
SUPREME COURT ACT
Principal Act

Act. No. 1960-02	<i>Commencement</i>	1.9.1960
	<i>Assent</i>	17.3.1960

Amending enactment	Relevant current provisions	Commence- ment date
Acts. 1960-11	ss.8, 14, 17 and 38(1)	
1961-19	s.6	
1965-24	ss.28 and 35	
1966-29	ss.20 and 35	
1967-01	–	
1968-24	s.16	
1969-30	ss.2, 11, 28(1), 29	
1970-03	s.28(1)	
Regs. of 28.5.1970	s.20	
Acts. 1971-14	s.28(2)	
1972-06	s.19	
1974-24	ss.20 and 21	
1975-24	ss.27 and 36	
1977-01	s.13	
1977-02	–	
1977-35	ss.2, 4(2), 6(1), 18(2), and (3) and 26	
1978-06	s.23	
1978-29	s.37	
1980-04	ss.3(2), 34 and 38(1)	
1983-44	–	
1983-48	s.36	
1986-24	ss. 28, 29, 32 and 38 (cc).	1.1.1987
1987-34	s. 20(q)	27.12.1987
1988-35	ss. 17, 17A, 17B, 20, 21, and 26A.	5.11.1998
1997-25	s. 20(q)	21.8.1997
1997-32	ss. 35A to 35H, 28(1) & (c), 29(1)(a) and Sch	16.10.1997
2002-12	ss. 39 to 72	19.12.2002
2004-11	ss. 38A and 38B	1.9.2004
2004-23	s. 35A(1) and Sch Part I.	1.5.2004
2007-17	s. 37	14.6.2007
2007-24	ss. 3, 27(1), 28(3), 36, 38B(4)	28.6.2007
2008-05	ss. 41(1), (2) & (3), 73 & Sch.	1.1.2007
2010-10	s.12A	6.5.2010

2010-16	s. 36B	8.7.2010
2010-20 ¹	ss. 19A to 22I, 27A to 27V, 35A, Schs. 2, 3 & 4	1.1.2011 ²
LN. 2011/105	ss. 72A -72G	7.7.2011

The Supreme Court (Admiralty Practice) Rules and the Supreme Court (Prize Court Fees) Rules 1940 are printed under the title Colonial Courts of Admiralty Act 1890.

The Supreme Court Fund Regulations are printed under the title Public Finance (Control and Audit).

EU Legislation/International Agreements involved:

Directive 77/249/EEC

Directive 98/5/EC

Directive 2006/100/EC

Directive 2008/52/EC

English sources

Juries Act 1825 (6 Geo.4 c.50)

County Courts Act 1934 (24 & 25 Geo.5 c.53)

¹ ***Transitional and miscellaneous provisions.***

7.(1) The jury list which was in force immediately before section 3 of this Act came into operation shall be deemed to remain in force until such time as a new list has come into force in accordance with section 19B of the Supreme Court Act (as inserted by this Act).

(2) Notwithstanding section 19B(4) of the Supreme Court Act (as inserted by this Act) the first jury list compiled under section 19B shall come into force on the day it is received by the Registrar following certification by the clerk of the magistrates' court

(3) The first jury list compiled under section 19B shall remain in force until the 30th September 2011.

(4) The Minister may by order amend Schedule 4 to the Supreme Court Act.

² See LN. 2010/183

REARRANGEMENT AND RENUMBERING OF SECTIONS

Provisions relating to criminal procedure have been transferred to the Criminal Procedure Act.

Previous number	New number	Previous number	New number
1	1	32	21
2	2	32A	Act. 1961-24, s.158
3	<i>Repealed</i>	33	<i>Repealed</i>
4	“	34	22
5	“	35	23
6	“	36	Act. 1961-24, s.139
7	“	37	Act. 1961-24, s.141
8	9	38	Act. 1961-24, s.142
9	3	39	Act. 1961-24, s.143
10	4	39A	Act. 1961-24, s.144
11	5	40	Act. 1961-24, s.138
12	7	41	<i>Repealed</i>
13	6	42	Act. 1961-24, s.140
14	28	43	Act. 1961-24, s.145
15	32	44	Act. 1961-24, s.146
16	29	45	Act. 1961-24, s.149
17	30	46	26
18	31	47	Act. 1961-24, s.150
19	33	47A	Act. 1961-24, s.151
20	34	47B	Act. 1961-24, s.153
21	35	47C	Act. 1961-24, s.147
22	12	48	Act. 1961-24, s.154
22A	13	49	Act. 1961-24, s.155
23	16	50	Act. 1961-24, s.156
24	15	51	27
25	17	51A	36
26	14	52	37
27	Act. 1961-24, s.128	53	38
28	Act. 1961-24, s.148	54	Act. 1961-24, s.157
29	Act. 1961-24, s.158	55	10
30	19	56	18
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FINANCIAL OFFENCES

AN ACT TO AMEND THE LAW RELATING TO THE SUPREME COURT OF JUDICATURE IN GIBRALTAR.

Short title.

1. This Act may be cited as the Supreme Court Act.

Interpretation.

2. In this Act, unless the context otherwise requires,—

“Constitution” means the Constitution of Gibraltar as set out in Annex 1 to the Gibraltar Constitution Order 1969;

“court” means the Supreme Court of Gibraltar and includes the Chief Justice, and any additional judge thereof, whether sitting in court or in chambers or elsewhere;

“prescribed” means prescribed by rules of court;

“Registrar” means the Registrar of the Supreme Court appointed under the provisions of section 3.

