

S.I. 2016 No.

Magistrate's Courts Act

CAP. 116A

**MAGISTRATE'S COURTS (CRIMINAL PROCEDURE)
(AMENDMENT) RULES, 2016**

The Rules Committee, in exercise of the powers conferred on it by section 268 of the *Magistrate's Courts Act*, makes the following Rules:

1. These Rules may be cited as the *Magistrate's Courts (Criminal Procedure) (Amendment) Rules, 2016*.
2. *The Magistrate's Courts (Criminal Procedure) Rules, 2001 (S.I. 2001 No. 98) in these Rules referred to as the principal Rules, are amended by deleting rule 21 and substituting the following:*

“Confirmation of Written Statements

- 21.(1)** An examining magistrate shall
- (a) cause the evidence of the written statement of a witness, including the evidence of the accused, but not including any written statement merely to the character of the accused, to be described to, confirmed by and signed by the witness who made the written statement; and
 - (b) sign the written statement to effect that the witness confirms the written statement as the written statement previously made and signed by the witness.
- (2) Where the written statement has been reviewed and confirmed in the absence of the accused under section 17(2) of the Act, that fact

shall be recorded by the examining magistrate on the written statement of the witness; and where a copy of that witness statement has been given to the accused that written statement need not be read in the presence and hearing of the accused.

(3) Where oral evidence is given, an examining magistrate shall cause a deposition to be made of the oral evidence of each witness, including the evidence of the accused, but not including any witness merely as to the character of the accused, and as soon as may be practicable after the oral examination of the witness, the deposition shall be read to the witness in the presence and hearing of the accused and the examining magistrate shall require the witness or the accused, as the case may be, to sign the deposition.

(4) The confirmed written statement or deposition shall be authenticated by a certificate signed by the examining magistrate with a statement to that effect.

(5) Where the accused is not represented by an attorney-at-law, before a written statement or deposition taken from a child is received in evidence under section 133(1) of the Act, the examining magistrate shall explain that section to the accused in ordinary language, and if the defence does not object to the application of that section, the examining magistrate shall inform him that he may ask questions about the circumstances in which the statement was made or taken.

(6) A statement under paragraph (5) that is received in evidence shall be made an exhibit. ”.

3. *The principal Rules are amended by deleting rule 22 and substituting the following:*

“Warnings to the accused

22.(1) The examining magistrate shall consider the evidence submitted as written statements for the prosecution and where submitted, by the accused, and after hearing any permitted oral evidence, the examining magistrate shall, unless he then decides not to commit for trial, cause the charge to be written down, if this has not already been done, and read to the accused, and if the accused is not represented by an attorney-at-law the examining magistrate shall explain the charge to the accused in ordinary language.

(2) The examining magistrate shall ask the accused whether he wishes to say anything in answer to the charge and, if he is not represented by an attorney-at-law, shall before asking the questions say the following words to him or words of like effect:

“You will have an opportunity to make a statement or to give evidence on oath before me, but first I am going to ask you whether you wish to say anything in answer to the charge. You need not say anything unless you wish to do so. Anything you say will be taken down and may be given in evidence at your trial. You should take no notice of any promise or threat which any person may have made to persuade you to say anything.”

(3) Whatever the accused says in answer to the examining magistrate or the charge shall be put into writing, read over to him and signed by the examining magistrate and also by the accused.

(4) After paragraph (3) has been complied with, the magistrate shall say to the accused the following words or words of like effect:

“I must warn you that if I 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 give this court notice of the defence of alibi in accordance with section 18G. You may give this notice now, and supply the information required by section 18G that is the

details of the alibi or with leave from this court, you may forward your notice of the defence of an alibi within 7 clear days from the end of these committal proceedings by forwarding one copy to the examining magistrate and one copy to the Director of Public Prosecutions.”

(5) Where it appears to the examining magistrate that the accused may not understand the meaning of the term “alibi”, he shall explain it to him; but the examining 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.

(6) Where the examining magistrate has given the warning required by rule 22 (4) to the accused, the clerk of the court shall give to the accused a written notice in the form set out as Form 8 in the *First Schedule*.

(7) Where the accused is represented by an attorney-at-law, his attorney-at-law shall be heard on his behalf, either before or after the evidence for the defence is taken, and where the examining magistrate gives leave to the attorney-at-law for the accused to be heard either before or after the evidence is taken, the attorney-at-law for the prosecution shall be entitled to be heard immediately before the attorney-at-law for the accused is heard for the second time.

