

**FIRST SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3817 of 28th October, 2010



I ASSENT,

ADRIAN JOHNS,

GOVERNOR.

26th October, 2010.



GIBRALTAR

No. 20 of 2010

AN ACT to amend the Criminal Procedure Act and the Supreme Court Act so as to make provision for the reform of the jury system.

ENACTED by the Legislature of Gibraltar.

Title and commencement.

1.(1) This Act may be cited as the Criminal Procedure (Juries) Act 2010.

(2) This Act comes into operation on the day appointed by the Minister with responsibility for justice by notice in the Gazette and different days may be appointed for different purposes.

Amendment of the Criminal Procedure Act.

2.(1) The Criminal Procedure Act is amended in accordance with this section.

(2) For section 135 substitute—

“135.(1) Subject to subsection (2), every criminal case before the court shall be tried with a jury in the manner provided by Part III of the Supreme Court Act.

(2) A trial on an indictment which includes a serious or complex financial offence may be conducted by a judge, assisted by 2 lay assessors, or by the judge alone, in accordance with and in the manner provided by Part IIIA of the Supreme Court Act.”.

(3) Delete sections 145 to 163.

Amendment of Part III of the Supreme Court Act.

3. For Part III of the Supreme Court Act substitute—

“PART III

TRIAL BY JURY

Qualification for jury service.

19A.(1) Subject to this Part, a person is qualified to serve as a juror in the Supreme Court and is liable to be included on the jury list if he is not less than 18 nor more than 65 years of age and—

- (a) he is eligible for registration as an elector under the Parliament Act; or
- (b) he has been ordinarily resident in Gibraltar for a continuous period of at least 5 years before the jury list is drawn up.

(2) A person must not be included on the jury list if–

- (a) he is mentally disabled and by reason of his disability cannot reasonably be expected to perform the duties of a juror;
- (b) he does not have an adequate knowledge of English to perform the duties of a juror;
- (c) he is disqualified for jury service by virtue of subsection (5); or
- (d) he is ineligible for jury service by virtue of subsection (6).

(3) Subject to subsection (2), a person aged 66 or more but who has not reached the age of 71 may volunteer for service as a juror, and may apply to the Registrar to be included among persons liable for jury service, and the Registrar if satisfied that the person–

- (a) is eligible for registration as an elector in accordance with section 3 of the Parliament Act; or
- (b) has been ordinarily resident in Gibraltar for a continuous period of at least 5 years before the jury list is drawn up,

must include his or her name on the jury list accordingly.

(4) In subsection (2) “mentally disabled” has the meaning given to that term by Part I of Schedule 2.

(5) The persons who are disqualified for jury service are those listed in Part II of Schedule 2.

(6) The persons who are ineligible for jury service due to their profession being listed in Part I of Schedule 3.

Jury list.

19B.(1) The Registrar must—

- (a) before the first Sunday in September in each alternate year make a list in the prescribed form of all persons qualified and liable to serve as jurors;
- (b) cause a copy of the list to be published at such time and place as the Chief Justice may direct;
- (c) attach to each such copy a notice stating that all objections to the list will be heard by the magistrates' court at a time and place stated in it, being not less than 15 nor more than 21 days from the date of publication of the notice.

(2) At the time and place so stated, there must be a sitting of the magistrates' court for the revision of the jury list at which, upon any evidence adduced before it or of its own knowledge, information and belief, the court may—

- (a) strike out from the list the name of any person included in it who is not qualified or liable to serve; or
- (b) add to the list the name of any person who is qualified and claims the right to serve as a juror.

(3) Any person may appear before the magistrates' court at the revision of the list either personally or by counsel and claim that he is or is not liable to serve as a juror.

(4) The list when revised—

- (a) must be certified by the clerk of the magistrates' court and delivered to the Registrar;
- (b) comes into force from the 1st day of October next after it is certified; and
- (c) remains in force for 2 years.

(5) Every person whose name is included in the jury list as revised by the magistrates' court shall, subject to the provisions of this Part, be liable to serve as a juror notwithstanding that he may have been entitled by reason of some disqualification or exemption to claim that he ought not to be in the jury list.

Service of summons.

19C.(1) A summons to serve as a juror must be in the prescribed form and served by the Registrar at least 6 clear days before the day appointed for the sitting of the court—

- (a) by delivering it to the person to be summoned or, if he is not present, by leaving it at his usual place of abode or place of business; or
- (b) by sending it by registered post addressed to him at his usual place of abode or place of business.

(2) No person may be summoned to serve on any jury or inquest more than once in any period of two years, unless all the jurors on the list have been already summoned to serve during the year.

(3) A written summons sent or delivered to any person under subsection (1) must be accompanied by a notice informing him—

- (a) of how many days he is expected to attend court;
- (b) of the effect of sections 19E, 19F, 19G, 19H, 19I, 22E and 22F; and

- (c) that he may make representations to the Registrar with a view to obtaining the withdrawal of the summons, if for any reason he is no longer qualified for jury service, or wishes or is entitled to be excused.