PART I.
ADMINISTRATION.

Appointment of Registrar.

3. There shall be attached and belong to the Court a Registrar appointed by the Governor acting on the advice of the Judicial Services Commission.

Duties of Registrar.

- 4.(1) The Registrar shall perform all such duties as are respectively performed by the Master, Registrar, Taxing Master or Keeper of the Records of Her Majesty's High Court of Justice in England and shall be Registrar of the Supreme Court in its Admiralty jurisdiction and he and the other officers of the court shall be subject to such orders as they may from time to time receive from the Chief Justice. The Registrar shall be a Commissioner of the said court to administer oaths and take solemn declarations or affirmations in lieu of oaths and also to take examinations of witnesses de bene esse.

(2) Any ruling or other decision of any kind whatsoever in any civil criminal proceedings by the Registrar in exercise of the duties imposed upon him by subsection (1) shall be subject to appeal to the court.

Jurisdiction of Registrar in absence of judge.

5.(1) If at any time neither the Chief Justice nor an additional judge is present in Gibraltar or readily available to hear and determine any matter of an urgent nature it shall be lawful for the Registrar to hear and determine any matter which might lawfully be determined by the Chief Justice or additional judge sitting in chambers and any order, direction or warrant made, given or issued by the Registrar under the provisions of this section shall for all purposes and at all times be of the same force and effect as though such order, direction or warrant has been made, given or issued by the Chief Justice, or an additional judge.

(2) In any matter, not to be dealt with in chambers, if by reason of the death or unavoidable absence of the Chief Justice or an additional judge, a court cannot be held under this Act on any day on which it has been appointed to be held, the Registrar shall adjourn the court to such day as he may deem convenient, and enter in the minute book the cause of such adjournment.

Appointment and duties of Sheriff and Marshal.

6.(1) The Registrar shall be the Sheriff of Gibraltar and shall, by himself or by his sufficient deputies to be by him appointed and authorized under his hand and for whom he shall be responsible, and execute all such writs, warrants, orders, commands and process of the court as he shall be required by the court to execute, and make return of the same together with the manner of the execution thereof to the court, and receive and detain in prison all such persons as shall be committed to the custody of the Sheriff by the court, and shall be Marshal of the Supreme Court in its Admiralty jurisdiction:

Provided that, whenever the court directs or awards any process against the Sheriff or awards any process in any cause, matter or thing wherein the Sheriff by reason of any good cause of challenge which would be allowed against any sheriff in England cannot by law execute the same, in every such case the court shall appoint some other fit person to execute and return the same and the said process shall be directed to the person so to be named for that purpose and the cause of such proceeding shall be entered on the record of the court.

(2) In the exercise of his powers and duties as Sheriff of Gibraltar, the Registrar may exercise such powers and shall perform such duties as are from time to time exercised or performed by a sheriff in England in

accordance with the law from time to time in force in England with respect thereto.

Powers of Deputy Registrar.

7. It shall be competent for the person holding the appointment of Deputy Registrar of the Court subject to such directions as the Chief Justice may from time to time deem expedient to give to perform any act or discharge any duty which the Registrar may lawfully do or is required by law to do and for such purposes the person holding such appointment as aforesaid shall have all powers, privileges and authority of the Registrar:

Provided however, that the Deputy Registrar shall not exercise any of the powers conferred upon the Registrar by section 5(1).

Duty of police officers.

8. It shall be the duty of every police officer to assist in effecting any execution, attachment or committal ordered by court or carried out under rules of court.

Seal of court.

9.(1) The Supreme Court shall continue to use the same seal or a similar seal as hitherto and such seal shall be kept in the custody of the Registrar.

(2) All process issuing out of the court which by any rules of court or otherwise requires to be sealed shall be impressed with the seal of the court.

(3) All process purporting to be sealed as aforesaid, and all copies, certificates and other documents purporting to be sealed as aforesaid or to be stamped with the official stamp of the court shall be received in evidence without further proof thereof.

Sittings of court.

10.(1) The court shall sit for the trial of criminal and civil causes and for the disposal of other legal business pending at such times as the Chief Justice may direct.

(2) The Registrar shall ordinarily give notice beforehand of all such sittings.

PART II.
JURISDICTION AND POWERS.

Supreme court a court of record.

11. The Supreme Court for Gibraltar established by section 56 of supreme the Constitution shall be a superior court of record and, subject to the provisions of the Constitution; shall be constituted and have the jurisdiction and powers hereinafter specified.

Court to have jurisdiction of High Court in England.

12. The court shall in addition to any other jurisdiction conferred by this or any other Act, within Gibraltar and subject as in this Act mentioned, possess and exercise all the jurisdiction, powers and authorities which are from time vested in and capable of being exercised by Her Majesty's High Court of Justice in England.

Jurisdiction of Family Judge.

12A.(1) There shall be a puisne judge in the Supreme Court to whom shall be designated all family proceedings.

(2) The judge referred to in subsection (1) shall be known as the Family Judge and shall deal with family proceedings.

(3) Notwithstanding the other provisions of this section, the Family Judge may be allocated any matter, other than family proceedings, by the Chief Justice in the following cases–

- (a) where he has a spare capacity; or
- (b) during the vacation, illness or absence of another judge of the Supreme Court.

(4) The Family Judge shall have a duty to prioritise the work of family proceedings.

