

and Nevis.



I assent,

SAMUEL WEYMOUTH TAPLEY SEATON

Governor-General

18th April, 2018.

SAINT CHRISTOPHER AND NEVIS

AN ACT to amend the Magistrate's Code of Procedure Act, Cap. 3.17.

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BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the National Assembly of Saint Christopher and Nevis and by the authority of the same as follows:

1. **Short title and commencement.**

This Act may be cited as the Magistrate's Code of Procedure (Amendment) Act 2018 and shall come into operation on a day to be fixed by the Minister by notice in the *Gazette*.

2. **Interpretation.**

In this Act, unless the context otherwise requires, Act means the Magistrate's Code of Procedure Act, Cap. 3.17.

3. **Amendment to Part IV of the Act.**

The Act is amended by replacing the title of Part IV, that is, "**PART IV - PRELIMINARY INQUIRIES**" with the following:

.....
"**PART IV – COMMITTAL PROCEEDINGS**".

4. **Amendment to section 47 of the Act.**

The Act is amended by:-

- (a) replacing section 47 with the following new section

"47. **Definition of "committal proceedings" and "deposition".**

(1) In this Act, "committal proceedings" means proceedings under this Part for the committal of persons accused of indictable offences for trial by jury.

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(2) For the purposes of this Act and any other law, a reference to a deposition in relation to committal proceedings shall be construed as a reference to any statement admitted in evidence in committal proceedings under this Act.” and

(b) Inserting immediately after section 47 the following new section (c)

“47A. Committal proceedings to be held in camera.

(1) Committal proceedings in respect of public prosecutions instituted under this Act shall be held in camera.

(2) The Magistrate may refuse any person access to enter, to be in or to remain in the room or place where the committal proceedings are being held if it appears to the Magistrate that the ends of justice will be best answered by so doing.

(3) The provisions of subsection (2) of this section shall not apply to the counsel or solicitor of the accused person.”

5. Amendment to section 48 of the Act.

The Act is amended by replacing section 48 with the following new section:

“48. Committal proceedings where case is not triable summarily.

Where any charge is brought against any person for an offence which is not triable summarily, committal proceedings shall be held as provided in this Act.

6. Insertion of new sections 48A, 48B, 48C and 48D.

The Act is amended by inserting immediately after section 48 the following new section:-

“48A. Institution of committal proceedings etc.

(1) Committal proceedings in respect of public prosecutions shall be instituted under the direction of the Director of Public Prosecutions and shall be commenced by the filing of

- (a) one or more written statements of witnesses in support of the charge;
- (b) a list of exhibits, if there are any exhibits which the prosecution intends to produce in connection with the proceedings.

(2) The Director of Public Prosecutions shall, as soon as practicable, cause the documents which are filed under the provisions of subsection (1) to be served on the accused person.

48B. Accused person may file statements in reply.

(1) After the documents referred to in section 48A. (1) have been served on the accused person and within such period as may be specified by the Magistrate, the accused person may, in reply, file

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- (a) his or her own statement, and any statement of his or her own witnesses; and
- (b) a list of exhibits, if there are any exhibits which the accused person intends to introduce in connection with the proceedings.

(2) The failure by the accused person to file the documents referred to in subsection (1) of this section or the absence of such documents shall not, in itself, affect the power of the Magistrate to proceed with and conclude the committal proceedings or to take any other action permitted by this Act.

(3) The court shall cause the documents filed by the accused person in accordance with the provisions of subsection (1) of this section in reply to the charges made against him or her to be served on the Director of Public Prosecutions.

48C. Committal on written statements only.

A Magistrate who is holding committal proceedings may commit an accused person for trial by jury on a charge of an indictable offence if the Magistrate is satisfied that either the charge supported by the evidence contained in the documents filed pursuant to the provisions of section 48A. (1) alone or in conjunction with evidence contained in the documents filed pursuant to the provisions of section 48B. (1), establish or is likely to establish the indictable offence charged or an indictable offence of a like kind which is otherwise within the Magistrate's jurisdiction to deal with summarily.

48D. Exhibits to be marked and delivered into safe custody of the Clerk.

