

Subsidiary Legislation made under s.317.

Criminal Appeal Rules

LN.1977/162

Commencement **15.12.1977**

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Title.

1. These Rules may be cited as the Criminal Appeal Rules.

PART I.
APPEALS UNDER SECTION 293.

Application.

2. The rules contained in this Part shall apply to appeals to the Supreme Court in criminal matters, brought under section 293 of the Act.

Transmission of record.

3. The clerk of the magistrates' court shall transmit the appeal record to the Registrar of the Supreme Court as soon as practicable and in any case within twenty-one days of the receipt by him of the notice of appeal.

Contents of appeal record.

4. The appeal record shall consist of copies certified by the clerk of the magistrates' court of—
 - (a) the charge or summons;
 - (b) the plea, the conviction and the sentence or order appealed against;
 - (c) the notes of evidence, if any, made by the justices and the notes made by the clerk of the magistrates' court;
 - (d) the documentary exhibits or, in the case of documents of great length, of the relevant parts of such documents;
 - (e) the notice of appeal; and
 - (f) a statement containing the last known address of each of the parties to the appeal.

Setting down and notice of the appeal.

5. On receipt of the appeal record, the Registrar shall fix a date and time for the hearing of the appeal and shall give notice thereof in writing to the clerk of the magistrates' court, to each of the parties to the appeal and to the Attorney-General.

Failure of parties to appear.

6.(1) If, at the time fixed for hearing the appeal–

- (a) the appellant does not appear and is not represented, the court may dismiss the appeal;
- (b) the appellant appears or is represented and the respondent does not appear and is not represented, the appeal shall proceed in his absence,

unless, in either case, the court shall think fit to adjourn the proceedings.

(2) Where an appeal has been dismissed under paragraph (a) of subrule (1) or heard and allowed under paragraph (b) of that subrule, the appellant or the respondent, as the case may be, may within seven days apply to the court by motion to set aside the determination and restore the appeal for hearing on the ground that he was prevented by any sufficient cause from appearing or being represented.

Exhibits.

7.(1) The clerk of the magistrates' court shall transmit all exhibits to the Registrar at the same time as the appeal record.

(2) Subject to any order of the Supreme Court or of the Court of Appeal, the Registrar shall return the exhibits to the clerk of the magistrates' court–

- (a) on the abandonment of the appeal to the Supreme Court;
- (b) on the expiration of the period allowed for giving notice of appeal from the decision of the Supreme Court, where no such notice is given; or
- (c) where such notice of appeal is given, on the withdrawal of the appeal or the determination of the appeal by the Court of Appeal.

PART II.
APPEALS BY CASE STATED.

Application.

8. The rules contained in this Part shall apply to appeals to the Supreme Court in criminal matters, brought by application under section 310 of the Act for the stating of a case.

Form of application.

9. An application to the justices to state a case for the opinion of the Supreme Court shall be in writing and shall be delivered to the clerk of the magistrates' court, together with a copy thereof for each of the justices who heard the proceedings.

Contents of application.

10.(1) The application shall state the question or questions of law or jurisdiction to be determined.

(2) Where the question or one of the questions on which the opinion of the Supreme Court is sought is whether there was evidence on which the magistrates' court could come to its decision, the particular finding of fact made by that court which it is claimed cannot be supported by the evidence shall be specified in the application.

Draft case.

11.(1) The clerk of the magistrates' court shall send a draft case to the applicant or his solicitor and shall send a copy thereof to the respondent or his solicitor, within twenty-one days—

- (a) after receipt of the application; or
- (b) when the justices have refused to state a case, after the making of an order of mandamus,

as the case may be.

(2) Each party may, within twenty-one days after receipt of the draft case, make representations thereon and such representations shall be in writing, shall be signed by or on behalf of the party making them and shall be delivered to the clerk of the magistrates' court.

Final case.

12.(1) Within twenty-one days after the latest day on which representations may be made under rule 11(2), the justices whose decision is questioned shall make such adjustments, if any, to the draft case as they may think fit after considering any such representations, and shall state and sign the case.

(2) A case, other than a case stated by the stipendiary magistrate, may be stated on behalf of the justices by any two or more of them and may, if the justices so direct, be signed on their behalf by their clerk.

(3) Forthwith after the case has been stated and signed, the clerk of the magistrates' court shall transmit it to the Registrar, together with a statement of the last known address of each of the parties, and shall send copies of the case stated to the applicant or his solicitor and to the respondent or his solicitor.

Contents of case.

13.(1) The case stated shall state the facts found by the magistrates' court and the question or questions of law or jurisdiction on which the opinion of the Supreme Court is sought.

(2) Where one of the questions on which the opinion of the Supreme Court is sought is whether there was evidence on which the magistrates' court could come to its decision, the particular finding of fact which it is claimed cannot be supported by the evidence before the magistrates' court shall be specified in the case.

(3) Unless one of the questions on which the opinion of the Supreme Court is sought is whether there was evidence on which the magistrates' court could come to its decision, the case shall not contain a statement of evidence.

Setting down, notice of hearing and failure to appear.

14. The provisions of rules 5, 6, and 7 shall, apply *mutatis mutandis* to the hearing of cases stated to which this Part applies.

PART III.
MISCELLANEOUS.

Suspension of disqualification etc., pending appeal.

15. Whenever upon the conviction of any person of any offence by the magistrates' court, or by reason of any order made by any such court,—

- (a) any disqualification, forfeiture or disability attaches to any person;
- (b) any property or thing the subject of a prosecution or connected therewith is to be or may be destroyed;
- (c) any proceedings may be taken under any enactment from time to time in force in Gibraltar against any person; or
- (d) a certificate of conviction may be issued,

such disqualification, forfeiture or disability shall not attach, such property or thing shall not be destroyed, any such proceedings shall be stayed and such certificates shall not be issued, during the period allowed for giving notice of appeal or, in the event of such notice being given, until after the appeal is disposed of:

Provided that this rule shall not apply as regards any suspension, cancellation or disqualification under the Traffic Act, the Insurance (Motor Vehicles) (Third Party Risks) Act or any enactment amending or replacing the same.

Giving of notice, etc.

16. Any notice required to be given and any document required to be sent to any person under these rules may either be delivered to him or be sent by post in a registered letter and, if sent by post, shall be addressed to him at the address shown in the statement referred to in rule 4(f) or rule 12(3), as the case may be.

Extension and abridgement of time.

17.(1) The Supreme Court may by order extend or abridge the time limited by these rules for doing any act, whether before or after the expiration of such time and whether before or after the doing of the act.

(2) An application by the clerk of the magistrates' court for an order under subrule (1) may be made informally and ex parte.