(5) For the purpose of this section, “family proceedings” shall have the meaning assigned to it by section 25 of the Children Act 2009.

(6) Nothing in this section shall–

- (a) limit or otherwise affect the competence and jurisdiction of all judges of the Supreme Court to deal with family proceedings; and
- (b) limit or otherwise affect the competence and jurisdiction of the Family Judge to deal with matters other than family proceedings.

(7) Where a judge other than the Family Judge deals with a family proceedings reference in any other legislation to the Family Judge shall be a reference to the judge that has dealt with those proceedings.

International conventions affecting jurisdiction.

13.(1) The provisions of this section shall apply for the purpose of giving effect as respects Gibraltar to any convention for the time being in force, by virtue of which the High Contracting Parties to the Convention, or their property are rendered liable to legal proceedings in the courts of the other High Contracting Parties and in the courts of any territory for whose external relations a High Contracting Party is responsible and which has been included in the ratification of such High Contracting Party.

(2) As from such day as the Governor may, by notice in the Gazette, state as being the day on which any such convention has come into force as respects Gibraltar, every High Contracting Party to the convention shall, for the purposes of any proceedings brought in the Supreme Court against that party or in respect of property of that party in accordance with the provisions of the convention, be deemed to have submitted to the jurisdiction of the court; and the court shall, in determining whether or to what extent any such proceedings are within its jurisdiction, give effect to any provision of the convention (including any protocol thereto) prescribing the mode of proof of any material circumstance.

(3) The Governor may by notice in the Gazette name those countries which Her Majesty by Order in Council has certified as being the High Contracting Parties to any such convention, in respect of what territories they are respectively parties, and to what extent they have availed themselves of any provision of the convention for suspending or modifying the operation of the convention, and any such notice shall, except in so far as it has been superseded by a subsequent notice, be conclusive evidence of the matters so certified.

Avoidance of multiplicity of proceedings.

14. In the exercise of the jurisdiction granted by this Act the court shall have power to grant and shall grant either absolutely or on such terms as shall seem just, all such remedies or relief whatsoever interlocutory or final as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim or defence properly put forward by them respectively or which shall appear in such cause or matter; so that as far as possible all matters in controversy between the parties respectively may be completely and finally determined and all multiplicity of legal proceedings concerning any of such matters avoided.

Practice and procedure.

15. The jurisdiction vested in the court shall be exercised (as far as regards practice and procedure) in the manner provided by this or any other Act or by such rules as may be made pursuant to this Act or any other Act and in default thereof, in substantial conformity with the law and practice for the time being observed in England in the High Court of Justice.

Power to appoint receivers for persons under disability.

16. The court shall have power to appoint guardians and committees of the persons and estates of minors and persons suffering from mental disorder within the meaning of the Mental Health Act and unable to govern themselves or their estates, and for that purpose to enquire into, hear and determine, by inspection of the person the subject of such inquiry, or by examination on oath or otherwise of the party in whose custody or charge such person maybe, or of any other person or persons, or by such other ways and means by which the truth may be best discovered, and to act in all cases whatsoever as fully and amply to all intents and purposes as the Lord High Chancellor or the grantee from the Crown of the persons and estates of minors and persons suffering from mental disorder may” lawfully do in England.

Power of review.

17.(1) The court shall have full power, jurisdiction and authority to review the proceedings of all inferior courts of justice in Gibraltar, and if necessary to set aside or correct the same.

(2) Without prejudice to the generality of subsection (1), the court may upon application by or on behalf of the Attorney-General, order any inferior court to send to the Registrar the record of proceedings in any criminal case or matter, and may also require in addition to such record a statement showing in detail the proceedings taken with reference to the whole case or any particular matter, and if it appears to the court that there has been any material error in the proceedings of the inferior court, it may, after hearing the defendant or counsel on his behalf, set aside or vary any judgment or order of the inferior court and pass such judgment or make such order, or remit the case or matter to the inferior court with such directions, if any, as justice may require:

Provided that no application under this subsection may be made with regard to a sentence passed on conviction by an inferior court.

(3) The application by or on behalf of the Attorney-General referred to in subsection (2) may be made only within a period of thirty days of the date of the judgment or order of the inferior court to which it relates.

Orders of mandamus, prohibition and certiorari.

17A. The court shall have jurisdiction to make orders of mandamus, prohibition and certiorari in those classes of cases in which it had power to do so immediately before the commencement of this section.

Application for judicial review.

17B.(1) An application to the court for one or more of the following forms of relief, namely—

- (a) an order of mandamus, prohibition or certiorari; or
- (b) a declaration or injunction under subsection (2),

shall be made in accordance with rules of court by a procedure to be known as an application for judicial review.

(2) A declaration may be made or, subject to the provisions of the Crown Proceedings Act, an injunction granted under this subsection in any case where an application for judicial review, seeking that relief, has been made and the court considers that, having regard to—

- (a) the nature of the matters in respect of which relief may be granted by orders of mandamus, prohibition or certiorari;
- (b) the nature of the persons and bodies against whom relief may be granted by such orders; and
- (c) all the circumstances of the case,

it would be just and convenient for the declaration to be made or of the injunction to be granted, as the case may be.

(3) No application for judicial review shall be made unless the leave of the court has been obtained in accordance with rules of court; and the court shall not grant leave to make such an application unless it considers that the applicant has a sufficient interest in the matter to which the application relates.