(4) If a person is summoned under this section, the Registrar may at any time put or cause to be put to him such questions as the Registrar thinks fit in order to establish whether or not the person is qualified for jury service.

(5) A certificate signed by the Registrar stating that a written summons was duly served in accordance with subsection (1) is admissible as evidence in any proceedings, without proof of the Registrar's signature or official character.

Withdrawal or alteration of summons.

19D. If it appears to the Registrar, at any time before the day on which any person summoned under section 19C is first to attend, that his attendance is unnecessary, or can be dispensed with on any particular day or days, the Registrar may withdraw or alter the summons by notice served in the same way as a notice of summons.

Attendance and service.

19E.(1) Subject to subsection (2), a person summoned under section 19C—

- (a) must attend the Supreme Court for the number of days directed by the summons or by the Registrar; and
- (b) is liable to serve on any jury.

(2) No more than—

- (a) one person from each household;
- (b) 3 persons employed as registered nurses in Gibraltar;

- (c) 3 persons employed as teachers in Gibraltar (including no more than 1 teacher from a particular school);
- (d) 3 members of the City Fire Brigade;

may be summoned to serve as a juror at the same time.

Excusal for previous jury service.

19F.(1) If a person summoned under section 19C shows to the satisfaction of the Registrar, or of the court—

- (a) that he has served on a jury, or duly attended to serve on a jury, in the 2 years ending with the service of the summons on him; or
- (b) that the court has excused him from jury service for a period which has not terminated,

the Registrar or court must excuse him from attending, or further attending, pursuant to the summons.

(2) Records of persons summoned under section 19C must be kept in the manner the Registrar determines, and the Registrar may, if he thinks fit, make arrangements for allowing inspection of the records by members of the public in such circumstances and subject to such conditions as he determines.

(3) A person duly attending in compliance with a summons under this Part is entitled on application to the Registrar to a certificate recording that he has so attended.

Excusal for certain persons.

19G.(1) If a person summoned under section 19C—

- (a) shows to the satisfaction of the Registrar or the court that he is among the persons listed in Part II of Schedule 3; and

(b) states that he wishes to be excused from jury service,

the Registrar or court, as the case may be, must excuse him from such service and, if applicable, from attending the Supreme Court in relation to such summons.

(2) An application to the Registrar for excusal under this section must be made in person and at least one clear day before the day appointed for the sitting of the court.

Discretionary excusal.

19H.(1) If a person summoned under section 19C shows to the satisfaction of the Registrar or the court that there is good reason why he should be excused from attending pursuant to the summons, the Registrar or court, as the case may be, may excuse him from so attending.

(2) An application to the Registrar for excusal under this section must be made in person and at least one clear day before the day appointed for the sitting of the court.

(3) Without affecting other provisions of this section or section 19G, the court before which a person is summoned to attend under this Part may excuse that person from so attending.

Discretionary deferral.

19I.(1) If a person summoned under section 19C shows to the satisfaction of the Registrar that there is good reason why his attendance pursuant to the summons should be deferred, the Registrar may defer his attendance, and, if he does so, must vary the days on which that person is summoned to attend and the summons has effect accordingly.

(2) If an application under subsection (1) has been granted or refused, the powers conferred by that subsection may not be exercised subsequently in relation to the same summons.

Discharge of summons in case of doubt as to capacity.

19J. If at any time it appears to the Registrar or the court, in the case of a person attending pursuant to a summons under this Part, that on account of the person's insufficient understanding of English there is doubt as to his capacity to act effectively as a juror, even if the person is on the jury list, the Registrar or court, as the case may be, must determine whether or not he should act as a juror and, if not, must discharge the summons.

Number of jurors.

20A.(1) The jury must consist of 9 persons except for the trial of a person arraigned on an indictment for murder when the jury must consist of 12 persons.

(2) If it appears to the court that the duration of the trial may exceed 4 weeks, the court may order that no more than 3 persons (in this Part referred to as "additional jurors") are to be chosen in accordance with the provisions of section 20B in addition to the number of jurors specified in subsection (1).

(3) The provisions of section 21C apply in respect of any person chosen as an additional juror.

(4) This section does not affect the operation of the system of lay assessors provided for in Part IIIA.

Choosing the jury.

20B.(1) The jury is to be chosen from among the number of persons summoned to attend by ballot in open court, until the required number of jurors, including the number of any additional jurors ordered by the court under section 20A(2) appear and, after all just causes of challenge have been allowed, remain as fair and indifferent.

(2) The same procedure is to be followed whenever it is necessary to form a new jury.

(3) The power of summoning jurors under section 19C may be exercised after balloting has begun, as well as earlier, and if exercised after balloting has begun the court may dispense with balloting for persons summoned under that section.

(4) If a case is brought on for trial during the time that a jury in any other case is deliberating, a new jury may be drawn.

(5) No more than one teacher, one member of the City Fire Brigade and one registered nurse may be chosen to be included in a jury to try a particular issue.

Summoning in exceptional circumstances.

20C. If it appears to the court that a jury to try any issue before the court will be, or probably will be, incomplete, the court may require any persons who are in, or in the vicinity of, the court, to be summoned (without any written notice) for jury service up to the number needed (after allowing for any who are not qualified under section 19A, and for excusals and challenges) to make up a full jury.