(8) Where the accused is not represented by an attorney-at-law the accused may give evidence himself and call witnesses at such time and in such a manner as the examining magistrate permits.”

4. *The principal Rules are amended by deleting rule 23 and substituting the following:*

“Change of Charge

23.(1) Where the examining magistrate determines to commit the accused for trial in respect of a charge that differs from that which was read to him in accordance with the provisions of rule 22(1), the examining magistrate shall cause the new charge to be read to him.

(2) Where an examining magistrate acts in accordance with paragraph (1) he must in respect of that charge comply with paragraphs (2) to (7) of rule 22.”.

5.*The principal Rules are amended by deleting rule 24 and substituting the following:*

“Rights of accused in committal proceedings

24.(1) An examining magistrate presiding over committal proceedings shall on the basis of written statements, materials, exhibits and all the evidence before him, copies of which have been given to the accused, make a determination, and where he decides to commit the accused for trial of an indictable offence, the examining magistrate shall cause the charge to be written down, if this has not already been done, and read to the accused, and shall ascertain whether the accused wishes to

- (a) object to any of the prosecution statements being tendered in evidence;
- (b) give evidence himself or call witnesses; or
- (c) submit that the prosecution statements disclose insufficient evidence to put him on trial by jury for the offence with which he is charged.

(2) Where the examining magistrate is satisfied that the accused or each of the accused, as the case may be, does not wish to take any of the steps mentioned in sub-paragraphs (a) to (c) of paragraph (1) and he determines to commit the accused for trial after consideration of the written submissions and any other evidence, the examining magistrate shall say the following words to the accused, or words of like effect

“You will be committed for trial by jury but I must warn you again that at the trial you may not be permitted to give evidence of an alibi or to call witnesses in support of an alibi unless you have given notice of the defence of an alibi. You may give this notice now or with leave from me you may file the notice within 7 clear days from the end of the committal proceedings. You shall forward 2 copies of this notice. One copy of the notice shall be forwarded to the examining magistrate and one copy shall be forwarded to the Director of Public Prosecutions.”

(3) The examining magistrate shall not be required to give a warning under paragraph (2) 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. ”.

6. *Rule 30 (1) of the principal Rules is amended by deleting paragraph(b) and substituting the following:*

“(b) the written statements tendered in evidence, any written record of any statements made at the committal proceedings, and where relevant, any depositions, together with a certificate in the Form 11 in the *First Schedule* authenticating the written statements and the depositions;”.

7. *The principal Rules are amended by deleting rule 31 and substituting the following:*

“Supply of copies of written statements or depositions to the accused

31.(1) A person having custody of the written statements, written records or depositions on which any person has been committed for trial shall, as soon as is practicable, supply copies of the written statements, written records or depositions to the accused free of charge.

(2) The copies of the written statements, written records or depositions referred to in paragraph (1) shall be supplied by the person having custody of the written statements, written records or depositions, and shall be served by that person

(a) on the accused at the last known or usual place of abode of the accused

(b) by them leaving the written statements, written records, or depositions with an adult person at the last known or usual place of abode of the accused; or

(c) by delivering them to the attorney-at-law of the accused, where the accused is represented by an attorney-at-law.

(3) Where time does not permit the written statements, written records or depositions to be served in the manner specified in paragraph (2), the person having custody of the written statements, written records or depositions may notify the accused in such manner as may be most expedient in the circumstances.

(4) Where the person having custody of the written statements, written records or depositions supplies them to the accused under this rule, he shall inform the prosecutor of that fact; and shall provide proof of having supplied them. ”.

- 8.** *The First Schedule to the principal Rules is amended by deleting*
- (a) Form 8 and substituting the Form 8 as set out in the Schedule to these Rules; and*
 - (b) Form 11 and substituting the Form 11 as set out in the Schedule to these Rules.*

SCHEDULE

(Rule 8)

"FORM 8

(Rules 23(4), 24(6))

IN THE MAGISTRATE'S COURT FOR DISTRICT

*Notice of provisions under section 158
of the Evidence Act, Cap. 121*

PARTICULARS OF ALIBI

To A.B., of

If you wish to raise an alibi defence at your trial you should read this notice carefully and if you intend to consult an attorney-at-law you should show it to him at once.