(4) On an application for judicial review the court may award damages to the applicant if—

- (a) he has joined with his application a claim for damages arising from any matter to which the application relates; and
- (b) the court is satisfied that, if the claim had been made in an action begun by the applicant at the time of making his application, he would have been awarded damages.

(5) If, on an application for judicial review seeking an order of certiorari, the court quashes the decision to which the application relates, the court may remit the matter to the court, tribunal or authority concerned, with a direction to reconsider it and reach a decision in accordance with the findings of the court.

(6) Where the court considers that there has been undue delay in making an application for judicial review, the court may refuse to grant-

- (a) leave for the making of the application; and
- (b) any relief sought on the application,

if it considers that the granting of the relief sought would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good administration.

(7) Subsection (6) is without prejudice to any enactment or rule of court which has the effect of limiting the time within which an application for judicial review may be made.

Summary power to punish contempt.

18.(1) If any Person—

- (a) being served with a subpoena to attend the court as a witness in accordance with rules of court refuses or neglects to attend the court pursuant to such subpoena; or
- (b) being present in court and required to give evidence refuses to be sworn or to give evidence; or
- (c) assaults or obstructs an officer of the court while in the execution of his duty; or
- (d) commits any contempt before the court,

it shall be lawful for the court to punish such person in a summary way by a fine of £50, or by commitment to prison for two months, if the court shall think that the contempt is one which may be disposed of without having recourse to its more formal and extensive jurisdiction:

Provided that nothing herein contained shall affect or abridge the right of any plaintiff or defendant to proceed against any party for not appearing pursuant to his subpoena for the recovery of any special damage such plaintiff or defendant may have sustained by reason of the disobedience of any such party:

Provided also that no person having been served with a subpoena shall be so punished for refusing or neglecting to attend the court unless there has been paid or tendered to him at the time of the service of the subpoena such sum in respect of his expenses (including in such cases as may be prescribed compensation for loss of time) as may be prescribed by rules of court.

(2) Payment of any fine imposed by the court under this section may be enforced upon the order of the court-

- (a) in like manner as payment of any debt adjudged by the court to be paid may be enforced under this Act; or
- (b) in like manner as payment of a sum adjudged to be paid on summary conviction may be enforced under the Criminal Procedure Act.

(3) The court may in its discretion direct that the whole or any part of any such fine, after deducting the costs, shall be applicable towards indemnifying the party injured by the refusal or neglect.

PART III **TRIAL BY JURY**

Qualification for jury service.

19A.(1) Subject to this Part, a person is qualified to serve as a juror in the Supreme Court and is liable to be included on the jury list if he is not less than 18 nor more than 65 years of age and-

- (a) he is eligible for registration as an elector under the Parliament Act; or
- (b) he has been ordinarily resident in Gibraltar for a continuous period of at least 5 years before the jury list is drawn up.

(2) A person must not be included on the jury list if-

- (a) he is mentally disabled and by reason of his disability cannot reasonably be expected to perform the duties of a juror;
- (b) he does not have an adequate knowledge of English to perform the duties of a juror;
- (c) he is disqualified for jury service by virtue of subsection (5); or
- (d) he is ineligible for jury service by virtue of subsection (6).

(3) Subject to subsection (2), a person aged 66 or more but who has not reached the age of 71 may volunteer for service as a juror, and may apply to the Registrar to be included among persons liable for jury service, and the Registrar if satisfied that the person—

- (a) is eligible for registration as an elector in accordance with section 3 of the Parliament Act; or
- (b) has been ordinarily resident in Gibraltar for a continuous period of at least 5 years before the jury list is drawn up,

must include his or her name on the jury list accordingly.

(4) In subsection (2) “mentally disabled” has the meaning given to that term by Part I of Schedule 2.

(5) The persons who are disqualified for jury service are those listed in Part II of Schedule 2.

(6) The persons who are ineligible for jury service due to their profession being listed in Part I of Schedule 3.

Jury list.

19B.(1) The Registrar must—

- (a) before the first Sunday in September in each alternate year make a list in the prescribed form of all persons qualified and liable to serve as jurors;
- (b) cause a copy of the list to be published at such time and place as the Chief Justice may direct;
- (c) attach to each such copy a notice stating that all objections to the list will be heard by the magistrates’ court at a time and place stated in it, being not less than 15 nor more than 21 days from the date of publication of the notice.

(2) At the time and place so stated, there must be a sitting of the magistrates’ court for the revision of the jury list at which, upon any evidence adduced before it or of its own knowledge, information and belief, the court may—

- (a) strike out from the list the name of any person included in it who is not qualified or liable to serve; or
- (b) add to the list the name of any person who is qualified and claims the right to serve as a juror.

(3) Any person may appear before the magistrates' court at the revision of the list either personally or by counsel and claim that he is or is not liable to serve as a juror.

(4) The list when revised—

- (a) must be certified by the clerk of the magistrates' court and delivered to the Registrar;
- (b) comes into force from the 1st day of October next after it is certified; and
- (c) remains in force for 2 years.

(5) Every person whose name is included in the jury list as revised by the magistrates' court shall, subject to the provisions of this Part, be liable to serve as a juror notwithstanding that he may have been entitled by reason of some disqualification or exemption to claim that he ought not to be in the jury list.

Service of summons.

