

**INDICTABLE OFFENCES
(PRELIMINARY ENQUIRY) ACT**

CHAPTER 12:01

Act

12 of 1917

Amended by

48 of 1920	*27 of 1986
5 of 1923	†8 of 1990
21 of 1936	†18 of 1994
14 of 1939	20 of 1994
25 of 1948	6 of 1996
1 of 1955	28 of 1996
10 of 1961	19 of 1998
11 of 1961	32 of 1998
29 of 1977	23 of 2005
45 of 1979	

*See Note on page 2

†See Note on page 2

Current Authorised Pages

<i>Pages (inclusive)</i>	<i>Authorised by L.R.O.</i>
1-47 ..	1/2009

L.R.O. 1/2009

Note on Subsidiary Legislation

This Chapter contains no subsidiary legislation.

Note on Act No. 27 of 1986
[Sexual Offences Act (Ch. 11:28)]

See section 33 of Act No. 27 of 1986 with respect to committal proceedings under this Act.

Note on Acts Nos. 8 of 1990 and 18 of 1994

Section 4 of the Indictable Offences (Preliminary Enquiry) (Amendment) Act, 1990, (Act No. 8 of 1990) repealed section 28 of the Act and renumbered sections 29 to 42 as sections 28 to 41.

The Third Schedule to the Bail Act, 1994 (Act No. 18 of 1994) amended, *inter alia*, sections 28, 30(1), 31(1), 33, 34, 37 and 38 of the Act. The amendment to section 28 by Act No. 18 of 1994 was a correct reference to that section which was formerly section 29 before it was renumbered by Act No. 8 of 1990.

However, reference to the amendments to sections 30(1), 31(1), 33, 34, 37 and 38 by Act No. 18 of 1994 were incorrect references to those sections since they were renumbered by Act No. 8 of 1990, and, the correct references to those sections referred to in Act No. 18 of 1994 ought to have been the renumbered sections 29(1), 30(1), 32, 33, 34, 36, and 37.

The incorrect references to the section numbers which were intended to be amended by Act No. 18 of 1994 were in fact due to the fact that Act No. 8 of 1990 was not taken into consideration or were due to typographical, clerical or printing errors.

In the revision of the Act, the Commission exercised its powers under section 2 of the Law Revision Act (Ch. 3:03) to rectify the incorrect references.

Note on section 23H

See section 23H for the sections of this Act which shall not apply to preliminary enquiries before 15th September 2005.

CHAPTER 12:01

**INDICTABLE OFFENCES
(PRELIMINARY ENQUIRY) ACT**

ARRANGEMENT OF SECTIONS

SECTION

1. Short title.
2. Interpretation.
Jurisdiction of Justices.
3. Compelling appearance of accused person.
4. Magistrate may enquire into suspected offence.

SEARCH WARRANT

5. Power to issue search warrant.
Detention of articles seized.
Destruction of forged bank notes, etc.
Disposal of counterfeit coin, etc.
Search for and disposal of gunpowder, etc.

COMPLAINT

6. Reception of complaint.

SUMMONS TO ACCUSED PERSON

7. Issue, contents, and service of summons.

WARRANT FOR APPREHENSION OF ACCUSED PERSON

8. Issue of warrant of apprehension in first instance.
9. Warrant endorsed for bail.

PROCEEDINGS ON APPEARANCE OF ACCUSED PERSON

10. Disposal of person apprehended upon warrant.
Accused may have assistance of legal adviser.

IRREGULARITIES

11. Irregularity in summons, warrant, service or arrest.

WITNESSES

12. Application of law with respect to summoning, etc., of witnesses.

ARRANGEMENT OF SECTIONS—*Continued*

SECTION

LOCAL EXAMINATION AND MEDICAL INSPECTION

13. Making of local inspection and examination of injured person.

PROCEEDINGS AT PRELIMINARY ENQUIRY

14. Adjournment.
15. Custody of accused during adjournment.
16. Taking of evidence for prosecution.
16A. Notice of alibi.
16B. Evidence of alibi at trial.
Rules of Court.
16C. Admissibility of written statements.
16D. Procedure.
17. Accused to give evidence upon oath and record of accused person's response.
17A. Accused and his witness may tender written statement.
18. Taking of evidence for defence.
19. Marking of exhibits.
20. Deposition of witness unable to attend.
21. Binding over to give evidence.
Binding over of witnesses conditionally.
22. Magistrate may consult Director of Public Prosecution.

DISCHARGE, COMMITTAL FOR TRIAL

23. Discharge or committal for trial of accused.
23A. Committal without consideration of the written statements.
23B. Committal based on the written statements.
23C. Depositions.
23D. Cross-examination.
23E. False written statements tendered in evidence.
23F. Non-application of certain written provisions.
23G. Appeals.
23H. Transitional provision.
24. Copies of depositions for accused person.

SECTION

DISCHARGE, COMMITTAL ON WRITTEN STATEMENT

- 24A. Order of commitment and bail.
- 24B. Sections 25 and 27 to apply.
- 24C. Further evidence.

PROCEEDINGS SUBSEQUENT TO COMMITTAL

- 25. Transmission and custody of documents and exhibits relating to a case.
- 26. Where deposition lost or destroyed.
- 26A. Use of certified copy of depositions.
- 27. D.P.P. may refer back case for further evidence.
D.P.P. may refer back case to be dealt with summarily.

COMMITTAL FOR SENTENCE

- 27A. Accused admitting guilt at preliminary enquiry to be committed for sentence.
- 27B. Accused admitting guilt at preliminary enquiry to be further cautioned and may be committed for sentence.
- 27C. Answer of accused consenting to be committed for sentence to be recorded.
Committal for sentence.
Admissibility of statement of accused in evidence.
Transmission of proceedings and filing of indictment.

BAIL

- 28. Right of accused to bail.
- 29. Committal of accused pending preliminary enquiry.
- 30. Bail on committal for trial.
- 31. Conveying accused to prison after committal.
- 32. Bailing of accused after committal.
- 33. Court or Judge may bail accused.
- 34. Apprehension of accused person on bail but about to abscond.
- 35. Amount of bail.
- 36. Bail of married woman or infant.
- 37. Power to revoke or require higher bail.

PLACE OF COMMITMENT

- 38. Place of commitment.

LAWS OF TRINIDAD AND TOBAGO

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6

Chap. 12:01 *Indictable Offences (Preliminary Enquiry)*

ARRANGEMENT OF SECTIONS—*Continued*

SECTION

EVIDENCE

- 39. Reading of depositions at trial.
- 40. Report of Chief Chemist.

PUBLICATION OF PROCEEDINGS

- 41. Restriction on publication of report of preliminary enquiry.
Penalties.

FIRST SCHEDULE.

SECOND SCHEDULE.

THIRD SCHEDULE.

CHAPTER 12:01

INDICTABLE OFFENCES
(PRELIMINARY ENQUIRY) ACT

An Act relating to Preliminary Enquiries into Indictable
Offences by Magistrates.

1950 Ed.
Ch. 4 No. 1.
12 of 1917.

[29TH MAY 1917]

Commencement.

1. This Act may be cited as the Indictable Offences
(Preliminary Enquiry) Act.

Short title.

2. (1) In this Act “Court” means the High Court or a Judge
of the Court.

Interpretation.

(2) For the purposes of this Act, Justices shall have and
exercise concurrent jurisdiction with the Magistrates to issue
summons, warrants, and other process of Court, to grant bail
and to fix the amount, to take recognisances, and to bind over
parties and witnesses, and to administer oaths.

Jurisdiction of
Justices.

3. Any Magistrate may issue a summons or warrant under
this Act to compel the appearance before him, for the preliminary
examination, of any person accused of having committed in any
place, whether within or outside of Trinidad and Tobago any
indictable offence triable, according to the law for the time being
in force, in Trinidad and Tobago.

Compelling
appearance of
accused person.

*4. (1) Where a Magistrate believes that—

- (a) an indictable offence has been committed within
the limits of his jurisdiction; or
- (b) there is reasonable ground for enquiring
whether an indictable offence has been
committed; or
- (c) in either of the cases mentioned in paragraphs (a)
and (b) there is reasonable ground for enquiring by
whom the indictable offence has been committed,

Magistrate may
enquire into
suspected
offence.

he may, whether any person is charged or not—

- (i) summon to appear before him any person

*See section 33(3) of the Sexual Offences Act Ch. 11:28.