Challenge.

20D.(1) In proceedings for the trial of any person for an offence on indictment—

- (a) that person may challenge all or any of the jurors for cause; and
- (b) any challenge for cause must be tried by the judge before whom that person is to be tried.

(2) A challenge to a juror in any court must be made after his name has been drawn by ballot (unless the court, pursuant to section 20B(3) has dispensed with balloting for him) and before he is sworn.

(3) The fact that a person summoned to serve on a jury is not qualified to serve is a ground of challenge for cause; but subject to

that, and to the other provisions of this section, nothing in this Part affects the law relating to challenge of jurors.

(4) This section does not affect the right of challenge to the array, that is to say the right of challenge on the ground that the person responsible for summoning the jurors in question is biased or has acted improperly.

Jury may try several issues.

20E.(1) If no objection is made by either party the court may—

- (a) try any issue with the same jury that has previously tried or been drawn to try a previous issue; or
- (b) order the name of any person on such jury whom both parties consent to withdraw or who is justly challenged, or whom the court excuses, to be set aside, and another person to be chosen by lot.

(2) If one or more additional jurors have been chosen, the court may appoint an additional juror to be a member of the jury, subject to the powers of the court contained in this section, and only when no additional juror is available may another person be chosen by ballot.

Swearing of juror.

21A.(1) A juror must be sworn immediately after he has been chosen.

(2) No more than one member of a jury to try an issue in a court may be sworn at a time.

Appointment of foreman.

21B.(1) When the jurors have been sworn, they must appoint one of their number to be foreman.

(2) If a majority of the jurors do not agree in the appointment of a foreman within a time the court considers reasonable, the court must appoint a foreman.

(3) The functions of the foreman are—

- (a) to preside during the deliberations of the jury;
- (b) to ask any information from the court that is required by the jury or any of the jurors;
- (c) to announce the verdict of the jury.

Continuation of trial on death or discharge of juror.

21C.(1) If one or more additional jurors have been chosen, such a person is to be treated as and has the obligations of a juror for the period of the trial up to the time that either—

- (a) he is appointed as a juror by reason of subsection (3)(a); or
- (b) the jury consider their verdict, at which time the court must discharge any additional juror in respect of the trial.

(2) If the court discharges an additional juror under subsection (1)(b), it may require the person to attend the court as an additional juror if the same jury tries another issue.

(3) If in the course of a trial a juror dies or is discharged by the court, whether as being through illness incapable of continuing to act or for any other reason, then—

- (a) if one or more additional jurors has been chosen, the court must appoint such person or persons, selected in the order in which additional jurors were chosen, as juror in place of a juror who has died or was discharged; or

- (b) if no additional juror has been chosen, or any additional juror chosen has been appointed juror or is not otherwise available to be appointed juror, but the number of the members of the jury is not reduced below 7,

the jury is for all the purposes of the trial properly constituted, and the trial must proceed and a verdict may be given accordingly.

(4) On a trial for murder, subsection (3)(b) does not apply on the death or discharge of a juror unless—

- (a) assent to its applying is given in writing by or on behalf of both the prosecution and the defendant, or each of the defendants; and
- (b) in any event the number of jurors is not reduced below 10.

Discharge of jury: General power.

21D.(1) Without affecting section 21C, the judge may at any time discharge a jury and order a retrial if he thinks fit to do so.

(2) If the reason for the discharge is because jury tampering appears to have taken place, section 21E applies.

Discharge of jury for jury tampering.

21E.(1) If a judge is minded during a trial on indictment to discharge the jury because jury tampering appears to have taken place, then before taking any steps to discharge the jury, the judge must—

- (a) inform the parties that he is minded to discharge the jury;
- (b) inform the parties of the grounds on which he is so minded; and

(c) allow the parties an opportunity to make representations.

(2) If the judge, after considering any such representations, discharges the jury, he may, subject to subsection (4), order that the trial is to continue without a jury if he is satisfied that—

(a) jury tampering has taken place; and

(b) to continue the trial without a jury would be fair to the defendant or defendants.

(3) If the judge considers that it is necessary in the interests of justice for the trial to be terminated, he must terminate the trial.

(4) If a trial is continued without a jury, the court has all the powers, authorities and jurisdiction which the court would have had if the trial had been continued with a jury (including power to determine any question and to make any finding which would be required to be determined or made by a jury).

(5) Unless the context otherwise requires, any reference in an enactment to a jury, the verdict of a jury or the finding of a jury is to be read, in relation to a trial continued without a jury, as a reference to the court, the verdict of the court or the finding of the court.

(6) If a trial is continued without a jury and the court convicts a defendant—

(a) the court must give a judgment which states the reasons for the conviction at, or as soon as reasonably practicable after, the time of the conviction; and

(b) for purposes of an appeal (or any other purpose) the date of the conviction is to be read as a reference to the date of that judgment.

(7) This section does not affect section 256 of the Criminal Procedure Act.

Delivery of verdicts.