19C.(1) A summons to serve as a juror must be in the prescribed form and served by the Registrar at least 6 clear days before the day appointed for the sitting of the court—

- (a) by delivering it to the person to be summoned or, if he is not present, by leaving it at his usual place of abode or place of business; or
- (b) by sending it by registered post addressed to him at his usual place of abode or place of business.

(2) No person may be summoned to serve on any jury or inquest more than once in any period of two years, unless all the jurors on the list have been already summoned to serve during the year.

(3) A written summons sent or delivered to any person under subsection (1) must be accompanied by a notice informing him—

- (a) of how many days he is expected to attend court;
- (b) of the effect of sections 19E, 19F, 19G, 19H, 19I, 22E and 22F; and
- (c) that he may make representations to the Registrar with a view to obtaining the withdrawal of the summons, if for any reason

he is no longer qualified for jury service, or wishes or is entitled to be excused.

(4) If a person is summoned under this section, the Registrar may at any time put or cause to be put to him such questions as the Registrar thinks fit in order to establish whether or not the person is qualified for jury service.

(5) A certificate signed by the Registrar stating that a written summons was duly served in accordance with subsection (1) is admissible as evidence in any proceedings, without proof of the Registrar's signature or official character.

Withdrawal or alteration of summons.

19D. If it appears to the Registrar, at any time before the day on which any person summoned under section 19C is first to attend, that his attendance is unnecessary, or can be dispensed with on any particular day or days, the Registrar may withdraw or alter the summons by notice served in the same way as a notice of summons.

Attendance and service.

19E.(1) Subject to subsection (2), a person summoned under section 19C–

- (a) must attend the Supreme Court for the number of days directed by the summons or by the Registrar; and
- (b) is liable to serve on any jury.

(2) No more than–

- (a) one person from each household;
- (b) 3 persons employed as registered nurses in Gibraltar;
- (c) 3 persons employed as teachers in Gibraltar (including no more than 1 teacher from a particular school);
- (d) 3 members of the City Fire Brigade;

may be summoned to serve as a juror at the same time.

Excusal for previous jury service.

19F.(1) If a person summoned under section 19C shows to the satisfaction of the Registrar, or of the court–

- (a) that he has served on a jury, or duly attended to serve on a jury, in the 2 years ending with the service of the summons on him; or
- (b) that the court has excused him from jury service for a period which has not terminated,

the Registrar or court must excuse him from attending, or further attending, pursuant to the summons.

(2) Records of persons summoned under section 19C must be kept in the manner the Registrar determines, and the Registrar may, if he thinks fit, make arrangements for allowing inspection of the records by members of the public in such circumstances and subject to such conditions as he determines.

(3) A person duly attending in compliance with a summons under this Part is entitled on application to the Registrar to a certificate recording that he has so attended.

Excusal for certain persons.

19G.(1) If a person summoned under section 19C—

- (a) shows to the satisfaction of the Registrar or the court that he is among the persons listed in Part II of Schedule 3; and
- (b) states that he wishes to be excused from jury service,

the Registrar or court, as the case may be, must excuse him from such service and, if applicable, from attending the Supreme Court in relation to such summons.

(2) An application to the Registrar for excusal under this section must be made in person and at least one clear day before the day appointed for the sitting of the court.

Discretionary excusal.

19H.(1) If a person summoned under section 19C shows to the satisfaction of the Registrar or the court that there is good reason why he should be excused from attending pursuant to the summons, the Registrar or court, as the case may be, may excuse him from so attending.

(2) An application to the Registrar for excusal under this section must be made in person and at least one clear day before the day appointed for the sitting of the court.

(3) Without affecting other provisions of this section or section 19G, the court before which a person is summoned to attend under this Part may excuse that person from so attending.

Discretionary deferral.

19I.(1) If a person summoned under section 19C shows to the satisfaction of the Registrar that there is good reason why his attendance pursuant to the summons should be deferred, the Registrar may defer his attendance, and, if he does so, must vary the days on which that person is summoned to attend and the summons has effect accordingly.

(2) If an application under subsection (1) has been granted or refused, the powers conferred by that subsection may not be exercised subsequently in relation to the same summons.

Discharge of summons in case of doubt as to capacity.

19J. If at any time it appears to the Registrar or the court, in the case of a person attending pursuant to a summons under this Part, that on account of the person's insufficient understanding of English there is doubt as to his capacity to act effectively as a juror, even if the person is on the jury list, the Registrar or court, as the case may be, must determine whether or not he should act as a juror and, if not, must discharge the summons.

Number of jurors.

20A.(1) The jury must consist of 9 persons except for the trial of a person arraigned on an indictment for murder when the jury must consist of 12 persons.

(2) If it appears to the court that the duration of the trial may exceed 4 weeks, the court may order that no more than 3 persons (in this Part referred to as "additional jurors") are to be chosen in accordance with the provisions of section 20B in addition to the number of jurors specified in subsection (1).

(3) The provisions of section 21C apply in respect of any person chosen as an additional juror.

(4) This section does not affect the operation of the system of lay assessors provided for in Part IIIA.

Choosing the jury.

20B.(1) The jury is to be chosen from among the number of persons summoned to attend by ballot in open court, until the required number of jurors, including the number of any additional jurors ordered by the court

under section 20A(2) appear and, after all just causes of challenge have been allowed, remain as fair and indifferent.

(2) The same procedure is to be followed whenever it is necessary to form a new jury.

(3) The power of summoning jurors under section 19C may be exercised after balloting has begun, as well as earlier, and if exercised after balloting has begun the court may dispense with balloting for persons summoned under that section.