- whom he believes is capable of giving material evidence concerning the offence;
- (ii) examine that person upon oath concerning the offence; and
 - (iii) if he thinks fit, bind that person by recognisance to attend and give evidence within the next twelve months if called upon by any Magistrate or by the Court, unless that person can show some reasonable excuse to the contrary.

(2) Where a person so summoned neglects to attend, or refuses without lawful excuse to take the oath, or, having taken the oath, to answer any question concerning the offence which may then be put to him, or to enter into the recognisance mentioned in subsection (1), he may be dealt with in the same manner as a witness may be dealt with who neglects or refuses to attend or give evidence, or who refuses to be bound by recognisance to give evidence, after having been served with a summons for that purpose.

SEARCH WARRANT

Power to issue search warrant.

5. (1) Any Magistrate who is satisfied by proof on oath that there is reasonable ground for believing that there is in any building, ship, vessel, carriage, box, receptacle, or place—

- (a) anything upon or in respect of which any indictable offence has been or is suspected to have been committed; or
- (b) anything which there is reasonable ground for believing will afford evidence as to the commission of any such offence; or
- (c) anything which there is reasonable ground for believing is intended to be used for the purpose of committing any indictable offence against the person,

may at any time issue a warrant under his hand authorising any constable to search such building, ship, vessel, carriage, box, receptacle, or place for any such thing, and to seize and carry it before the Magistrate issuing the warrant or some other Magistrate, to be dealt with by him according to law.

(2) Every such warrant may be issued and executed at any time, and may be issued and executed on a Sunday.

(3) When any such thing is seized and brought before any Magistrate, he may detain it or cause it to be detained, taking reasonable care that it is preserved until the conclusion of the enquiry; and if any person is committed for trial, he may order it further to be detained for the purpose of evidence on the trial.

Detention of articles seized.

(4) Except in the cases mentioned in this Act, where a person is not committed for trial, the Magistrate shall direct the thing seized to be restored to the person from whom it was taken unless he is authorised or required by law to dispose of it otherwise.

(5) Where under any such warrant, there is brought before any Magistrate any forged bank note, bank note paper, instrument, or other thing, the possession of which, in the absence of lawful excuse, is an indictable offence according to any written law for the time being in force, the Court, if such person is committed for trial, or, if there is no commitment for trial, the Magistrate, may cause such thing to be defaced or destroyed.

Destruction of forged bank notes, etc.

(6) Where, under any such warrant, there is brought before any Magistrate any counterfeit coin or other thing, the possession of which, with knowledge of its nature and without lawful excuse, is an indictable offence according to any Act for the time being in force, every such thing shall be delivered up to the Commissioner of Police or to any person authorised by him to receive the same, as soon as it has been produced in evidence or as soon as it appears that it will not be required to be produced.

Disposal of counterfeit coin, etc.

(7) If the thing to be searched for is gunpowder or any other explosive or dangerous or noxious substance or thing, the person making the search shall have the same powers and protection as are given by any Act for the time being in force to any person lawfully authorised to search for any such thing, and the thing itself shall be disposed of in the manner directed by the Act, or, in default of such direction, as the Commissioner of Police may order.

Search for and disposal of gunpowder, etc.

COMPLAINT

Reception of
complaint.
[45 of 1979].

6. Where a complaint is made to a Magistrate or Justice of the Peace that an indictable offence has been committed by any person whose appearance he has power to compel, the Magistrate or Justice of the Peace shall consider the allegations of the complainant, and if he is of opinion that a case for so doing is made out, he shall issue a summons or warrant in accordance with this Act and the Magistrate or Justice of the Peace shall not refuse to issue such summons or warrant on the ground only that the alleged offence is one for which an offender may be arrested without warrant.

SUMMONS TO ACCUSED PERSON

Issue, contents,
and service of
summons.

7. (1) A Magistrate may issue a summons although there is no complaint in writing or upon oath.

(2) The summons shall be directed to the accused person and shall require him to appear at a certain time and place to be mentioned in the summons.

(3) No such summons shall be signed in blank.

(4) Every such summons shall be served by a constable upon the accused person, either by delivering it to him personally or if he cannot be found, by leaving it with some person for him at his last or most usual place of abode.

(5) The constable who served the summons shall attend at the time and place mentioned in the summons for the appearance of the accused person, in order, if necessary, to prove the service; but the Magistrate before whom the accused person ought to appear may in his discretion receive proof of the service by affidavit and such affidavit may be made before any Magistrate.

WARRANT FOR APPREHENSION OF ACCUSED PERSON

Issue of
warrant of
apprehension
in first instance.

8. (1) Where there is a complaint in writing and upon oath, a Magistrate may, if he is of opinion that a case for so doing is made out, issue a warrant for the apprehension of the accused person. The warrant may be issued and executed at any time and may be issued and executed on a Sunday.

(2) The fact that a summons has been issued shall not prevent any Magistrate from issuing the warrant at any time before or after the time mentioned in the summons for the appearance of the accused person; and where the service of the summons for the appearance of the accused person is proved and the accused person does not appear, or where it appears that the summons cannot be served, the warrant may issue.

(3) The Magistrate who would have heard the charge if the person summoned had appeared may issue the warrant, either on complaint in writing and upon oath taken before himself, or on complaint in writing and upon oath taken before another Magistrate, either before or after the summons was issued.

9. (1) A Magistrate issuing a warrant under this Act for the arrest of any person in respect of any offence other than those persons referred to in section 5(1) of the Bail Act, may grant him bail endorsing the warrant with a direction in accordance with subsection (2).

Warrant
endorsed for
bail.
[18 of 1994].
Ch. 4:60.

(2) A direction for bail endorsed on a warrant under subsection (1) shall—

- (a) state that the person arrested is to be released on bail subject to a duty to appear before such Court and at such time as may be specified in the endorsement; and
- (b) fix the amount in which any surety is to be bound.

(3) Where a warrant has been endorsed for bail under subsection (1), then on the person referred to in the warrant being taken to a police station on arrest under the warrant, the officer in charge of the police station shall, subject to his approving any surety rendered in compliance with the endorsement, release him from custody as directed in the endorsement.

PROCEEDINGS ON APPEARANCE OF ACCUSED PERSON

10. (1) When any person is apprehended upon a warrant, he shall be brought before a Magistrate as soon as practicable after he is arrested, and the Magistrate shall either proceed with the

Disposal of
person
apprehended
upon warrant.
[18 of 1994].

preliminary enquiry or postpone the enquiry to a future time, in which latter case he may grant him bail or commit him to prison according to the provisions hereinafter contained.

Accused may have assistance of legal adviser.

(2) Every accused person is entitled as of right to the presence and assistance of his legal adviser, and while under remand shall be allowed the access of his legal adviser at all reasonable times.

IRREGULARITIES

Irregularity in summons, warrant, service, or arrest. [18 of 1994].

11. (1) No irregularity or defect in the substance or form of the complaint, summons, or warrant, and no variance between the charge contained in the summons or warrant and the charge contained in the complaint, or between any of them and the evidence adduced on the part of the prosecution at the preliminary enquiry, shall affect the validity of any proceeding at or subsequent to the hearing.

(2) Where any accused person is before a Magistrate, whether voluntarily or upon summons, or after being apprehended with or without warrant, or while in custody for the same or any other offence, the preliminary enquiry may be held notwithstanding—

- (a) any irregularity, illegality, defect or error in the summons or warrant, or the issuing, service or execution of the same;
- (b) the want of any complaint upon oath; or
- (c) any defect in the complaint, or any irregularity or illegality in the arrest or custody of the accused person.

(3) The Magistrate may, if he thinks that the ends of justice require it, adjourn the hearing of the case, at the request of the accused person, to some future day and in the meantime grant him bail or commit him to custody according to the provisions hereinafter contained.

(4) Where the hearing is adjourned under subsection (3), the accused person shall not be committed to prison unless, before his committal, a complaint in writing and upon oath is taken.

WITNESSES

12. Subject to this Act, the law for the time being in force with respect to witnesses on the hearing of a complaint for an offence punishable on summary conviction in a Magistrate's Court shall, *mutatis mutandis*, apply to witnesses on the holding of a preliminary enquiry before a Magistrate with respect to an indictable offence, and any such witness who, without reasonable excuse, refuses to sign his deposition or to enter into a recognisance may be dealt with in accordance with the provisions of this Act.

Application of law with respect to summoning, etc, of witnesses.

