

Subsidiary Legislation made under s.142.

Indictments Rules

LN.1978/034

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SCHEDULE

Form of Indictment.

Title.

1. These Rules may be cited as the Indictments Rules.

PART I.
APPLICATIONS FOR CONSENT TO PREFERMENT
OF INDICTMENTS.

Form of application.

2. An application for the consent of the Chief Justice under section 137(2)(b) of the Act to the preferment of a bill of indictment shall be in writing and shall be signed by the applicant or his solicitor.

Supporting documents.

3. Every such application—
 - (a) shall be accompanied by the bill of indictment which it is proposed to prefer and, unless the application is made by or on behalf of the Attorney-General, by an affidavit by the applicant, or, if the applicant is a corporation, by an affidavit by some director or officer of the corporation, that the statements contained in the application are, to the best of the deponent's knowledge, information and belief, true; and
 - (b) shall state whether or not any application has previously been made under these rules and whether there have been any committal proceedings, and the result of any such application or proceedings.

Supporting statements.

- 4.(1) Where there have been no committal proceedings, the application shall state the reason why it is desired to prefer a bill without such proceedings, and—
 - (a) there shall accompany the application proofs of the evidence of the witnesses whom it is proposed to call in support of the charges; and
 - (b) the application shall embody a statement that the evidence shown by the proofs will be available at the trial and that the case disclosed by the proofs is, to the best of the knowledge, information and belief of the applicant, substantially a true case.

(2) Where there have been committal proceedings, and the justice or justices have refused to commit the accused for trial, the application shall be accompanied by—

- (a) a copy of the depositions; and
- (b) proofs of any evidence which it is proposed to call in support of the charges so far as that evidence is not contained in the depositions;

and the application shall embody a statement that the evidence shown by the proofs and, except so far as may be expressly stated to the contrary in the application, the evidence shown by the depositions, will be available at the trial and that the case disclosed by the depositions and proofs is, to the best of the knowledge, information and belief of the applicant, substantially a true case.

Attendance.

5.(1) Unless the Chief Justice otherwise directs in any particular case, the decision on the application shall be signified in writing on the application without requiring the attendance of the applicant or of any of the witnesses.

(2) If the Chief Justice thinks fit to require the attendance of the applicant or of any of the witnesses, their attendance shall not be in open court.

(3) Unless the Chief Justice gives a direction to the contrary, an applicant required to attend may attend by a solicitor or by counsel.

Duty to make depositions available.

6. It shall be the duty of any person in charge of any depositions to give to any person desiring to make an application for leave to prefer a bill of indictment against the person who was accused when the depositions were taken, a reasonable opportunity to inspect the depositions and, if so required by him, to supply him with copies of the depositions or any part thereof.

PART II.

FORM AND CONTENTS OF INDICTMENTS.

Material for indictment.

7. An indictment may be on any durable paper, and may be either written or printed, or partly written and partly printed.

Form of indictment.

8. An indictment shall be in the form in the Schedule or in a form substantially to the like effect.

Joining of charges in one indictment.

9. Charges for any offences may be joined in the same indictment if those charges are founded on the same facts, or form or are part of a series of offences of the same or a similar character.

Mode in which offences are to be charged.

10.(1) A description of the offence charged in an indictment, or where more than one offence is charged in an indictment, of each offence so charged, shall be set out in the indictment in a separate paragraph called a count.

(2) A count of an indictment shall commence with a statement of the offence charged, called the statement of offence.

(3) The statement of offence shall describe the offence shortly in ordinary language, avoiding as far as possible the use of technical terms, and without necessarily stating all the essential elements of the offence, and if the offence charged is one created by statute or by any other enactment shall contain a reference to the section of the statute or enactment creating the offence.

(4) After the statement of the offence, particulars of such offence shall be set out in ordinary language, in which the use of technical terms shall not be necessary:

Provided that where any law limits the particulars of an offence which are required to be given in an indictment, nothing in this rule shall require any more particulars to be given than those so required.

(5) Where an indictment contains more than one count, the counts shall be numbered consecutively.

Provisions as to statutory offences and other offences.

11.(1) Where an enactment constituting an offence states the offence to be the doing or the omission to do any one of any different acts in the alternative, or the doing or the omission to do any act in any one of any different capacities, or with any one of any different intentions, or states any part of the offence in the alternative, the acts, omissions, capacities, or intentions, or other matters stated in the alternative in the enactment, may be stated in the alternative in the count charging the offence.

(2) It shall not be necessary, in any count charging a statutory offence or an offence under any other enactment, to negative any exception or exemption from or qualification to the operation of the statute or enactment creating the offence.

Description of property.

12.(1) The description of property in a count in an indictment shall be in ordinary language and such as to indicate with reasonable clearness the property referred to, and if the property is so described it shall not be necessary, except when required for the purpose of describing an offence depending on any special ownership of property or special value of property, to name the person to whom the property belongs or the value of the property.

(2) Where property is vested in more than one person, and the owners of the property are referred to in an indictment, it shall be sufficient to describe the property as owned by one of those persons by name with others, and if the persons owning the property are a body of persons with a collective name such as “Inhabitants”, “Trustees”, “Commissioners”, or “Club” or other such name, it shall be sufficient to use the collective name without naming any individual.

(3) Property belonging to or provided for the use of any public establishment, service or department may be described as the property of Her Majesty the Queen.