(4) If a case is brought on for trial during the time that a jury in any other case is deliberating, a new jury may be drawn.

(5) No more than one teacher, one member of the City Fire Brigade and one registered nurse may be chosen to be included in a jury to try a particular issue.

Summoning in exceptional circumstances.

20C. If it appears to the court that a jury to try any issue before the court will be, or probably will be, incomplete, the court may require any persons who are in, or in the vicinity of, the court, to be summoned (without any written notice) for jury service up to the number needed (after allowing for any who are not qualified under section 19A, and for excusals and challenges) to make up a full jury.

Challenge.

20D.(1) In proceedings for the trial of any person for an offence on indictment—

- (a) that person may challenge all or any of the jurors for cause; and
- (b) any challenge for cause must be tried by the judge before whom that person is to be tried.

(2) A challenge to a juror in any court must be made after his name has been drawn by ballot (unless the court, pursuant to section 20B(3) has dispensed with balloting for him) and before he is sworn.

(3) The fact that a person summoned to serve on a jury is not qualified to serve is a ground of challenge for cause; but subject to that, and to the other provisions of this section, nothing in this Part affects the law relating to challenge of jurors.

(4) This section does not affect the right of challenge to the array, that is to say the right of challenge on the ground that the person responsible for summoning the jurors in question is biased or has acted improperly.

Jury may try several issues.

20E.(1) If no objection is made by either party the court may—

- (a) try any issue with the same jury that has previously tried or been drawn to try a previous issue; or
- (b) order the name of any person on such jury whom both parties consent to withdraw or who is justly challenged, or whom the court excuses, to be set aside, and another person to be chosen by lot.

(2) If one or more additional jurors have been chosen, the court may appoint an additional juror to be a member of the jury, subject to the powers of the court contained in this section, and only when no additional juror is available may another person be chosen by ballot.

Swearing of juror.

21A.(1) A juror must be sworn immediately after he has been chosen.

(2) No more than one member of a jury to try an issue in a court may be sworn at a time.

Appointment of foreman.

21B.(1) When the jurors have been sworn, they must appoint one of their number to be foreman.

(2) If a majority of the jurors do not agree in the appointment of a foreman within a time the court considers reasonable, the court must appoint a foreman.

(3) The functions of the foreman are—

- (a) to preside during the deliberations of the jury;
- (b) to ask any information from the court that is required by the jury or any of the jurors;
- (c) to announce the verdict of the jury.

Continuation of trial on death or discharge of juror.

21C.(1) If one or more additional jurors have been chosen, such a person is to be treated as and has the obligations of a juror for the period of the trial up to the time that either—

- (a) he is appointed as a juror by reason of subsection (3)(a); or
- (b) the jury consider their verdict, at which time the court must discharge any additional juror in respect of the trial.

(2) If the court discharges an additional juror under subsection (1)(b), it may require the person to attend the court as an additional juror if the same jury tries another issue.

(3) If in the course of a trial a juror dies or is discharged by the court, whether as being through illness incapable of continuing to act or for any other reason, then—

- (a) if one or more additional jurors has been chosen, the court must appoint such person or persons, selected in the order in which additional jurors were chosen, as juror in place of a juror who has died or was discharged; or
- (b) if no additional juror has been chosen, or any additional juror chosen has been appointed juror or is not otherwise available to be appointed juror, but the number of the members of the jury is not reduced below 7,

the jury is for all the purposes of the trial properly constituted, and the trial must proceed and a verdict may be given accordingly.

(4) On a trial for murder, subsection (3)(b) does not apply on the death or discharge of a juror unless—

- (a) assent to its applying is given in writing by or on behalf of both the prosecution and the defendant, or each of the defendants; and
- (b) in any event the number of jurors is not reduced below 10.

Discharge of jury: General power.

21D.(1) Without affecting section 21C, the judge may at any time discharge a jury and order a retrial if he thinks fit to do so.

(2) If the reason for the discharge is because jury tampering appears to have taken place, section 21E applies.

Discharge of jury for jury tampering.

21E.(1) If a judge is minded during a trial on indictment to discharge the jury because jury tampering appears to have taken place, then before taking any steps to discharge the jury, the judge must—

- (a) inform the parties that he is minded to discharge the jury;
- (b) inform the parties of the grounds on which he is so minded; and
- (c) allow the parties an opportunity to make representations.

(2) If the judge, after considering any such representations, discharges the jury, he may, subject to subsection (4), order that the trial is to continue without a jury if he is satisfied that—

- (a) jury tampering has taken place; and
- (b) to continue the trial without a jury would be fair to the defendant or defendants.

(3) If the judge considers that it is necessary in the interests of justice for the trial to be terminated, he must terminate the trial.

(4) If a trial is continued without a jury, the court has all the powers, authorities and jurisdiction which the court would have had if the trial had been continued with a jury (including power to determine any question and to make any finding which would be required to be determined or made by a jury).

(5) Unless the context otherwise requires, any reference in an enactment to a jury, the verdict of a jury or the finding of a jury is to be read, in relation to a trial continued without a jury, as a reference to the court, the verdict of the court or the finding of the court.

(6) If a trial is continued without a jury and the court convicts a defendant—

- (a) the court must give a judgment which states the reasons for the conviction at, or as soon as reasonably practicable after, the time of the conviction; and
- (b) for purposes of an appeal (or any other purpose) the date of the conviction is to be read as a reference to the date of that judgment.