LOCAL EXAMINATION AND MEDICAL INSPECTION

13. (1) The Magistrate holding a preliminary enquiry shall make or cause to be made such local inspection as the circumstances of the case may require; and, in a case of homicide or serious injury to the person, the Magistrate shall cause the body of the person killed or injured to be examined by a duly qualified medical practitioner, if any such can be had, and if not, then by the most competent person that can be obtained, and the deposition of the medical practitioner or other person shall then be taken from him if necessary.

Making of local inspection and examination of injured person.

(2) Every medical practitioner or other person as above who refuses or neglects, without reasonable excuse, to comply with any order or direction of a Magistrate given under this section is liable on summary conviction to a fine of four hundred dollars.

PROCEEDINGS AT PRELIMINARY ENQUIRY

14. (1) A Magistrate may from time to time adjourn a preliminary enquiry if he considers it expedient to do so.

Adjournment.

(2) Such an adjournment shall be made to a certain time and place.

(3) Unless the person remanded and the prosecutor consent, an adjournment shall not be for longer than ten clear days, but where no Court is to be held within the ten days then the adjournment may be fixed for the next day on which the Magistrate holds a Court at the place where the order is made.

L.R.O. 1/2009

(4) Where a Magistrate is satisfied that an accused person who has been remanded is, by reason of illness or accident, unable to appear personally before the Court at the adjournment pursuant to subsections (2) and (3), the Magistrate may, in the absence of the accused person, order him to be further remanded for such time as may be considered reasonable.

Custody of accused during adjournment. [18 of 1994].

15. During such adjournment the Magistrate may grant bail to the accused person or commit him to custody according to the provisions hereinafter contained.

Taking of evidence for prosecution. [23 of 2005].

16. (1) When an accused person is before a Magistrate holding a preliminary enquiry, the Magistrate shall take or cause to be taken down in writing, or have recorded, the evidence of the witnesses on the part of the prosecution apart from each other.

(2) If the Magistrate thinks it is necessary or conducive to the ends of justice that any of the witnesses shall be permitted or required to be present during the whole or any part of the examination of any of the other witnesses, the Magistrate shall take or cause to be taken down in writing, or have recorded, the evidence of the witnesses in their presence accordingly.

(3) If the evidence is being taken down in writing, the following shall apply:

- (a) the evidence of each such witness shall be taken down in the form of a deposition;
- (b) such deposition shall be read over to the witness and shall be signed by the witness and the Magistrate; or if the witness refuses to sign or is incapable of signing, then the deposition shall be signed by the Magistrate, and the accused person, the witness and the Magistrate shall be present together at the time of such reading and signing;
- (c) any witness who refuses, without reasonable excuse, to sign his deposition may be committed to prison by warrant by the Magistrate holding the enquiry, there to be kept until after the trial

or until the witness signs his deposition before a Magistrate, but if the accused is afterwards discharged, any Magistrate may order any such witness to be discharged; and

(d) the signature of the Magistrate shall be at the end of the deposition of each witness, in such a form as to show that it is meant to authenticate the deposition.

(4) If the evidence is recorded by electronic audio recording, video recording or Computer Aided Transcription (CAT), a transcript of the recorded evidence shall be prepared and verified by the certificate of those responsible for the accuracy of the recording of the proceedings and of the transcript in accordance with the Recording of Court Proceedings Act. Ch. 4:31.

(5) The evidence of each such witness shall be given in the presence of the accused person, or, if taken in his absence, the authenticated deposition or verified transcript shall be read over to the accused in the presence of the witness, and the accused person is entitled to cross-examine him.

16A. (1) Where the examination of the witnesses called on behalf of the prosecution has been completed but before compliance with section 17(2), the Magistrate shall address the accused person in the following words or words to the like effect: Notice of alibi. [28 of 1996].

“I must warn you that if this Court should commit you for trial you may not be permitted at that trial to give evidence of an alibi or to call witnesses in support of an alibi unless you have earlier given particulars of the alibi and of the witnesses in support thereof. You may give those particulars now to this Court or in writing to the Director of Public Prosecutions not later than ten days from the end of these committal proceedings”.

(2) If it appears to the Magistrate that the accused person does not understand the meaning of the term “alibi”, the Magistrate shall explain it to him.

(3) The Magistrate shall not be required to give this warning in any case where it appears to him that, having regard to the nature of the offence with which the accused is charged, it is unnecessary to do so.

(4) Where the Magistrate has given the accused the warning required by subsection (1) the Clerk of the Peace shall give to him written notice of the provisions of section 16B.

Evidence of
alibi at trial.
[28 of 1996].

16B. (1) On trial on indictment, the accused person shall not, without leave of the Court, adduce evidence in support of an alibi, unless he has given notice of the particulars as provided in section 16A.

(2) In this section, “evidence in support of an alibi” means evidence tending to show that by reason of the presence of the defendant at a particular place or at a particular time he was not, or was unlikely to have been, at the place where the offence is alleged to have been committed at the time of its alleged commission.

(3) Without prejudice to subsection (1), on any such trial the defendant shall not, without the leave of the Court call any other person to give such evidence unless—

- (a) the notice under that subsection includes the name and address of the witness or, if the name or address is not known to the defendant at the time at which he gives the notice, any information in his possession which might be of material assistance in finding the witness;
- (b) the name or the address is not included in that notice and the Court is satisfied that the defendant, before giving notice, took and thereafter continued to take all reasonable steps to ensure that the name or address would be ascertained;
- (c) the name or the address is not included in that notice, but the defendant subsequently discovers the name or address or receives other information which might be of material

assistance in finding the witness and he forthwith gives notice of the name, address or other information, as the case may be;

- (d) the defendant is notified by the Director of Public Prosecutions that the witness has not been traced by the name or at the address given and he forthwith gives notice of any such information which is then in his possession or, on subsequently receiving any such information, he forthwith gives notice of it.

(4) The Court shall not refuse leave under this section if it appears to the Court that the defendant was not informed in accordance with section 16A, of the requirements of that section.

(5) Any evidence tendered to disprove an alibi may, subject to the discretion of the Court as to the time at which it is to be given, be tendered before or after such evidence in support of the alibi.

(6) The Rules Committee established by the Supreme Court of Judicature Act, may, subject to negative resolution of Parliament, make Rules for the purposes of sections 16A and 16B.

Rules of Court.
Ch. 4:01.

16C. (1) Notwithstanding sections 16 and 18, in a preliminary enquiry a written statement by a witness shall, if the conditions mentioned in subsection (3) are satisfied, be admissible as evidence to the like extent as oral evidence to the like effect by that witness.

Admissibility of
written
statements
[23 of 2005].

(2) Where a child is a witness in a preliminary enquiry, the Magistrate shall first comply with section 19 of the Children Act and then this section shall be applied to any written statement made by such a witness.

Ch. 46:01.

- (3) The conditions referred to in subsection (1) are that—
- (a) the statement purports to be signed by the witness who made it;
- (b) the statement was sworn before a Justice of the Peace and shall be authenticated by a certificate signed by him;

L.R.O. 1/2009

- (c) the statement contains a declaration by the witness who made the statement to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that, if it were tendered in evidence, he would be liable to prosecution if he wilfully stated in it anything which he knew to be false or did not believe to be true;
- (d) before the statement is tendered in evidence a copy of the statement is given, by or on behalf of the party proposing to tender it, to each of the other parties to the proceedings; and
- (e) none of the other parties, before the statement is tendered in evidence, at the preliminary enquiry, objects to the statement being so tendered under this section.

(4) The following provisions shall also have effect in relation to any written statement admitted in evidence under this section, that is to say:

- (a) if the statement is made by a witness under eighteen years of age, it shall state his age and that an adult of his choice was present with him when it was made;
- (b) if the statement is made on behalf of a witness it shall be signed by both the witness and the person who made it and dated;
- (c) if the statement is made on behalf of a witness who cannot read, the person who made it shall read it to him before he signs it and it shall be accompanied by a declaration by the person who made it that it was so read to the witness and he appeared to understand it and he agreed to it;
- (d) if the statement is made on behalf of a witness who cannot write, the person who made the statement shall read it to the witness before he

puts his mark or thumbprint on it and it shall contain a declaration by the person who made it that it was read to the witness and he appeared to understand it and he agreed to it; and

- (e) if the statement refers to any other document as an exhibit, the copy of the statement given to any other party to the enquiry under subsection (3)(d) shall be accompanied by a copy of that document or by such information as may be necessary in order to enable the party to whom it is given to inspect that document or a copy of it.

(5) Where any party objects to the admissibility of a written statement under subsection (3)(e), the Magistrate shall make a ruling on the objection and where he overrules the objection, the statement shall be admitted in evidence in accordance with subsection (1).