21F.(1) Every verdict in a criminal case must be delivered orally in open court by the foreman of the jury, and must thereupon be recorded and read over to the jury before they are discharged.

(2) In every case the foreman must announce the number of jurors who agreed on the verdict and the number who dissented.

Majority verdicts.

21G.(1) If a person is arraigned on indictment for murder, the court must not accept any verdict of the jury unless it is unanimous.

(2) In any other criminal case, the court may accept a verdict upon which at least 7 of the jurors are agreed, subject to subsections (3) and (4).

(3) The court may only accept a majority verdict if the jury are unable to reach a unanimous verdict after deliberating for a time the court considers reasonable having regard to the nature and complexity of the case, not being less than 2 hours from the conclusion of the summing-up.

(4) The court must not accept a verdict of guilty by virtue of subsection (2) unless the foreman of the jury has stated in open court the number of jurors who respectively agreed to and dissented from the verdict.

(5) The verdict of a majority of the jurors accepted by the court under this section is as good and valid in all respects as a unanimous verdict.

Jury unable to reach verdict.

21H.(1) If in any case the court is satisfied that there is no reasonable prospect of the jury agreeing upon a verdict which the court can accept, the court must, subject to subsection (2), discharge the jury and either—

- (a) cause a new jury to be at once impanelled and sworn and charged with the case; or
- (b) adjourn the proceedings to a date the court thinks fit.

(2) A jury must not be discharged before it has deliberated for at least 3 hours after the conclusion of the summing-up.

(3) A trial with a new jury must proceed *de novo* as if the first jury had not been impanelled.

Stay or reversal of judgment.

21I.(1) No judgment after verdict in any trial by jury in any court may be stayed or reversed by reason that—

- (a) the provisions of this Part about the summoning or impanelling of jurors, or the selection of jurors by ballot, have not been complied with;
- (b) a juror was not qualified in accordance with section 19A;
- (c) any juror was wrongly named or described; or
- (d) any juror was unfit to serve.

(2) Subsection (1)(a) does not apply to any irregularity if objection is taken at, or as soon as practicable after, the time it occurs, and the irregularity is not corrected.

(3) Nothing in subsection (1) applies to any objection to a verdict on the ground of personation.

Views.

22A.(1) The Chief Justice may by rules of court make provision for viewing of sites by jurors.

(2) The places that a juror may be called on to view are not restricted to any particular locality.

Separation.

22B. If, on the trial of any person for an offence on indictment, the court thinks fit, it may at any time (either before or after the jury have been directed to consider their verdict) permit the jury to separate.

Documents produced as exhibits.

22C.(1) This section applies if on a trial before a judge and jury for an offence—

- (a) a statement made in a document is admitted in evidence; and
- (b) the document or a copy of it is produced as an exhibit.

(2) The exhibit must not accompany the jury when they retire to consider their verdict unless—

- (a) the court considers it appropriate; or
- (b) all the parties to the proceedings agree that it should accompany the jury.

Refreshment.

22D. Jurors, after being sworn, may, in the discretion of the court, be allowed reasonable refreshment at the court's expense.

Payment for jury service.

22E.(1) Subject to this section, a person who serves as a juror is entitled, in respect of his attendance at court for the purpose of performing jury service, to receive payment, at rates determined from time to time by the Minister, by way of allowances for—

- (a) travelling and subsistence; and
- (b) any loss of earnings which he would otherwise have made or received.

(2) The Registrar must determine the actual amounts payable to persons under subsection (1) and the manner of making those payments, and all such payments are to be made out of the Consolidated Fund.

(3) For the purpose of subsection (1) a person who, in obedience to a summons to serve on a jury, attends for service as a juror is deemed to serve as a juror even if he is not subsequently sworn.

Offences and penalties.

22F.(1) Subject to subsections (2) to (4), a person who—

- (a) when duly summoned under section 19C fails to attend (on the first or on any subsequent day on which he is required to attend by the summons or by the Registrar) in compliance with the summons; or
- (b) after attending pursuant to a summons, is not available when called on to serve as a juror, or is unfit for service by reason of drink or drugs,

commits an offence and is liable on summary conviction to a fine at level 3 on the standard scale.

(2) Subsection (1)(a) does not apply to a person summoned otherwise than under section 20C, unless the summons was duly served on him not later than 6 days before the date fixed by the summons for his first attendance.

(3) A person does not commit an offence under subsection (1) if he can show some reasonable cause for his failure to comply with the summons, or for not being available when called on to serve.

(4) This section has effect subject to the provisions of this Part about the withdrawal or alteration of a summons and about the granting of any excusal or deferral.

(5) A person who—

- (a) having been summoned under section 19C makes, or causes or permits to be made on his behalf, any false representation to the Registrar with the intention of evading jury service;
- (b) makes or causes to be made on behalf of another person who has been so summoned any false representation to that officer with the intention of enabling the other to evade jury service;
- (c) when any question is put to him pursuant to section 19C(4), refuses without reasonable excuse to answer, or gives an answer which he knows to be false in a material particular, or recklessly gives an answer which is false in a material particular;
- (d) knowing that he is not qualified for jury service under Part I of Schedule 2 serves on a jury; or
- (e) knowing that he is disqualified from jury service under Part II of Schedule 2, serves on a jury,

commits an offence.