The exhibits produced by the prosecution pursuant to the provisions of section 48A. (1)(b) or by the accused person pursuant to the provisions of section 48B. (1) shall, at the hearing of the committal proceedings be duly marked and delivered into the custody of the Clerk to the Magistrate, who shall keep them in safe custody under the direction of the Magistrate, and to be delivered to the High Court at the trial of the accused person."

7. Amendment to section 49 of the Act.

The Act is amended in section 49 by inserting immediately after the word "guardian" which appears in the second line thereof the words "or an adult next of kin"

8. Amendment to section 50 of the Act.

The Act is amended in section 50 by inserting immediately after the word "guardian" wherever it appears in the section the words "or an adult next of kin".

9. Insertion of new section 50A.

The Act is amended by inserting immediately after section 50 thereof the following new section:

"50A. Offences triable on indictment or summarily.

- (1) Where an adult is charged with an offence which is, by virtue of any other

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law, both an indictable offence and a summary offence, the Director of Public Prosecutions shall inform the Magistrate who is dealing with the offence, in the presence of the accused person, whether the charge is to be tried on indictment or summarily, and the Magistrate may make an order to deal with the offence in accordance with that information.

(2) Where the accused person fails to appear to answer to the charge, then the information required to be given by the Director of Public Prosecutions pursuant to the provisions of subsection (1) of this section may be given in the absence of the accused person.

(3) Before making an order pursuant to the provisions of subsection (1) of this section, the Magistrate shall give the accused person an opportunity to show cause, by way of submission only, why the order should not be made.

(4) The provisions of this section shall not be construed as affecting the operation of section 52.”.

10. **Amendment to section 51 of the Act.**

The Act is amended by replacing section 51 thereof with the following new section:

“51. Adult pleading guilty or consenting to be tried summarily in certain cases.

(1) Where an adult is charged with an indictable offence in respect of which

- (a) the prescribed penalty, in case of a fine, does not exceed \$10,000 or,
- (b) in the case of imprisonment, does not exceed a term of twenty-four (24) months, and
- (c) the accused person pleads guilty and agrees to the case being dealt with summarily,

then the Magistrate shall deal with the offence summarily, and, notwithstanding any other law, may impose such penalty prescribed for the offence as the Magistrate may consider appropriate.

(2) In every case to which the provisions of subsection (1) of this section apply, the Magistrate shall, after reading the charge to the accused person, question him to the following effect:

- (a) “How do you plead to the charge?”; and
- (b) If the accused
 - (i) does not enter a plea; or
 - (ii) pleads “not guilty”

then the accused should be asked the question “Do you wish to be tried by jury or do you consent to your case being dealt with summarily?”;

(3) The Magistrate may explain to the accused person, if necessary, the meaning of the case being dealt with summarily or by jury.”.

11. Amendment to section 52.

The Act is amended by replacing section 52 thereof with the following new section.

“52. Substitution of indictable charge of a likely kind.

(1) Subject to subsection (2) and (3) of this section, where, in committal proceedings on a charge of an indictable offence, the Magistrate is of the opinion that

- (a) the evidence contained in the documents filed pursuant to the provisions of section 48A. (1) either alone or in conjunction with evidence contained in the documents filed pursuant to the provisions of section 48B. (1); or
- (b) any additional evidence contained in the documents filed pursuant to the provisions of section 73A. (3),

an indictable offence of a like kind to the offence charged is established or appears likely to be established, the Magistrate may make an order for the alteration of the charge by the substitution of another charge of an indictable offence of the like kind to the offence charged as the Magistrate thinks necessary in the circumstances of the case and the Magistrate shall thereafter proceed to deal with the case as provided for in this Act in relation to indictable offences.

(2) The Magistrate may make an order for the alteration of the charge, unless the order cannot, in the Magistrate’s opinion, be made without causing injustice.

(3) The Magistrate shall, before making an order under the provisions of subsection (1) of this section, give the prosecution and the accused person an opportunity to show cause, by way of submission only, why the order should not be made.

12. Amendment to section 53 of the Act.

The Act is amended in section 53 thereof by replacing the words “on the holding of any preliminary inquiry” which appear in the first line thereof with the words “in committal proceedings.

13. Amendment to section 54.

The Act is amended by replacing section 54 thereof with the following new section:

“54. Power to adjourn and remand.