(6) So much of any statement as is admitted in evidence by virtue of this section shall, unless the Magistrate commits the accused for trial by virtue of section 23A(1) or the Magistrate otherwise directs, be read aloud at the hearing, and where the Magistrate so directs, an account shall be given orally of so much of any statement as is not read aloud.

(7) A document or an object referred to as an exhibit and identified in a written statement tendered in evidence under this section shall be treated as if it had been produced as an exhibit and identified in Court by the maker of the statement.

(8) Section 39(1) shall apply to any written statement tendered in evidence in a preliminary enquiry under this section as it applies to a deposition taken in such proceedings, but in its application to any such statement that subsection shall have effect as if paragraphs (b) and (c) thereof were omitted.

(9) Where the written statements to be tendered in evidence are given by the prosecution and accepted by the accused and his Attorney-at-law, the accused is not entitled thereafter to object to a preliminary enquiry in accordance with section 23A or 23B and the Magistrate shall proceed to conduct the enquiry in accordance with section 23A or 23B.

(10) Where the accused and his Attorney-at-law accepts the written statements given by the prosecution, the accused and his Attorney-at-law shall sign Part A and Part B respectively, of the form set out in the Third Schedule.

Third
Schedule.

Procedure.
[23 of 2005].

16D. (1) A written statement shall be filed with the Clerk of the Peace of the Magistrates' Court by either party and a filed copy shall be served on the other party to the enquiry as soon as practicable thereafter.

(2) A written statement filed under subsection (1) by either party to the enquiry shall be tendered by such party and may be admitted into evidence by the Magistrate under section 16C(1), and where a statement is so admitted it shall be marked by the Magistrate as a Court exhibit and kept together with all the other written statements and any other depositions.

(3) Where a statement is to be admitted in evidence under section 16C(1), and the Magistrate is of the opinion that a part of it is inadmissible there shall be written against that part the words "treated as inadmissible" together with the signature of the Magistrate.

(4) Where it is not possible to write on the statement, the words set out in subsection (3) shall instead be written on a label or other mark of identification which clearly identifies the part of the statement to which the words relate and contains the signature of the Magistrate in accordance with that subsection and which shall be attached to the statement.

(5) Where a written statement, admitted in evidence under section 16C(1), refers to any document or object as an exhibit, that document or object shall wherever possible be identified by means of a label or other mark of identification signed by the maker of the statement and before the Magistrate treats any document or object referred to as an exhibit in such a statement as an exhibit produced and identified in Court by the maker of the statement, the Magistrate shall be satisfied that the document or object is sufficiently described in the statement for it to be identified.

(6) Where, during the conduct of a preliminary enquiry, a written statement is admitted in accordance with section 16C(1), the name of the maker of the statement shall be read aloud unless the Magistrate otherwise directs.

(7) Where during the conduct of a preliminary enquiry before a Magistrate under section 16C(6), any part of a written statement has to be read out aloud or an account has to be given orally of so much of a written statement as is not read out aloud, the statement shall be read or the account given by or on behalf of the party who has tendered the evidence.

(8) The written statements admitted into evidence by the Magistrate under section 16C(1), are deemed to be the evidence in chief of each witness for the purpose of section 23A or 23B.

(9) Notwithstanding this section, an accused person is entitled to submit to the Magistrate that any part of a statement is inadmissible in evidence.

17. (1) After the examination of the witnesses called on behalf of the prosecution has been completed, the Magistrate shall, unless he discharges the accused person, inform him that he is entitled to give evidence upon oath or to remain silent or shall address him in the following words, or words to the like effect:

Accused to give evidence upon oath and record of accused person's response. [23 of 2005].

“Having heard the evidence, do you wish to say anything in answer to the charge? Do you wish to give evidence? You are not obliged to say anything, but if you do, you must do so under oath and you will be subject to cross-examination. Your statement will be taken down in writing or recorded, and may be given in evidence at your trial notwithstanding any promise or threat made to you to induce you to make any admission or confession of your guilt.”

(2) Whatever the accused person then answers thereto, whether on oath or not, shall be taken down in writing or recorded in the same manner as described in section 16 and—

(a) if taken down in writing, the statement of the accused shall be kept with the authenticated

depositions of the witnesses and any verified transcripts of their recorded evidence; or

- (b) if recorded, the Magistrate shall cause a copy of the recording and the verified transcript to be kept with the authenticated depositions of the witnesses and any authenticated transcripts of their recorded evidence,

as stated in subsections (3) and (4).

(3) Where pursuant to subsection (1), a Magistrate informs an accused person of his entitlement and the accused person—

- (a) chooses to remain silent; or
(b) replies that he reserves his defence or uses words to that effect,

the Magistrate shall take or cause to be taken down in writing, or have recorded, the latter's response or the fact of his silence, as the case may be, and the statement shall be read to and signed by the accused person, if he will, and the Magistrate, and such statement or transcript of the recording shall be kept with the depositions.

(4) Where the accused person refuses to sign the statement referred to in subsection (3), the Magistrate shall record, in writing, the refusal, and such record shall be kept with the depositions.

(5) At the trial, the statement of the accused, whether taken down or recorded, whether on oath or not, and whether signed by him or not, may be admitted into evidence without further proof thereof.

(6) Where the statement purports to bear the signatures of the Magistrate and the accused person, the statement shall be admitted into evidence unless it is proved that neither the accused person nor the Magistrate signed it.

(7) Notwithstanding anything in this section or in section 18, the Magistrate may, if he thinks fit and although the

case for the prosecution has been closed, take the evidence of further witnesses for the prosecution or recall any witness for further examination.

17A. (1) Without prejudice to section 17, the Magistrate, acting under section 23A or 23B, shall also inform the accused person that he is entitled to tender a written statement into evidence and to call any witness who is entitled to tender a written statement into evidence.

Accused and his witness may tender written statement. [23 of 2005].

(2) Where the accused person or any of his witness decides to tender a written statement, he shall give a copy of it to the prosecution, and the original to the Magistrate who shall mark it as a Court exhibit and it shall be kept together with the other written statements and any depositions.

(3) The written statement of the accused person and his witness if any may be admitted in evidence at the trial without further proof thereof unless it is proved that the accused or the witness, where such statement purports to have been signed by the accused or the witness, did not in fact sign it.

18. (1) After the proceedings required by section 17 are completed, the Magistrate shall ask the accused person if he wishes to call any witnesses. Every witness called by the accused person who testifies to any fact relevant to the case shall be heard, and his evidence shall be taken in the same manner as the evidence of a witness for the prosecution.

Taking of evidence for defence. [23 of 2005].

(2) After the Magistrate has enquired of the accused person whether he wishes to call any witnesses, the Magistrate shall take or cause to be taken down in writing or have recorded—

- (a) the request; and
- (b) the response, if any, of the accused person to the request,

and the statement shall be read to and signed by the accused person, if he will, and the Magistrate, and such statement or transcript of the recording shall be kept with the depositions.

(3) Where the accused person refuses to sign the statement referred to in subsection (2), the Magistrate shall record, in writing, the refusal and such record shall be kept with the depositions.

Marking of exhibits.

19. The Magistrate shall cause all writings and other articles exhibited by the witnesses, or any of them, to be inventoried and labelled, or otherwise marked, in the presence of the person producing them, so that they may be identified at the trial.

Deposition of witness unable to attend.

20. (1) Where any person capable of giving material evidence in respect of an indictable offence is, from illness, unable to attend at the place where the Magistrate usually sits, a Magistrate shall have power to take the deposition of the person at the place where the person is.

(2) The Magistrate taking the deposition may, by an order in writing under his hand, direct the Keeper of the prison having the custody of an accused person to cause him to be conveyed to the place where the examination is to be taken, for the purpose of being present when it is taken, and to be taken back to prison afterwards.

(3) Section 16 shall, so far as the same is applicable, apply to depositions taken under this section.

(4) Every deposition taken under this section shall be forwarded to the Magistrate by whom the preliminary enquiry into the indictable offence is being, or has been, held, if the deposition was taken by some other Magistrate, and the deposition shall, subject to section 40(2) be treated in all respects in the same way, and shall be considered for all purposes as a deposition taken upon the preliminary enquiry.

Binding over to give evidence.

21. (1) The Magistrate holding the preliminary enquiry shall bind over every witness for the prosecution whose deposition has been taken, and every witness for the defence not being merely a witness to the character of the accused whose evidence is, in his opinion, material, to give evidence at the trial of the accused person before the Court.

