

DRAFT CRIMINAL PRACTICE RULES 2022

EXPLANATORY MEMORANDUM

The *Criminal Practice Rules* 1987 have been amended significantly only once, in 2013, by the insertion of a new Order 2A dealing with Fraud and Corruption cases. The proposed Criminal Practice Rules 2022 will repeal and replace the 1987 Rules.

The 2022 Rules would consist of 12 Orders and three Schedules.

Order 1 – Administrative Matters – deals with matters covered by Order 1 of the 1987 Rules but includes new provisions, eg on file references and terminology.

Order 2 – Commencement of Proceedings – contains many new rules that codify the procedure to be invoked at commencement of proceedings, eg ex officio indictments, private prosecutions, challenges to commencement, want of understanding of accused, delay in commencement of trial.

Order 3 – Proceedings Involving Juveniles – this connects to the *Juvenile Justice Act* 2014.

Order 4 – Fraud and Corruption Cases – this is essentially a replica of Order 2A (*fraud and corruption-related offences*) of the 1987 Rules.

Order 5 – Warrants of Arrest – this contains a more elaborate set out rules than in Division 3.3 of the 1987 Rules.

Order 6 – Pre-trial Procedure – this provides for standard forms that will expedite and simplify the pre-trial process.

Order 7 – Withdrawal of Proceedings – this deals with the various ways in which criminal proceedings are withdrawn.

Order 8 – Evidence – this contains many new rules that set out the procedure for filing a notice of alibi, an objection to proposed evidence, voir dire hearings, special measures orders under the *Evidence Act* etc.

Order 9 – Miscellaneous Occurrences During Trial – this contains rules dealing with various uncommon occurrences (insanity of accused, incapacity of trial judge, custody of girls, references to the Supreme Court) during trial, which are placed in this Order as they don't fit neatly in any other Order.

Order 10 – Verdicts – this sets out rules that clarify what orders need to be made on verdict and links to forms in Schedule 3 that are designed to bring consistency and clarity to drafting of orders as to verdict.

Order 11 – Sentences – these rules relate closely to Order 10 and have a similar purpose: to bring consistency and clarity to drafting of orders as to sentence.

Order 12 – Appeals and Reviews from District Courts – the rules in this order facilitate the appeal and review function of the National Court.

Schedule 1 – Indictments – this sets out a draft form of indictment for every offence created by the *Criminal Code*. It is based on the second schedule of the 1987 Rules. However, note that there are many new offences (eg the child sex offences introduced in 2002) that have been created or existing offences that have been amended since 1987. Please refer to the drafting notes at the start of Schedule 1 and the use of the letters [A], [B] and [C], which indicate: [A] if the offence is new or there is no equivalent in the 1987 Rules; [B] where the wording of the equivalent draft indictment in the 1987 has been materially amended; [C] where the wording of the 1987 Rules has not been materially amended.

Schedule 2 – this is the list of offences regarded as FC cases: it is a near-replica of what is in Order 2A of the 1987 Rules.

Schedule 3 – Forms – this is a completely new set of 83 forms – adoption of a form is in most instances at the discretion of the Judge – the forms have been drafted to deal with most events that occur in a criminal proceeding.

JUSTICE CANNINGS
CHAIRMAN, RULES COMMITTEE