(7) This section does not affect section 256 of the Criminal Procedure Act.

Delivery of verdicts.

21F.(1) Every verdict in a criminal case must be delivered orally in open court by the foreman of the jury, and must thereupon be recorded and read over to the jury before they are discharged.

(2) In every case the foreman must announce the number of jurors who agreed on the verdict and the number who dissented.

Majority verdicts.

21G.(1) If a person is arraigned on indictment for murder, the court must not accept any verdict of the jury unless it is unanimous.

(2) In any other criminal case, the court may accept a verdict upon which at least 7 of the jurors are agreed, subject to subsections (3) and (4).

(3) The court may only accept a majority verdict if the jury are unable to reach a unanimous verdict after deliberating for a time the court considers reasonable having regard to the nature and complexity of the case, not being less than 2 hours from the conclusion of the summing-up.

(4) The court must not accept a verdict of guilty by virtue of subsection (2) unless the foreman of the jury has stated in open court the number of jurors who respectively agreed to and dissented from the verdict.

(5) The verdict of a majority of the jurors accepted by the court under this section is as good and valid in all respects as a unanimous verdict.

Jury unable to reach verdict.

21H.(1) If in any case the court is satisfied that there is no reasonable prospect of the jury agreeing upon a verdict which the court can accept, the court must, subject to subsection (2), discharge the jury and either—

(a) cause a new jury to be at once impanelled and sworn and charged with the case; or

(b) adjourn the proceedings to a date the court thinks fit.

(2) A jury must not be discharged before it has deliberated for at least 3 hours after the conclusion of the summing-up.

(3) A trial with a new jury must proceed *de novo* as if the first jury had not been impanelled.

Stay or reversal of judgment.

21I.(1) No judgment after verdict in any trial by jury in any court may be stayed or reversed by reason that—

- (a) the provisions of this Part about the summoning or impanelling of jurors, or the selection of jurors by ballot, have not been complied with;
- (b) a juror was not qualified in accordance with section 19A;
- (c) any juror was wrongly named or described; or
- (d) any juror was unfit to serve.

(2) Subsection (1)(a) does not apply to any irregularity if objection is taken at, or as soon as practicable after, the time it occurs, and the irregularity is not corrected.

(3) Nothing in subsection (1) applies to any objection to a verdict on the ground of personation.

Views.

22A.(1) The Chief Justice may by rules of court make provision for viewing of sites by jurors.

(2) The places that a juror may be called on to view are not restricted to any particular locality.

Separation.

22B. If, on the trial of any person for an offence on indictment, the court thinks fit, it may at any time (either before or after the jury have been directed to consider their verdict) permit the jury to separate.

Documents produced as exhibits.

22C.(1) This section applies if on a trial before a judge and jury for an offence—

- (a) a statement made in a document is admitted in evidence; and
- (b) the document or a copy of it is produced as an exhibit.

(2) The exhibit must not accompany the jury when they retire to consider their verdict unless—

- (a) the court considers it appropriate; or
- (b) all the parties to the proceedings agree that it should accompany the jury.

Refreshment.

22D. Jurors, after being sworn, may, in the discretion of the court, be allowed reasonable refreshment at the court's expense.

Payment for jury service.

22E.(1) Subject to this section, a person who serves as a juror is entitled, in respect of his attendance at court for the purpose of performing jury service, to receive payment, at rates determined from time to time by the Minister, by way of allowances for—

- (a) travelling and subsistence; and
- (b) any loss of earnings which he would otherwise have made or received.

(2) The Registrar must determine the actual amounts payable to persons under subsection (1) and the manner of making those payments, and all such payments are to be made out of the Consolidated Fund.

(3) For the purpose of subsection (1) a person who, in obedience to a summons to serve on a jury, attends for service as a juror is deemed to serve as a juror even if he is not subsequently sworn.

Offences and penalties.

22F.(1) Subject to subsections (2) to (4), a person who—

- (a) when duly summoned under section 19C fails to attend (on the first or on any subsequent day on which he is required to attend by the summons or by the Registrar) in compliance with the summons; or
- (b) after attending pursuant to a summons, is not available when called on to serve as a juror, or is unfit for service by reason of drink or drugs,

commits an offence and is liable on summary conviction to a fine at level 3 on the standard scale.

(2) Subsection (1)(a) does not apply to a person summoned otherwise than under section 20C, unless the summons was duly served on him not later than 6 days before the date fixed by the summons for his first attendance.

(3) A person does not commit an offence under subsection (1) if he can show some reasonable cause for his failure to comply with the summons, or for not being available when called on to serve.

(4) This section has effect subject to the provisions of this Part about the withdrawal or alteration of a summons and about the granting of any excusal or deferral.

(5) A person who—

- (a) having been summoned under section 19C makes, or causes or permits to be made on his behalf, any false representation to the Registrar with the intention of evading jury service;
- (b) makes or causes to be made on behalf of another person who has been so summoned any false representation to that officer with the intention of enabling the other to evade jury service;
- (c) when any question is put to him pursuant to section 19C(4), refuses without reasonable excuse to answer, or gives an answer which he knows to be false in a material particular, or recklessly gives an answer which is false in a material particular;
- (d) knowing that he is not qualified for jury service under Part I of Schedule 2 serves on a jury; or
- (e) knowing that he is disqualified from jury service under Part II of Schedule 2, serves on a jury,

commits an offence.