(2) Every recognisance so entered into shall specify the name and surname of the person entering into it, his occupation or profession, if any, the place of his residence, and the name and number, if any, of any street in which it may be.

(3) Such recognisance may be either at the foot of the deposition or separate from it, and shall be acknowledged by the person entering into it, and be subscribed by the Magistrate before whom it is acknowledged.

(4) Any witness who refuses, without reasonable excuse, to enter into such recognisance may be committed to prison by warrant by the Magistrate holding the enquiry, there to be kept until after the trial, or until the witness enters into such recognisance before a Magistrate; but if the accused person is afterwards discharged, any Magistrate may order any such witness to be discharged.

(5) Where a person charged before a Magistrate with an indictable offence is committed for trial and it appears to the Magistrate, after taking into account anything which may be said by the accused or the prosecutor, that the attendance at the trial of a witness who has been examined before him is unnecessary because of—

- (a) anything contained in any statement by the accused; or
- (b) the accused having pleaded guilty to the charge; or
- (c) the evidence of the witness being merely of a formal nature,

then the Magistrate shall—

- (i) if the witness has not already been bound over, bind him over to attend the trial conditionally upon notice being given to him and not otherwise; or
- (ii) if the witness has already been bound over, direct that he shall be treated as having been bound over to attend only conditionally,

Binding over of witnesses conditionally. [172/1961 8/1962 136/1976].

and transmit with the depositions a statement in writing of the names, addresses and occupations of the witnesses who are or who are to be treated as having been bound over to attend the trial conditionally.

(6) The Magistrate shall, on committing the accused for trial, inform him of his right to require the attendance at the trial of such witness and of the steps which he must take to enforce the attendance of the witness.

(7) The Director of Public Prosecutions shall at least seven days before the day fixed for the trial inform the person committed for trial of the names, addresses and occupations of the witnesses, and the Director of Public Prosecutions or the person committed for trial shall give notice to the Registrar at least four days before the day fixed for the trial that he desires any such witness to attend at the trial, and the Registrar, on receipt of the notice, shall then notify the witness that he is required to attend in pursuance of his recognisance.

Magistrate may consult Director of Public Prosecutions. [172/1961 8/1962 136/1976 18 of 1994].

22. Where a Magistrate is, during a preliminary enquiry, in doubt as to any matter arising during the enquiry, he may grant bail to the accused person or commit him to prison according to the provisions hereinafter contained, until he has consulted, and received the opinion of, the Director of Public Prosecutions in the matter.

DISCHARGE, COMMITTAL FOR TRIAL

Discharge or committal for trial of accused. [172/1961 8/1962 136/1976 45 of 1979 18 of 1994 23 of 2005].

23. (1) When all the witnesses on the part of the prosecutor and of the accused person, if any, have been heard, the Magistrate shall, if, upon the whole of the evidence, he is of opinion that no *prima facie* case of any indictable offence is made out, discharge him; and in such case any recognisance taken in respect of the charge becomes void.

(2) Where the Magistrate is of the opinion, on consideration of the evidence and of any statement of the accused, that there is sufficient evidence to put the accused on

trial for any indictable offence, the Magistrate shall commit the accused for trial—

- (a) in custody, that is to say, by committing him to prison there to be safely kept until delivered in due course of law; or
- (b) on bail in accordance with the provisions of the Bail Act, that is to say, by directing the accused to appear before the High Court for trial,

and where his release on bail is conditioned on his providing a surety and, in accordance with section 16 of the Bail Act, the Magistrate fixes the amount in which the surety is to be bound with a view to his entering into his recognisance subsequently, the Magistrate shall, in the meantime, commit the accused to custody in accordance with paragraph (a) of this subsection.

Ch. 4:60.

(3) The commitment shall be in the form set out in the First Schedule.

First Schedule.

(4) Nothing herein shall be construed to prevent the Magistrate from granting bail to the accused person if the offence charged is of a bailable nature.

(5) In every case in which a Magistrate discharges an accused person on a preliminary enquiry, he shall, if required to do so by the Director of Public Prosecutions, transmit forthwith to him the record of the proceedings, and if the Director of Public Prosecutions, on perusing and considering the evidence, is of opinion that the accused ought not to have been discharged, he may apply to a Judge of the High Court for a warrant for the arrest and committal for trial of the accused person.

(6) If the Judge is of opinion that the evidence, as given before the Magistrate, was sufficient to put the accused person on his trial, he may issue a warrant for the arrest of the accused person and for his committal to prison for trial, there to be kept until discharged in due course of law or granted bail, and every person so proceeded against shall be further prosecuted in the like manner as if he had been committed for trial by the Magistrate by whom he was discharged.

(7) The requisition to the Magistrate by the Director of Public Prosecutions for the record of the proceedings shall be made within three months of the discharge of the accused person and the application to the Judge for the warrant for arrest and committal for trial of the accused person shall be made within six months of the discharge of the accused person.

(8) Notwithstanding subsections (5), (6) and (7), the Director of Public Prosecutions or the Deputy Director of Public Prosecutions may prefer an indictment whether or not a preliminary enquiry has been conducted only in the following instances:

- (a) where at the close of an inquest, a Coroner is of the opinion that sufficient grounds are disclosed for making a charge on indictment against any person pursuant to section 28 of the Coroners Act;
- (b) where a co-accused is arrested before the date fixed for the trial of a co-offender who has already been indicted and it is desired to join them both in the same indictment;
- (c) where a Magistrate has heard evidence and the depositions taken before him disclose a *prima facie* case and he is unable to complete the preliminary enquiry because of his:
 - (i) physical or mental infirmity;
 - (ii) resignation;
 - (iii) retirement; or
 - (iv) death;
- (d) where a person is charged with serious or complex fraud;
- (e) in exceptional circumstances to deal with offences of a violent or sexual nature and where there is a child witness, or an adult witness who has been assessed as one subject to threats, intimidation or elimination.

(9) Where an accused person has not been put upon his trial for any offence disclosed by the evidence taken at a preliminary enquiry and additional evidence of a material nature

in support of any such offence becomes available, a further enquiry may be held in the like manner and with the like consequences as if it were an original preliminary enquiry.

23A. (1) A Magistrate holding a preliminary enquiry shall, if satisfied that all the evidence before the Court, whether for the prosecution or the accused person, consists of written statements admitted under section 16C(1), with or without exhibits, commit the accused for trial for the offence without consideration of the contents of those statements.

Committal
without
consideration of
the written
statements.
[23 of 2005].

(2) Subsection (1) shall not apply where the—

- (a) accused or one of the accused is not represented by an Attorney-at-law; or
- (b) Attorney-at-law for the accused or one of the accused, as the case may be, has requested the Magistrate to consider a submission that the statements disclose insufficient evidence to put that accused on trial by jury for the offence.

(3) If the Magistrate is satisfied that the Attorney-at-law for the accused or, as the case may be, the Attorney-at-law for each of the accused does not wish to make a submission as provided for under subsection (2)(b), the Magistrate shall, after receiving any written statement under section 16C(1), commit the accused for trial without consideration of the evidence.

(4) Where a Magistrate commits an accused person for trial under this section he shall comply with sections 16A, 17 and 23(2).

(5) Where the Magistrate does not commit the accused under this section he shall proceed in accordance with section 23B.

23B. (1) A Magistrate holding a preliminary enquiry, who does not commit an accused person under section 23A, and having ascertained that the—

Committal
based on the
written
statements.
[23 of 2005].

- (a) accused has no Attorney-at-law acting for him in the enquiry;

- (b) Attorney-at-law for the accused has requested the Magistrate to consider a submission that there is insufficient evidence to put the accused on trial by jury for the offence with which he is charged; or
- (c) accused or his Attorney-at-law wishes to cross-examine any of the witnesses for the prosecution,

shall permit the prosecutor to tender to the Court any statement that is in compliance with section 16C.

(2) After the prosecutor tenders any statement as provided for under subsection (1), the Magistrate shall admit the written statements in accordance with section 16C(1), and it shall be read out aloud, except where the Magistrate otherwise directs the prosecutor or to the extent that he directs the prosecutor that an oral account be given of any statement.

(3) The Magistrate may view any exhibits produced before him and may take possession of them.

(4) After all the evidence including the written statements on behalf of the prosecution have been admitted and subject to the right of the accused under section 23D, the Magistrate shall hear any submission which the accused or his Attorney-at-law may wish to make as to whether there is sufficient evidence to put the accused on trial by jury for any indictable offence.