(6) A person who commits an offence under subsection (5) is liable on summary conviction—

- (a) in the case of an offence of serving on a jury when disqualified - to a fine at level 5 on the standard scale;
- (b) in any other case – to a fine at level 3 on the standard scale.

Application of Part III to civil actions.

22G. Subject to sections 22H and 22I, the provisions of this Part apply so far as they are appropriate, mutatis mutandis, to juries summoned for the trial of any civil action.

Jurors may be required to stand by.

22H.(1) Subject to subsection (2) in any civil action, it shall be lawful for the court, if it thinks it fit to do so, at the request of either party, to order any juror to stand by.

(2) When the panel is exhausted, the names of all those who have been ordered to stand by must be called over again and may not be objected to by either party except for cause.

Verdicts in civil actions.

22I. In any civil action tried by the court with a jury, the verdict of the jury need not be unanimous and the court may—

- (a) accept a verdict upon which at least 7 jurors are agreed, if the jury are unable to reach an unanimous verdict after deliberation for such time as the court may consider reasonable, not being less than two hours from the conclusion of the summing-up;
- (b) with the consent of all parties to the case, and after the jury have deliberated for such time as the court may consider reasonable not being less than three hours, accept the verdict of a simple majority of the jurors.”.

Insertion of a new Part IIIA into the Supreme Court Act.

4. After Part III of the Supreme Court Act insert—

“PART IIIA

TRIAL WITH LAY ASSESSORS

27A.(1) If–

- (a) one or more defendants are to be tried on an indictment which includes one or more financial offences as defined in Schedule 4 to this Act (whether or not any one or more of the defendants is also charged with an offence or offences which are not financial offences);
- (b) in the opinion of the Attorney-General the evidence of the offence charged–
 - (i) would be sufficient for the person charged to be committed for trial; and
 - (ii) reveals a case of a financial offence of such complexity that it is appropriate that the management of the case should without delay be taken over by the Supreme Court;
- (c) before the magistrates’ court begins to inquire into the case as examining magistrates the Attorney-General gives the court a notice certifying that opinion;
- (d) the Attorney-General informs the magistrates’ court that he intends to make an application under section 27B(1) that the case be conducted with lay assessors; and
- (e) the Attorney-General informs the magistrates’ court that at the time of giving the notice under paragraph (c) there are at least 10 names on the lay assessors list,

the magistrates' court must, subject to subsection (2), proceed immediately to commit the case for trial in accordance with section 132 of the Criminal Procedure Act.

(2) Paragraphs (a) and (b) of section 132(1) of the Criminal Procedure Act do not apply to cases where the Attorney-General has given the court a notice under this section.

Application by prosecution for case to be conducted with lay assessors.

27B.(1) If—

- (a) one or more defendants are to be tried on indictment which includes one or more financial offences as defined in Schedule 4 to this Act (whether or not the bill of indictment includes offences which are not financial offences); and
- (b) notice has been given under section 27A in respect of that offence or those offences,

the prosecution may apply to a judge for the trial to be conducted with lay assessors instead of a jury.

(2) If an application under subsection (1) is made and the judge is satisfied that the condition in subsection (3) is fulfilled, he may make an order that the trial is to be conducted with lay assessors; but if he is not so satisfied he must refuse the application.

(3) The condition is that the complexity of the offence or the probable length of the trial (or both) is likely to make the trial so burdensome to the members of a jury hearing it that the interests of justice require that the trial should be conducted with lay assessors instead of a jury.

(4) In deciding whether or not the condition in subsection (3) is fulfilled, the judge must have regard to any steps which might reasonably be taken to reduce the complexity or length of the trial.

(5) A step is not to be regarded as reasonable for the purposes of subsection (4) if it would significantly disadvantage the prosecution.

Procedure for applications under section 27B.

27C.(1) An application under section 27B must be determined at a preliminary hearing in the Supreme Court.

(2) The parties to the preliminary hearing must be given an opportunity to make representations with respect to the application.

(3) The Chief Justice may make rules of court regulating the procedure to be followed prior to and at a preliminary hearing pursuant to this section.

Effect of an order for trial with lay assessors.

27D.(1) If a judge refuses an order under section 27B for the trial to be with lay assessors, the trial must proceed as a jury trial in accordance with Part III.

(2) If a judge makes an order under section 27B for the trial to be with lay assessors, the trial to which the order relates is to be conducted with lay assessors, or, if there are insufficient lay assessors available, by a judge alone without a jury.

(3) If a trial is conducted with lay assessors, or by a judge alone, the court has all the powers, authorities and jurisdiction which it would have if the trial were conducted with a jury (including power to determine any question and to make any finding which would be required to be determined or made by a jury).

(4) Unless the context otherwise requires, any reference in an enactment to a jury, the verdict of a jury or the finding of a jury is to be read, in relation to a trial conducted with lay assessors or by a judge alone, as a reference to the court, the verdict of the court or the finding of the court.