(4) Coin and bank notes may be described as money, and any allegation as to money, so far as regards the description of the property, shall be sustained by proof of any amount of coin or of any bank or currency note, although the particular species of coin of which such amount was composed or the particular nature of the bank or currency note shall not be proved.

Description of persons.

13. The description or designation in an indictment of the accused person, or of any other person to whom reference is made therein, shall be such as is reasonably sufficient to identify him, without necessarily stating his correct name, or his abode, style, degree or occupation and if, owing to the name of the person not being known, or for any other reason, it is impracticable to give such a description or designation, such description or designation shall be given as is reasonably practicable in the circumstances, or such person may be described as “a person unknown”.

Description of documents.

14. Where it is necessary to refer to any document or instrument in an indictment, it shall be sufficient to describe it by any name or designation by which it is usually known, or by the purport thereof, without setting out any copy thereof.

General rule as to description.

15. Subject to any other provisions of these rules, it shall be sufficient to describe any place, time, thing, matter, act or omission whatsoever to which it is necessary to refer in any indictment, in ordinary language.

Statement of intent.

16. It shall not be necessary in stating any intent to defraud, deceive or injure to state an intent to defraud, deceive or injure any particular person when the statute or other enactment creating the offence does not make an intent to defraud, deceive or injure a particular person an essential ingredient of the offence.

Charge of previous convictions.

17. Any charge of a previous conviction of an offence shall be charged at the end of the indictment by means of a statement that the person accused has been previously convicted of that offence at a certain time and place without stating the particulars of the offence.

Use of figures and abbreviations.

18. Figures and abbreviations may be used for expressing anything which is commonly expressed thereby.

Gross sum may be specified in certain cases of theft.

19. Where a person is charged with theft and it is alleged that separate appropriations are connected so as to form a series of appropriations and that individual items cannot be identified, it shall be sufficient to specify the gross amount of property alleged to have been stolen and the dates between which the appropriations are alleged to have been made.

PART III.

PREFERMENT OF BILLS OF INDICTMENT.

Preferment of bill.

20. A bill of indictment shall be preferred before the court by delivery to the Registrar.

Signature of bill.

21. A bill shall be signed by or on behalf of the Attorney-General, or, where the bill is preferred by some other person, by that person or by his solicitor.

Time for preferment.

22. A bill shall be preferred as soon as practicable and in any case within twenty-eight days, or such longer period as the Registrar may allow, from—

- (a) the date of committal; or
- (b) the date of the direction or order of the court that a bill be preferred; or
- (c) the date of the consent of the Chief Justice to the preferment of a bill,

as the case may be.

PART IV.
PRACTICE DIRECTIONS.

Listing for directions.

23. As soon as a bill of indictment has been preferred and signed by the Registrar in accordance with section 137 of the Act, the Registrar shall list the case for practice directions.

Time for hearing.

24. The hearing for practice directions shall be held in chambers before the Registrar not later than fourteen days after the preferment of the bill of indictment.

Notice of hearing.

25. Notice of the hearing, together with a copy of the indictment, shall be served by the Registrar on the solicitors for the parties and on any unrepresented party not later than seven days before the date fixed for the hearing, unless all parties agree to shorter notice.

Attendance in chambers.

26.(1) The hearing for practice directions, including a hearing which has been adjourned into open court under rule 29, shall be attended by the Attorney-General or his representative, by counsel briefed to appear at the trial, if any, and by the defendant.

(2) If any party fails to attend a hearing, or an adjourned hearing, the Registrar or the court, as the case may be, may adjourn the hearing or may proceed in the absence of that party.

Right to seek directions.

27. Any party shall be entitled to seek directions from the court.

Particulars which the Registrar may require.

28. At the hearing, the Registrar may require counsel to inform him—

- (a) of the pleas to be tendered on the trial;
- (b) of the prosecution witnesses required at the trial as shown on the committal documents and any notices of further evidence already delivered and of the availability of such witnesses;
- (c) of any additional witnesses who may be called by the prosecution and the evidence that they are expected to give; if the statements of these witnesses are not then available for service a summary of the evidence that they are expected to give shall be supplied in writing;
- (d) of facts which can be and are admitted and of the witnesses whose attendance will not be required at the trial;
- (e) of the probable length of the trial;
- (f) of exhibits and schedules which are and can be admitted;
- (g) of the issues, if any, then envisaged as to the mental or medical condition of any defendant or witness;
- (h) of any point of law which may arise on the trial, any question as to the admissibility of evidence which then appears on the face of the papers and of any authority on which either party intends to rely as far as can be envisaged at that stage;
- (i) of the names and addresses of witnesses from whom statements have been taken by the prosecution but who are not going to be called;
- (j) of any alibi not already disclosed in conformity with the Act;

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- (k) of the order and pagination of the papers to be used by the prosecution at the trial;
and
- (l) of any other significant matter which might affect the proper and convenient trial of the case.

Adjournment into court.

29. The Registrar shall adjourn into open court any application by either party for the separate trial of any count or of any defendant and may so adjourn any other application or issue.

Date for trial.

30. When the Registrar is satisfied that the case is ready for trial, he may order that it be tried on such date as he may fix and the Registrar shall give other and consequential directions as he may think necessary.

SCHEDULE

Rule 8

FORM OF INDICTMENT.

IN THE SUPREME COURT OF GIBRALTAR.

The Queen v

charged as follows:

STATEMENT OF OFFENCE.

PARTICULARS OF OFFENCE.

Date

Registrar.