(5) The Magistrate shall permit the prosecutor to make a submission—

- (a) in reply to any submission made by the accused or his Attorney-at-law in pursuance of subsection (4); or
- (b) where the accused or his Attorney-at-law has not made any such submission but the Magistrate is nevertheless minded not to commit the accused for trial.

(6) After hearing any submission made in pursuance of subsection (4) or (5), the Magistrate shall, unless he discharges the accused person, comply with sections 16A, 17 and 23(2) with appropriate modification of the language of the sections in relation to the relevant circumstances.

23C. A written statement admitted in evidence under section 16C is deemed to be a deposition within the meaning of section 16(3).

Depositions.
[23 of 2005].

23D. Where a Magistrate holding a preliminary enquiry admits written statements of a person under section 23A or 23B, a party to the enquiry or an Attorney-at-law acting on behalf of that party is entitled to cross-examine the maker of any statement admitted in evidence.

Cross-examination.
[23 of 2005].

23E. A person who, in a written statement admitted in evidence in a preliminary enquiry by virtue of section 16C, wilfully makes a statement material in the preliminary enquiry which he knows to be false or does not believe to be true commits an offence and is liable on summary conviction to a fine of fifty thousand dollars and to imprisonment for seven years.

False written statements tendered in evidence.
[23 of 2005].

23F. Neither section 55 nor Part VI of the Summary Courts Act shall apply to proceedings under this Act.

Non-application of certain written provisions.
Ch. 4:20.
[23 of 2005].

23G. An appeal by the State from a decision of a Judge of the High Court under section 23(6), shall lie as of right to the Court of Appeal.

Appeals.
[23 of 2005].

23H. Sections 16, 16C, 16D, 17, 17A, 18, 23(8) and 23A to 23G shall not apply to a preliminary enquiry that began before 15th September 2005.

Transitional Provision.
[23 of 2005].

24. Every person committed for trial, whether bailed or not shall be entitled, at any reasonable time before the trial, to have copies of the depositions and of his own statement (if any) from the Clerk of the Magistrate's Court, or, if the documents relating to the inquiry have been transmitted by the Magistrate as hereinafter provided, from the Registrar.

Copies of depositions for accused person.
[45 of 1979].

DISCHARGE, COMMITTAL ON WRITTEN STATEMENT

24A. The provisions of this Act relating to the commitment for trial and to bail of an accused person shall apply where a Magistrate commits an accused person under section 23A or 23B.

Order of commitment and bail.
[20 of 1994
23 of 2005].

Sections 25 and 27 to apply. [20 of 1994 23 of 2005].

24B. Sections 25 and 27 apply to proceedings under section 23A or 23B.

Further evidence. [20 of 1994 23 of 2005].

24C. A Magistrate conducting a preliminary enquiry in accordance with section 16 or under section 23A or 23B may, if he thinks fit and although the case for the prosecution has been closed, take the evidence of further witnesses for the prosecution or recall any witness for further examination, or call upon the maker of a written statement to furnish him with additional evidence, as the case may be.

PROCEEDINGS SUBSEQUENT TO COMMITTAL

Transmission and custody of documents and exhibits relating to a case. [172/1961 8/1962 136/1976 8 of 1990 32 of 1998].

25. (1) After the preliminary enquiry has been concluded and the warrant of commitment for trial has been made out, the Magistrate shall, without delay, transmit to the Director of Public Prosecutions the complaint, the depositions of the witnesses, the documentary exhibits thereto, the evidence (if any) of the accused person, the warrant of commitment for trial, and the recognisances entered into. All exhibits, other than documentary exhibits, shall, unless the Magistrate otherwise directs, be taken charge of by the Police and shall be produced by them at the trial.

(2) Subject to this Act, the depositions and other documents received from the Magistrate by the Director of Public Prosecutions shall be kept by him until the indictment (if any) to which they relate is filed, and shall then be transmitted to the Registrar of the Supreme Court, who shall keep them and produce them to the Court at the trial of the accused person.

(3) A person committed for trial may be indicted for any offence for which he was committed for trial or for any offence which, in the opinion of the Director of Public Prosecutions, is disclosed by the depositions.

(4) Notwithstanding subsections (1), (2) and (3), an indictment charging any person with an indictable offence may also be preferred by the Director of Public Prosecutions on the direction of or with the consent of a Judge of the High Court or the Court of Appeal where any procedural defect has occurred during the course of a preliminary enquiry.

(5) The Criminal Procedure Act shall apply to an indictment preferred under subsection (4). Ch. 12:02.

26. (1) Where, after the preliminary inquiry into the complaint has been concluded, the deposition of any witness is lost or destroyed, the preliminary inquiry may be re-opened or a fresh preliminary inquiry may be held into the complaint for the purpose of taking the deposition of such witness. Where deposition lost or destroyed. [29 of 1977].

(2) Where the original of the complaint, any deposition of a witness, any documentary exhibit thereto the statement if any, of the accused person, the warrant of committal for the trial or any recognisance entered into is lost or destroyed, then in all proceedings at the trial (whether summary or on indictment) or at a re-opened preliminary enquiry or a fresh preliminary enquiry or an enquiry under section 23(8), secondary evidence of the contents of such document may, in the discretion of the Court or Magistrate be admitted in every case in which the original document would be admissible.

(3) Without prejudice to any other method by which such fact may be proved—

(a) the fact that any document is lost or destroyed may be proved by the testimony of the officer in whose charge the document was last entrusted; and

(b) the fact that a document is a copy may be authenticated—

(i) where the document is a private document, by any evidence with which secondary evidence as to private documents may be authenticated; and

(ii) where the document is a public document, by a certified copy thereof issued by the officer to whose custody the original was entrusted.

26A. Notwithstanding section 26(1) and (2) but subject to section 26(3), where the original deposition or part thereof, or Use of certified copy of depositions. [6 of 1996].

any document mentioned in that section is lost or destroyed, a copy of the deposition or part thereof, or of the document, duly certified by the Clerk of the Peace of the magisterial district in which the preliminary enquiry was held, or by the examining Magistrate shall be regarded as the original deposition or document as the case may be and dealt with as such for purposes of this Act.

D.P.P. may refer back case for further evidence. [172/1961 8/1962 136/1976 6 of 1996].

27. (1) At any time after the receipt of the depositions and other documents mentioned in section 25 or section 26A and before the indictment is filed, the Director of Public Prosecutions may, if he thinks fit, refer back the case to the Magistrate with directions to re-open the enquiry for the purpose of taking further evidence, and with such other directions as he may think proper. Where a case is referred back as herein provided, the enquiry shall be re-opened, and the case shall be dealt with in all respects as if the accused person had not been committed for trial.

D.P.P. may refer back case to be dealt with summarily.

(2) If, after the receipt of the depositions and other documents mentioned in section 25 or section 26A the Director of Public Prosecutions is of opinion that the accused person should not have been committed for trial but that the case should have been dealt with summarily, the Director of Public Prosecutions may, if he thinks fit, refer back the case to the Magistrate with directions to deal with the case accordingly, and with such other directions as he may think proper.

(3) Any directions given by the Director of Public Prosecutions under this section shall be in writing signed by him, and shall be complied with by the Magistrate: Provided that the Director of Public Prosecutions may at any time add to, alter, or revoke any such directions.

(4) When the Director of Public Prosecutions directs that an enquiry shall be re-opened or that a case shall be dealt with summarily, the following provisions shall have effect:

(a) where the accused person is in custody, the Magistrate shall, by an order in writing under his hand, direct the Keeper of the prison having the custody of the accused person to convey him

or cause him to be conveyed to the place named in the order for the purpose of being dealt with as the Magistrate may direct;

(b) where the accused person is on bail, the Magistrate shall issue a summons for his attendance at a time and place named in the summons. If the accused person does not attend in obedience to the summons, the Magistrate shall issue a warrant for his apprehension;

(c) thereafter the proceedings shall be continued under the provisions of this Act or of the Summary Courts Act as the case may be, and, if under the last-mentioned Act in the same manner as if the Magistrate had himself formed an opinion in terms of section 94 of that Act.

Ch. 4:20.

COMMITTAL FOR SENTENCE

27A. In a preliminary enquiry except when the charge is one of treason or murder, if an accused person who is represented by an Attorney informs the Magistrate that he is guilty of the charge the Magistrate may commit him for sentence before the High Court in accordance with section 27C(2).

Accused admitting guilt at preliminary enquiry to be committed for sentence. [20 of 1994].

