the consent of the defendant without hearing evidence;
- (k) prescribing anything which is to be, or may be, prescribed by this Act.

**Savings and transitional provisions.**

70.(1) Any case dealt with by the magistrates' court or any order made by such court on any complaint or application or any domestic or other proceedings commenced in the magistrates' court in accordance with the provisions of the Magistrates' Court Act prior to the coming into operation of this Act, shall be deemed to have been validly made, commenced or continued.

(2) Upon coming into operation of this Act, any case, complaint, application or proceedings referred to in subsection (1) which has not been disposed of, the magistrate's court may, if it appears to the court convenient to do so refer those matters forthwith to the Family Judge for hearing and disposal.

(3) In this section, "this Act" means the Magistrates' Court (Amendment) Act 2010.