(5) If a trial is conducted with lay assessors or by a judge alone and the court convicts a defendant—

- (a) the court must give a judgment which states the reasons for the conviction at, or as soon as reasonably practicable after, the time of the conviction, and
- (b) a reference to a date of conviction in any enactment is to be read as a reference to the date of the judgment mentioned in paragraph (a).

Lay assessors list.

27E.(1) The Registrar must—

- (a) make a list in the prescribed form of all persons who have volunteered and who are qualified to serve as lay assessors;
- (b) cause a copy of the list to be published at such time and at such place as the Chief Justice directs.

(2) Any person aged not less than 18 or more than 70 may volunteer for service as a lay assessor, and may apply to the Registrar to be included on the lay assessors list, and the Registrar if satisfied that the person has the necessary qualifications for a lay assessor, must include his or her name on the lay assessor list accordingly.

(3) A person is qualified for inclusion on the lay assessors list if he—

- (a) is qualified to be a juror under Part III;
- (b) is approved by the Judicial Services Commission (in this part referred to as “the Commission”) as a person with relevant experience, qualifications and background to serve as a lay assessor in a trial of a complex financial offence; and
- (c) is able to devote adequate time to the hearing of such a trial.

(4) The procedure for approval by the Commission is as set out in section 27F.

(5) The provisions of section 19B relating to the publication, certifying and revision of the jury list do not apply to the lay assessors list.

Procedure for approval as a lay assessor.

27F.(1) A person who wishes to be approved as a lay assessor must apply to the Registrar in writing and provide relevant supporting documents.

(2) The Registrar must refer the application to the Commission as soon as practicable after receipt of the application.

(3) The Commission may make any enquiries it considers appropriate as to the experience and qualification of the applicant, including interviewing the applicant and any other person who may have relevant information.

(4) The Commission, upon reaching a decision, must notify its decision in writing to the applicant and to the Registrar.

(5) Members of the Commission are not eligible to serve as lay assessors.

Inclusion on the lay assessors list.

27G.(1) A person who is on the lay assessors list may at any time, by writing to the Registrar, resign from the list, but not after having been called for service in a trial as a lay assessor until notified that his services are no longer required or until the conclusion of the trial, whichever is the later.

(2) Inclusion on the lay assessors list does not affect a person's liability to jury service as provided by Part III.

(3) A person who ceases to be qualified for jury service ceases by virtue of that fact to be included on the lay assessors list.

(4) The lay assessors list must be reviewed at the end of 2 years from first publication and every 2 years thereafter.

(5) A person on the lay assessors list at the time of a review who is still qualified to serve is deemed to apply for renewal of the approval unless he notifies the Registrar in writing that he does not seek renewal of approval.

Service of summons.

27H.(1) If the Registrar receives notice that the prosecution intends to apply for a case to be tried with lay assessors instead of a jury, he must give written notice to all the persons on the lay assessors list to stand by for attendance at court if the application is approved.

(2) If the application is approved, the trial must be adjourned for a sufficient period to enable the Registrar to summon the lay assessors for attendance at court.

(3) No two spouses may be summoned to serve as lay assessors for the same trial.

Attendance and excusal.

27I.(1) Sections 19E, 19F and 19H apply in respect of attendance by and excusing of persons summoned as lay assessors as they apply to persons summoned as jurors, except that in section 19F(1)(a) the reference to 2 years is to be read as a reference to 4 years.

(2) For the purpose of those sections, service as a lay assessor counts as jury service.

Number of lay assessors.

27J.(1) In a trial with lay assessors, there must be 2 lay assessors for the whole of the trial unless one of the assessors dies or becomes medically unfit to perform the duties of a lay assessor (as certified in

writing by a medical practitioner), in which case the trial may continue with one lay assessor.

(2) If both lay assessors die or become unfit as mentioned in subsection (1), the trial may continue with the judge alone as the arbiter of fact as well as of law.

Selection of lay assessors.

27K.(1) The lay assessors are to be chosen from among the number of persons summoned to attend as lay assessors by ballot in open court, until 2 lay assessors, after all just causes of challenge have been allowed, remain as fair and indifferent.

(2) If it appears to the court that there are not 2 lay assessors to try the case, the court may proceed to try the case with one lay assessor.

(3) If it appears to the court that there is not one lay assessor to try the case, the judge may proceed to try the case alone as arbiter of fact as well as of law.

(4) Each lay assessor must be sworn as soon as he is chosen.

Challenge to lay assessors.

27L.(1) In proceedings for the trial of any person under this Part—

- (a) that person may challenge all or any of the lay assessors for cause; and
- (b) any challenge for cause must be tried by the judge before whom the person is to be tried.

(2) A challenge to a lay assessor must be made after his name has been drawn by ballot and before he is sworn.

(3) The fact that a person summoned to serve as a lay assessor is not qualified to serve is a ground of challenge for cause.

(4) There is no right—

- (a) of peremptory challenge of a lay assessor;
- (b) of challenge on the ground that the person responsible for summoning the lay assessors is biased or has acted improperly.

Discharge of assessors.

27M.(1) The judge may at any time discharge the assessors and order a retrial if he thinks fit to do so.