27B. Except where the offence is one of treason or murder, if, after being informed of his rights under section 17, an accused person instead of giving evidence upon oath says or admits that he is guilty of the charge, then the Magistrate shall further say to him the words following, or words to the like effect:

Accused admitting guilt at preliminary enquiry to be further cautioned and may be committed for sentence. [172/1961 8/1962 136/1976 20 of 1994].

“Do you wish the witnesses again to appear to give evidence against you at your trial? If you do not, you will now be committed for sentence, instead of being committed for trial”.

27C. (1) Where the accused, in answer to the question referred to in section 27A, states that he does not wish the witnesses again to appear to give evidence against him, his statement shall be taken down in writing and read to him and

Answer of accused consenting to be committed for sentence to be recorded. [20 of 1994].

L.R.O. 1/2009

shall be signed by the Magistrate and by the accused, if he will, and shall be kept with the depositions of the witnesses. The witnesses may thereupon be bound over conditionally in the manner provided by section 21(5).

Committal for sentence.

(2) In any such case as mentioned in this section the Magistrate shall, instead of committing the accused for trial, order him to be committed for sentence before the High Court, and in the meantime, the Magistrate shall, by his warrant, commit the accused to prison to be there safely kept until the sittings of that Court, or until he is admitted to bail or delivered by due course of law.

Admissibility of statement of accused in evidence.

(3) The statement of the accused made under this section shall be received in evidence upon its mere production without further proof by the Court before which he is brought for sentence.

Transmission of proceedings and filing of indictment.

(4) The Magistrate shall, as soon after the committal as is practicable, transmit to the Director of Public Prosecutions the record or the proceedings in the manner required by section 24 and the Director of Public Prosecutions shall prefer and file in the High Court an indictment against the accused person committed for sentence.

BAIL

Right of accused to bail.
[1 of 1955
11 of 1961
45 of 1979
8 of 1990
18 of 1994
19 of 1998].
Ch. 4:60.

28. (1) A Magistrate may grant bail in accordance with the Bail Act, to any person charged with an offence.

(2) Where bail may be granted or refused in the discretion of the Magistrate, such discretion may be exercised at any stage of the proceedings.

(3) Whenever the preliminary enquiry is for any cause adjourned, the Magistrate may, upon such adjournment and subject to section 5 of the Bail Act, remand the accused person in custody by committing him to prison or to such other safe custody as the Magistrate thinks fit and the time fixed for the resumption of the trial shall be that at which he is required to appear or be brought before the Court in pursuance of the remand.

(4) If an accused person who has appeared and has been granted bail (either on the recognisance of sureties or on his own recognisance) to appear at any adjournment, fails to appear according to the condition of the recognisance, the Magistrate before whom he ought to have appeared may issue a warrant for his apprehension, whether there has been any complaint in writing and upon oath or not, and may also declare the recognisance to be forfeited.

(5) Where a recognisance is declared to be forfeited, any Magistrate may forthwith or at any time after the declaration issue a warrant committing any person liable, whether as principal or surety, under the recognisance to prison for any term not exceeding two months unless the amount due under the recognisance and also, if the Magistrate thinks fit, the costs of the commitment and conveying of the person to prison (the amount of such costs being ascertained and stated in the warrant) are sooner paid.

(6) The recognisance shall be in the form set out in Form 1 in the Second Schedule.

Second
Schedule.

29. (1) An accused person who is not released on bail shall be committed for safe custody to prison, or as the case may require.

Committal of
accused
pending
preliminary
enquiry.
[8 of 1990
18 of 1994].

(2) If the Magistrate adjourns the preliminary enquiry and remands the accused person, the remand shall be by warrant.

(3) The Magistrate may, whilst the accused person is under remand and before the expiration of the period for which he has been remanded, order the accused person to be brought before him, and the Keeper of the prison shall obey the order, or, if the accused person is on bail, the Magistrate may summon him to appear at an earlier day than that to which he was remanded. If the summons is not obeyed, a warrant may issue to enforce his attendance and may be executed like any other warrant.

30. (1) If an accused person who is committed for trial is granted bail, the recognisance of bail shall be taken in writing either from the accused person and one or more sureties or from

Bail on
committal for
trial.
[8 of 1990
18 of 1994
19 of 1998].

L.R.O. 1/2009

Ch. 4:60. the accused person alone, in the discretion of the Magistrate, according to the Bail Act, and shall be signed by the accused person and his surety or sureties, if any.

(2) The condition of such recognisance shall be that the accused person shall personally appear before the Court at any time from the date of the recognisance, to answer to any indictment that may be filed against him in the Court, and that he will not depart the Court without leave of the Court, and that he will accept service of any such indictment at some place to be named in such condition.

Second
Schedule.
Form 2.

(3) The recognisance may be in the form set out in Form 2 in the Second Schedule.

Conveying
accused to
prison after
committal.
[8 of 1990
18 of 1994].

31. (1) Where an accused person who is committed for trial is not released on bail, a constable shall convey him to the prison, and shall there deliver him, together with the warrant of commitment, to the Keeper of the prison, who shall thereupon give the constable a receipt for the accused person, which shall set forth the condition in which the accused person was when he was delivered into the custody of the Keeper.

(2) It shall not be necessary to address any warrant of commitment under this or any other section of this Act to the Keeper of the prison, but, upon delivery of any such warrant to the Keeper by the person charged with the execution of the warrant, the Keeper shall receive and detain the person named in the warrant (or detain him, if already in his custody) for the period and for the purpose as the warrant directs. In case of adjournments or remands, the Keeper shall bring the person, or cause him to be brought, at the time and place fixed by the warrant for that purpose, before the Magistrate.

(3) This section shall apply to every person who is committed to prison under any provision of this Act.

Bailing of
accused
after committal.
[8 of 1990
18 of 1994].

32. (1) Where an accused person is not released on bail only because he does not, at the time of his committal for trial, procure a sufficient surety or sureties for appearing to take his

trial, the Magistrate shall endorse on the warrant of commitment, or on a separate paper, a certificate of his consent to the accused person being bailed, and shall state the amount of bail which ought to be required.

(2) Any Magistrate attending or being at the prison where the accused person is confined shall, on the production of such certificate, grant him bail accordingly, and shall order him to be discharged by a warrant of deliverance.

(3) If it is inconvenient for a surety or sureties to attend at the prison to join the accused in the recognisance of bail, the committing Magistrate may make a duplicate of such certificate.

(4) Upon the production to any Magistrate of any such duplicate certificate, the Magistrate may take the recognisance of the surety or sureties in conformity with such certificate, and shall transmit the recognisance, if and when so taken, to the Keeper of the prison.

(5) Upon such recognisance and such certificate as is mentioned in subsection (3) being produced to any Magistrate attending or being at such prison, the Magistrate may take the recognisance of the accused party, and thereupon the Magistrate shall order him to be discharged by a warrant of deliverance.

33. Subject to the Bail Act, the Court or a Judge may at any time, on the petition of an accused person charged with an offence, grant him bail, and the recognisance of bail may, if the Court or the Judge so directs, be taken before any Magistrate.

Court or Judge may bail accused. [8 of 1990 18 of 1994]. Ch. 4:60.

34. Where an accused person is bailed in the above manner, the Magistrate by whom he is bailed, or any other Magistrate, may, if he sees fit, on the application of the surety or of either of the sureties of such person, and on information being laid in writing and upon oath by the surety, or by some person in his behalf, that there is reason to believe that the person so bailed is about to abscond for the purpose of evading justice, issue his warrant for the apprehension of the person so bailed, and afterwards, on being satisfied that the ends of justice would

Apprehension of accused person on bail but about to abscond. [8 of 1990 18 of 1994].

otherwise be defeated, commit such person when so arrested to prison until his trial, or until he produces another sufficient surety or other sufficient sureties, as the case may be, in like manner as before.

Amount of bail.
[8 of 1990].

35. The amount of bail to be taken in any case shall be in the discretion of the Magistrate, or of the Court or the Judge by whom the order for the taking of such bail is made, but no accused person shall be required to give excessive bail.

Bail of married woman or infant.
[8 of 1990
18 of 1994].

36. If an accused person who is granted bail is a married woman or infant, the recognisance of bail shall be taken only from the surety or sureties.

Power to revoke or require higher bail.
[172/1961
8/1962
136/1976
8 of 1990
18 of 1994].

37. (1) Where an accused person released on bail by a Magistrate is indicted by the Director of Public Prosecutions for an offence which is not bailable by a Magistrate, the Magistrate shall, on being informed of the fact by any police officer of the First Division of the Police Service, issue his warrant for the arrest of the accused person and commit him to prison in the same manner as if he had been originally committed for trial for the offence for which he is indicted.