Section 158 of the *Evidence Act*, Cap. 121 provides that an accused who is tried before a jury may not (without the leave of the court) give evidence himself, or call witnesses in support, of an alibi unless he has given particulars of the alibi and of the witness as required by that section. To comply with section 158 the accused must

- (a) give notice of the particulars in the magistrate's court (the time for doing this has passed in your case) or *to the examining magistrate and the Director of Public Prosecutions within 7 clear days from the end of the committal proceedings in the magistrate's court; and*
- (b) include in the notice particulars of the alibi and the name and addresses of any witness whom he proposes to call in support of the alibi.

If the accused is unable to give the name and address of the witness in the notice, he must include in it any information in his possession which might help to find the witness and must take all reasonable steps to enable the name and address to be discovered. If the name or address of a witness was not included in the notice but the accused subsequently discovers the name or address or other information that might help to find the witness, he must immediately give notice to the prosecutor of the name, address or other information. If the accused is notified by or on behalf of the prosecutor that a witness has not been traced by the name or at the address given by the accused, he must forthwith give notice to the prosecutor of any information then in his possession or subsequently received by him which might help to find the witness.

Any notice required to be given by the accused to the examining magistrate or Director of Public Prosecutions as mentioned above must be in writing and delivered to the clerk of the magistrate's court or left at the office of the clerk or sent in a registered letter or by the recorded delivery service addressed to the clerk of the court who shall forward the same to the Director of Public Prosecutions as soon as possible.

"Evidence in support of an alibi" means:

"Evidence tending to show that by reason of the presence of the accused at a particular place or in a particular area 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."

The name and address of the prosecutor in your case is

Clerk of the Magistrate's Court sitting at District

FORM 11

(Rule 30(1)(b))

IN THE MAGISTRATE'S COURT FOR DISTRICT

Certificate of authentication of written statements or depositions

Before the Examining Magistrate at District ,

A. B. having been committed for trial to the High Court charged with the [offence/offences] specified in the Schedule hereto.

I hereby certify that the [written statements or depositions] of the (state number) witnesses whose names are listed in the manner set out in Part II of the Schedule hereto [were confirmed before in the presence and hearing of the said A. B./were taken and sworn before me in the presence and hearing of the said A. B.] on the day of , [and the day of ,] and that he/she or his/her attorney-at-law had full disclosure in respect of each written statement, and where relevant any deposition, as well as having a opportunity where relevant to cross-examine each of the witnesses called for the prosecution.

or

[I hereby [further] certify that the (state number) statements purporting to be signed by the persons whose names are listed in Part II of the Schedule were tendered in evidence under section 17A of the Magistrate's Courts Act, Cap. 116A in the said proceedings.]

Dated the day of , .

Examining Magistrate

SCHEDULE

Part I

(Specify charge(s) on which accused was committed)

Part II

WRITTEN STATEMENTS

Name and address and occupation of witness	Witness order	Page No.

DEPOSITIONS

Name and address and occupation of witness	Witness order	Page No.

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Made by the Rules Committee of the Supreme Court this day of , 2016.

Sir Marston Gibson, KA
Chairman
Chief Justice

The Hon. Justice Andrew Burgess
Justice of Appeal

The Hon. Madam Justice Kaye Goodridge
Justice of Appeal

The Hon. Madam Justice Sandra Mason
Justice of Appeal

The Hon. Madam Justice Margaret Reifer
Judge of the High Court

The Hon. Mr. Justice William Chandler
Judge of the High Court

The Hon. Justice Randall Worrell
Judge of the High Court

The Hon. Madam Justice Jacqueline Cornelius
Judge of the High Court

The Hon. Madam Justice Dr. Sonia Richards
Judge of the High Court

The Hon. Dr. Justice Olson Alleyne
Judge of the High Court

The Hon. Madam Justice Michelle Weekes
Judge of the High Court

The Hon. Madam Justice Pamela Beckles
Judge of the High Court

Miss Debra Holder
Master of the High Court

Miss Jennifer Edwards, Q.C.
Solicitor-General

Mrs. Sandra Dawne Taylor
Chief Parliamentary Counsel (Ag.)

Mr. M. Tariq Khan
President of the Bar Association

Mrs. Laura Harvey-Read
Attorney-at-Law

Mr. Stewart Mottley
Attorney-at-Law

Mr. Barry Gale, Q.C.
Attorney-at-Law

Mrs. Barbara Cooke-Alleyne
Registrar
and Secretary of the Rules Committee of the Supreme Court