(2) If the judge is minded during a trial with lay assessors to discharge the assessors because they appear or either of them appears to have been the subject of improper influence by or on behalf of the defendant, then before taking any steps to discharge the assessors the judge must—

- (a) inform the parties that he is minded to discharge the assessors;
- (b) inform the parties of the grounds on which he is so minded; and
- (c) allow the parties an opportunity to make representations.

(3) If the judge, after considering any such representations, discharges the assessors, he may, subject to subsection (4), order that the trial is to continue without a jury if he is satisfied that—

- (a) improper influence has been brought; and
- (b) to continue the trial without assessors would be fair to the defendant or defendants.

(4) If the judge considers that it is necessary in the interests of justice for the trial to be terminated, he must terminate the trial.

Commencing or continuing trial without assessors.

27N.(1) If a trial is commenced or continued without assessors, the court has all the powers, authorities and jurisdiction which the court would have had if the trial had been continued with assessors (including power to determine any question and to make any finding which would be required to be determined or made by assessors).

(2) Unless the context otherwise requires, any reference in an enactment to a jury, the verdict of a jury or the finding of a jury is to be read, in relation to a trial commenced or continued without a jury, as a reference to the court, the verdict of the court or the finding of the court.

(3) If a trial is commenced or continued without assessors and the court convicts a defendant—

- (a) the court must give a judgment which states the reasons for the conviction at, or as soon as reasonably practicable after, the time of the conviction; and
- (b) for purposes of an appeal (or any other purpose) the date of the conviction is to be read as a reference to the date of that judgment.

Role of lay assessors.

27O.(1) In a trial with lay assessors, the assessors and the judge together decide issues of fact and arrive at a verdict on the defendant.

(2) The lay assessors do not need to retire when points of law are being argued in the case, but do not take any part in the decision on such points.

(3) The lay assessors may ask questions of witnesses and may take notes.

(4) Section 22A applies to views by lay assessors as it applies to view by jurors.

(5) Section 22C does not apply to documents in trial with lay assessors, but all documents may be taken with them when they retire.

(6) At the conclusion of the evidence and before final speeches by counsel, the judge must direct the lay assessors in open court as to the admissible evidence and as to the law applicable in the case.

(7) After the judge's direction, counsel for the prosecution and counsel for the defence may in turn address the court.

(8) The lay assessors retire with the judge to consider the verdict, but if the lay assessors ask any questions which require a ruling on law by the judge, the judge must announce the question and his ruling in open court.

Verdict in trial with lay assessors.

27P.(1) The verdict in a case tried with lay assessors is the verdict of the judge and assessors (the "members of the court") and must be delivered orally in open court by the judge.

(2) In every case each member of the court must announce the verdict that he has reached, without stating his reasons for it.

(3) The judge—

- (a) may accept a verdict upon which at least 2 of the members of the court agree; or
- (b) if there is only one lay assessor - may only accept a verdict on which he and that assessor agree.

(4) The verdict of a majority of the members of the court (or of the 2 remaining members) announced by the judge under this section is as good and valid in all respects as a unanimous verdict.

(5) When announcing the verdict of the court, the judge must state the facts and the matters of law which were relied on in reaching the verdict, and if the verdict was by a majority, must indicate the nature of the difference of opinion.

Judgment in trial by judge alone.

27Q.(1) The order of speeches in a trial commenced or continued by judge alone is as in section 27O.

(2) The verdict in a case tried or continued by the judge alone must be delivered orally in open court by the judge, who must state his findings of fact and ruling on matters of law.

Stay or reversal of judgment.

27R.(1) No judgment after verdict in a trial by lay assessors in any court may be stayed or reversed by reason that—

- (a) the provisions of this Part about the summoning or impanelling of lay assessors, or the selection of assessors by ballot, have not been complied with;
- (b) a lay assessor was not qualified in accordance with section 27E(3);
- (c) any lay assessor was wrongly named or described; or
- (d) any lay assessor was unfit to serve.

(2) Subsection (1)(a) does not apply to any irregularity if objection is taken at, or as soon as practicable after, the time it occurs, and the irregularity is not corrected.

(3) Nothing in subsection (1) applies to any objection to a verdict on the ground of personation.

Refreshment and payment.

27S.(1) Lay assessors, after being sworn and for the duration of the case, are entitled to reasonable refreshment during sittings of the court at the court's expense.

(2) The provisions of section 22E as to payment of jurors apply equally to lay assessors.

Offences by lay assessors.

27T.(1) Subject to subsection (2), a person who—

- (a) when duly summoned under this Part fails to attend (on the first or on any subsequent day on which he is required to attend by the summons or by the Registrar) in compliance with the summons; or
- (b) after attending pursuant to a summons, is not available when called on to serve as a lay assessor, or is unfit for service by reason of drink or drugs,

commits an offence.

(2) A person does not commit an offence under subsection (1) if he can show some reasonable cause for his failure to comply with the summons, or for not being available when called on to serve.

(3) A person who knowing that he is not qualified as a lay assessor serves as an assessor, commits an offence.