(2) For the purposes of this section, a person shall be deemed to be indicted when the indictment against him has been filed in the High Court.

(3) Where an accused person has been released on bail by a Judge or a Magistrate, and circumstances arise which, if the accused person had not been admitted to bail, would justify the Judge or Magistrate in refusing bail or in requiring bail of greater amount, the Judge or Magistrate may, on the circumstances being brought to his notice by any police officer of the First Division of the Police Service, issue his warrant for the arrest of the accused person, and, after giving the accused person an opportunity of being heard, may either commit him to prison to await trial or grant him bail for the same or an increased amount, as the Judge or Magistrate may think just.

PLACE OF COMMITMENT

38. All persons committed to prison under this Act shall be committed to the Port-of-Spain Prison, or to such other prison within the district in which they have been committed as may have been appointed by the President.

Place of
commitment.
[8 of 1990].

EVIDENCE

39. (1) Where any person has been committed for trial for any offence, the deposition of any person taken before a Magistrate may, if the conditions set out below are satisfied, without further proof be read as evidence on the trial of that person, whether for that offence or for any other offence arising out of the same transaction or set of circumstances as that offence.

Reading of
depositions at
trial.
[8 of 1990].

The conditions referred to above are the following:

- (a) the deposition must be the deposition either of a witness whose attendance at the trial is stated to be unnecessary in accordance with the provisions of section 21(5), or, of a witness who is proved at the trial by the oath of a credible witness to be dead, or so ill as not to be able to travel although there may be a prospect of his recovery, or incapable in consequence of his condition of mind of giving evidence, or absent from Trinidad and Tobago, or kept out of the way by the prosecutor or the State or by the accused person or by some other person on his behalf;
- (b) it must be proved at the trial, either by a certificate purporting to be signed by the Magistrate before whom the deposition purports to have been taken or by the oath of a credible witness, that the deposition was taken in the presence of the accused person or the prosecutor, as the case may be, and that he or his legal adviser had full opportunity of cross-examining the deponent;

(c) the deposition must purport to be signed by the Magistrate before whom it purports to have been taken.

(2) In the case of a deposition taken under section 20, the provisions of subsection (1) other than paragraph (b) shall apply on its being proved at the trial either by a certificate purporting to be signed by the Magistrate before whom the deposition purports to have been taken or by the oath of a credible witness—

(a) that reasonable notice of the intention to take the deposition was served upon the person (whether accused or prosecutor) against whom it is proposed to be given in evidence; and

(b) that such person or his legal adviser had, or might have had, if he had chosen to be present, a full opportunity of cross-examining the deponent.

(3) This section shall not have effect in any case in which it is proved—

(a) that the deposition, or where the proof required by subsection (1)(b) is given by means of a certificate, that the certificate was not in fact signed by the Magistrate by whom it purports to have been signed; or

(b) that where the deposition is the deposition of a witness whose attendance at the trial is stated to be unnecessary as provided by section 21(5), the witness has been duly notified that he is required to attend the trial.

Report of Chief
Chemist.
[8 of 1990].

40. (1) At any preliminary examination, any document purporting to be a report from the Chief Chemist upon any matter or thing submitted to him for examination, analysis, or report may, if it bears his signature, be used as evidence.

(2) The Magistrate may presume that the signature to any such document is genuine, and that the person signing it held the office which he professed to hold at the time when he signed it.

PUBLICATION OF PROCEEDINGS

41. (1) No person shall print or publish or cause or procure to be printed or published, in relation to any preliminary enquiry under this Act, any particulars other than the following:

Restriction on publication of report of preliminary enquiry. [8 of 1990].

- (a) the names, addresses and occupations of the accused person and the witnesses;
- (b) a concise statement of the charge and the defence in support of which evidence has been given;
- (c) submissions on any point of law arising in the course of the enquiry, and the decision of the Magistrate thereon.

(2) Nothing in this section shall apply to the printing or reproduction by any other method of any pleading, transcript of evidence or other documents for use in connection with any judicial proceedings or the communication thereof to persons concerned in the proceedings, or to the printing or publishing of any notice or report in pursuance of the directions of the Magistrate.

(3) A person who acts in contravention of this section is liable on summary conviction in respect of each offence to a fine of two thousand dollars or to imprisonment for four months.

Penalties.

LAWS OF TRINIDAD AND TOBAGO

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44

Chap. 12:01 *Indictable Offences (Preliminary Enquiry)*

Section 23(3).

FIRST SCHEDULE

WARRANT OF COMMITMENT

To(Constable), and to, Keeper of the Port-of-Spain Prison.

Whereas *A.B.* was this day charged before me the undersigned Magistrate on the complaint of....., for that [*state shortly the offence*]:

These are therefore to command you, the said..... to take the said *A.B.* and him safely to convey to the Port-of-Spain Prison in the City of Port-of-Spain, and there to deliver him to the Keeper thereof, together with this precept: and I do hereby command you, the said Keeper of the said Prison, to receive the said *A.B.* into your custody in the said Prison and there safely keep him until he shall be thence delivered by due course of law.

Date
.....
(Magistrate)

SECOND SCHEDULE

Section 28(2).
[19 of 1998].

FORM 1

**RECOGNISANCE OF BAIL ON ADJOURNMENT
OF PRELIMINARY ENQUIRY**

No. 20.....
COUNTY OF
BE IT REMEMBERED that on the day of, 20.....
C.D., of
..... and
G.H.,
of
personally came before me, the undersigned Magistrate [or *Justice*] for the
Magisterial District of
and severally acknowledged themselves to owe to the State the several sums
following, namely, the said C.D.,
as principal, the sum of
.....
and the said G.H.
as surety, the sum of
to be levied on their several movable and immovable property respectively, if
the said C.D. fails in the condition
hereon endorsed.

Taken and acknowledged the day and year first above-mentioned before me.

(Signed)
(*Magistrate or Justice*)

CONDITION ENDORSED

The condition of the within written recognisance is such that if the within bonded
C.D. appears before the Magistrate [or *Justice*] in the said
Court, the day of, 20....., at o'clock,m., at
..... and at every time and place to which during the course of
the proceedings against the said C.D.
the hearing may be from time to time adjourned to answer further the complaint
made against him by A.B., and to be further dealt with
according to law, then the said recognisance shall be void, but otherwise shall
remain in full force until the completion of the said proceedings.

L.R.O. 1/2009

LAWS OF TRINIDAD AND TOBAGO

MINISTRY OF LEGAL AFFAIRS

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46

Chap. 12:01 Indictable Offences (Preliminary Enquiry)

Section 30(3).
[19 of 1998].

FORM 2

RECOGNISANCE OF BAIL ON COMMITTAL

THE STATE

Against

A.B. on the charge of C.D. for [state offence briefly].

At in the said Trinidad and Tobago on this day of in the year of Our Lord Two Thousand of in the said Trinidad and Tobago, acknowledges himself to be indebted to the State, in the sum of....., and of acknowledges himself to be indebted to the State, in the sum of; upon condition that, if the said do personally appear before the High Court, in the of to answer to any indictment that shall be presented against him in the said Court in or about the premises, from the date of this acknowledgment, and do not depart the Court without leave, and do accept service of any such indictment at the residence of..... situated in in the of..... and that the said..... in the meantime be of good behaviour, and keep the peace towards the State and especially towards then this recognisance to be void; or else to remain in full force. And the said severally acknowledge themselves debtors in solidum to the State in the sums hereinbefore respectively acknowledged by them upon the property of them and each of them, to the use of the State, to be levied in due form of law, in case of default made in the condition of this recognisance or obligation.

Acknowledged by the said on the day of 20.....

Witness Before me,

THIRD SCHEDULE
ACCEPTANCE OF WRITTEN STATEMENTS

Section
16C(10).
[23 of 2005].

Complaint No..... of 20.....

.....(*Complainant*)

Against

.....(*Accused person*) on the charge
of..... (*State offence briefly*).

PART A

I..... (*name*) of (*address*) the
accused person accept the written statements of the prosecution given to me
thisday of, 20....., pursuant to section 16C of
the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01.

.....
(*Signature of accused person*)

PART B

I(*name*) of (*address*)
Attorney-at-law for(*name of the accused*
person) accept the written statements of the prosecution given to me this
.....day of, 20....., pursuant to section 16C of the
Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01.

.....
(*Signature of Attorney-at-law*).