Where a person is charged with an indictable offence, the Magistrate may, during committal proceedings, from time to time, adjourn the case and remand the accused person.”.

14. Repeal of sections 55, 56, 57, 58, 59, 60 and 61.

Sections 55, 56, 57, 58, 59, 60 and 61 of the Act are repealed.

15. Amendment to section 62 of the Act.

The Act is amended by replacing section 62 thereof with the following new section:

“62. Final decision on committal proceedings.

(1) Subject to the provisions of subsection (2), the Magistrate may, at the conclusion of the committal proceedings, make any of the following orders:

- (a) dismiss the charge and, if the accused person is in custody, make an order for his or her release;
- (b) commit the accused person for trial by jury; or
- (c) make any other order in relation to the case, charge the accused as provided for in this Act or any other law.

(2) Upon application by the prosecution or the accused, the Magistrate shall, before making an order under the provisions of subsection (1), give the prosecution or the accused, as the case may be, an opportunity to show cause, by way of submission only, why the order should not be made.

16. Amendment to section 73 of the Act.

The Act is amended in section 73 by replacing the words “At any time after all the witnesses have been examined” which appear in the first line thereof with the words “At the conclusion of the committal proceedings”.

17. Insertion of new section 73A, 73B and 73C.

The Act is amended by inserting immediately after section 73 thereof the following new sections:

“73A. Written statements in committal proceedings.

(1) In any committal proceedings, a written statement by any person shall, if the conditions specified in subsection (2) of this section are satisfied, be admissible as evidence to the like effect as oral evidence to the like effect by that person.

(2) The conditions referred to in subsection (1) of this section are:

- (a) the statement purports to be signed by the person who made it;
- (b) the statement contains a declaration by that person to the effect.
 - (i) that it is true to the best of his or her knowledge and belief;
 - (ii) that he or she made the statement knowing that if the statement were tendered in evidence he or she would be liable to prosecution if he or she willingly stated in the statement anything which he or she knew to be false or did not believe to be true; and

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- (c) before the statement is tendered in evidence, a copy of the statement is given, by or on behalf of the party proposing to tender the statement in evidence, to each of the other parties to the proceedings.
- (3) The Magistrate may, upon application by the prosecution or the accused person, allow either party to file other documents in addition to the documents referred to in section 42A. (1) or section 42B. (1), respectively, within such period as may be specified by the Magistrate.
- (4) The additional documents referred to in subsection (3) of this section shall be served on the other party and be treated in the same manner as the documents referred to in those sections.
- (5) Any part of a statement which is admitted in evidence under this section shall, unless the Magistrate otherwise commits the accused for trial under the provisions of section 42C 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 the statement which is not read aloud.
- (6) Any object or document 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.

73B. Notice of result of committal proceedings.

Where the Magistrate commits an accused person for trial or dismisses the charge against that person, the clerk of the court shall, on the day on which the committal proceedings are concluded or the next day, cause to be displayed in a part of the court house to which the public have access, a notice,

- (a) giving that person's name, address, and age, if known;
- (b) in a case where the Magistrate commits the accused person, stating the charge or charges on which the accused person is committed;
- (c) in a case where the Magistrate discharges the accused person, describing the offence charged and stating that the accused has been so discharged.

73C. Transitional provisions.

(1) The provisions of sections 47, 47A, 48, 48A, 48B, 48C, 48D, 49, 50, 50A, 51, 52, 53, 54, 62, 73A, and 73B of this Act shall not apply to proceedings which were commenced before the coming into force of this Act, unless

- (a) no evidence has been taken in the proceedings; or
- (b) where the evidence has been taken, the accused opts to have his case determined in accordance with the provisions of this Act.

(2) For the purposes of this section, "proceedings" shall be taken to have commenced upon the appearance of the accused person before a Magistrate, and when the charge has been read to the accused person."

18. Repeal of the First Schedule.

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The First Schedule to the Act is repealed.

19. Amendment to the Second, Third and Fourth Schedules.

The Act is amended by renumbering the Second, Third and Fourth Schedules as the First, Second and Third Schedules, respectively.

ANTHONY MICHAEL PERKINS

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Speaker

Passed by the National Assembly this 29th day of March, 2018.

SONIA BODDIE-THOMPSON
Deputy Clerk of the National Assembly