(4) A person who commits an offence under subsection (1) or (3) is liable on summary conviction to the statutory maximum fine.

Rules of court.

27U.(1) The Chief Justice may by rules of court make such provision as appears to him necessary or expedient for the purposes of this Part.

(2) Without limiting subsection (1), rules of court may in particular make provision for time limits within which applications under this Part must be made or within which other things in connection with this Part must be done.

(3) Nothing in this section limits any other enactment conferring powers to make rules of court, including section 27C(3).

Amendment of Schedule 4.

27V. The Minister may, after consultation with the Chief Justice, by order amend Schedule 4.”.

Amendment of section 35A of the Supreme Court Act.

5. In section 35A of the Supreme Court Act, in the definition of “EEA lawyer” for “the Schedule”, on both occasions it appears, substitute “Schedule 1”.

Amendment of the Schedule to the Supreme Court Act.

6.(1) The Schedule to the Supreme Court Act is renumbered “Schedule 1”.

(2) After Schedule 1 to the Supreme Court Act insert—

“SCHEDULE 2

(Section 19A)

Persons disqualified from jury service

Part I - Mentally disabled persons.

1. A person who suffers or has suffered from mental illness, psychopathic disorder, mental handicap or severe mental handicap and on account of that condition—

(a) is resident in a hospital or similar institution; or

- (b) regularly attends for treatment by a medical practitioner; and
 - (c) in the opinion of the judge is not capable of performing functions of a juror.
2. A person for the time admitted to hospital under Part II of the Mental Health Act.
3. A person whose property and affairs are managed by the court under Part IV of the Mental Health Act.
4. In this Part of this Schedule—
- (a) “mental handicap” means a state of arrested or incomplete development of mind (not amounting to severe mental handicap) which includes significant impairment of intelligence and social functioning;
 - (b) “severe mental handicap” means a state of arrested or incomplete development of mind which includes severe impairment of intelligence and social functioning;
 - (c) other expressions are to be construed in accordance with the Mental Health Act.

Part II – Other persons disqualified.

1. A person who is on bail in criminal proceedings.
2. A person who has at any time been sentenced in Gibraltar or elsewhere to—
- (a) imprisonment for life, detention for life or custody for life;
 - (b) detention during Her Majesty’s pleasure;
 - (c) a custodial sentence of 5 years or more.

3. A person who at any time in the previous 10 years has in Gibraltar or elsewhere—

- (a) served any part of a custodial sentence; or
- (b) had passed on him a suspended custodial sentence.

SCHEDULE 3

(Sections 19A(6) and 19G)

Part I – Persons ineligible for jury service due to their profession.

- 1. Serving Judges and Magistrates.
- 2. Serving police officers, prison officers and customs officers.
- 3. Serving probation officers and other persons engaged in the administration of justice.
- 4. Doctors of medicine and dentists employed in Gibraltar in such capacity.

Part II – Persons who may be excused.

- 1. Ministers of religion.
- 2. Members of Parliament.
- 3. Practising barristers, solicitors and notaries.
- 4. Former Judges.
- 5. Members of Her Majesty's naval, military or air forces in respect of whom their commanding officer certifies that it would be significantly prejudicial to the service if they were absent from duty.

SCHEDULE 4

(Sections 27A(1) and 27B(1))

FINANCIAL OFFENCES

An offence under any of the following provisions is a financial offence for purposes of Part IIIA—

1. The following offences under the Criminal Offences Act:—

- 196(1) – Obtaining property by deception
- 197(1) – Obtaining a pecuniary advantage by deception
- 198(1) – Obtaining services by deception
- 199(1) – Evasion of liability by deception
- 200(1) – False accounting
- 202(1) – False statements by company directors, etc
- 203(1) – Suppression, etc., of documents

2. An offence under Part II of the Crime (Money Laundering and Proceeds) Act 2007, other than section 5A.

3. An offence under section 54, 55 or 56 of the Drug Trafficking Offences Act 1995.

4. An offence under the Market Abuse Act 2005.

5. The following offences under the Companies Act

- 312 – Falsification of books
- 313 – Fraud by officers of companies which have gone into liquidation
- 314 – Proper accounts not kept
- 315 – Responsibility of directors for fraudulent trading of companies in liquidation

6. An offence under the Terrorism Act in relation to funding.

7. An offence under section 75B of the Financial Services (Banking) Act (Fraudulent inducement to make a deposit).”.

Transitional and miscellaneous provisions.

7.(1) The jury list which was in force immediately before section 3 of this Act came into operation shall be deemed to remain in force until such time as a new list has come into force in accordance with section 19B of the Supreme Court Act (as inserted by this Act).

(2) Notwithstanding section 19B(4) of the Supreme Court Act (as inserted by this Act) the first jury list complied under section 19B shall come into force on the day it is received by the Registrar following certification by the clerk of the magistrates' court

(3) The first jury list complied under section 19B shall remain in force until the 30th September 2011.

(4) The Minister may by order amend Schedule 4 to the Supreme Court Act.#

Passed by the Gibraltar Parliament on the 15th day of October, 2010.

M L FARRELL,
Clerk to the Parliament.

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