(6) A person who commits an offence under subsection (5) is liable on summary conviction—

- (a) in the case of an offence of serving on a jury when disqualified - to a fine at level 5 on the standard scale;
- (b) in any other case – to a fine at level 3 on the standard scale.

Application of Part III to civil actions.

22G. Subject to sections 22H and 22I, the provisions of this Part apply so far as they are appropriate, mutatis mutandis, to juries summoned for the trial of any civil action.

Jurors may be required to stand by.

22H.(1) Subject to subsection (2) in any civil action, it shall be lawful for the court, if it thinks it fit to do so, at the request of either party, to order any juror to stand by.

(2) When the panel is exhausted, the names of all those who have been ordered to stand by must be called over again and may not be objected to by either party except for cause.

Verdicts in civil actions.

22I. In any civil action tried by the court with a jury, the verdict of the jury need not be unanimous and the court may—

- (a) accept a verdict upon which at least 7 jurors are agreed, if the jury are unable to reach an unanimous verdict after deliberation for such time as the court may consider reasonable, not being less than two hours from the conclusion of the summing-up;
- (b) with the consent of all parties to the case, and after the jury have deliberated for such time as the court may consider reasonable not being less than three hours, accept the verdict of a simple majority of the jurors.

PART IIIA

TRIAL WITH LAY ASSESSORS

27A.(1) If—

- (a) one or more defendants are to be tried on an indictment which includes one or more financial offences as defined in Schedule 4 to this Act (whether or not any one or more of the defendants is also charged with an offence or offences which are not financial offences);
- (b) in the opinion of the Attorney-General the evidence of the offence charged—
 - (i) would be sufficient for the person charged to be committed for trial; and
 - (ii) reveals a case of a financial offence of such complexity that it is appropriate that the management of the case should without delay be taken over by the Supreme Court;
- (c) before the magistrates' court begins to inquire into the case as examining magistrates the Attorney-General gives the court a notice certifying that opinion;

- (d) the Attorney-General informs the magistrates' court that he intends to make an application under section 27B(1) that the case be conducted with lay assessors; and
- (e) the Attorney-General informs the magistrates' court that at the time of giving the notice under paragraph (c) there are at least 10 names on the lay assessors list,

the magistrates' court must, subject to subsection (2), proceed immediately to commit the case for trial in accordance with section 132 of the Criminal Procedure Act.

(2) Paragraphs (a) and (b) of section 132(1) of the Criminal Procedure Act do not apply to cases where the Attorney-General has given the court a notice under this section.

Application by prosecution for case to be conducted with lay assessors.

27B.(1) If—

- (a) one or more defendants are to be tried on indictment which includes one or more financial offences as defined in Schedule 4 to this Act (whether or not the bill of indictment includes offences which are not financial offences); and
- (b) notice has been given under section 27A in respect of that offence or those offences,

the prosecution may apply to a judge for the trial to be conducted with lay assessors instead of a jury.

(2) If an application under subsection (1) is made and the judge is satisfied that the condition in subsection (3) is fulfilled, he may make an order that the trial is to be conducted with lay assessors; but if he is not so satisfied he must refuse the application.

(3) The condition is that the complexity of the offence or the probable length of the trial (or both) is likely to make the trial so burdensome to the members of a jury hearing it that the interests of justice require that the trial should be conducted with lay assessors instead of a jury.

(4) In deciding whether or not the condition in subsection (3) is fulfilled, the judge must have regard to any steps which might reasonably be taken to reduce the complexity or length of the trial.

(5) A step is not to be regarded as reasonable for the purposes of subsection (4) if it would significantly disadvantage the prosecution.

Procedure for applications under section 27B.

27C.(1) An application under section 27B must be determined at a preliminary hearing in the Supreme Court.

(2) The parties to the preliminary hearing must be given an opportunity to make representations with respect to the application.

(3) The Chief Justice may make rules of court regulating the procedure to be followed prior to and at a preliminary hearing pursuant to this section.

Effect of an order for trial with lay assessors.

27D.(1) If a judge refuses an order under section 27B for the trial to be with lay assessors, the trial must proceed as a jury trial in accordance with Part III.

(2) If a judge makes an order under section 27B for the trial to be with lay assessors, the trial to which the order relates is to be conducted with lay assessors, or, if there are insufficient lay assessors available, by a judge alone without a jury.

(3) If a trial is conducted with lay assessors, or by a judge alone, the court has all the powers, authorities and jurisdiction which it would have if the trial were conducted with a jury (including power to determine any question and to make any finding which would be required to be determined or made by a jury).

(4) Unless the context otherwise requires, any reference in an enactment to a jury, the verdict of a jury or the finding of a jury is to be read, in relation to a trial conducted with lay assessors or by a judge alone, as a reference to the court, the verdict of the court or the finding of the court.

(5) If a trial is conducted with lay assessors or by a judge alone and the court convicts a defendant—

(a) the court must give a judgment which states the reasons for the conviction at, or as soon as reasonably practicable after, the time of the conviction, and

(b) a reference to a date of conviction in any enactment is to be read as a reference to the date of the judgment mentioned in paragraph (a).

Lay assessors list.

27E.(1) The Registrar must—

- (a) make a list in the prescribed form of all persons who have volunteered and who are qualified to serve as lay assessors;
- (b) cause a copy of the list to be published at such time and at such place as the Chief Justice directs.

(2) Any person aged not less than 18 or more than 70 may volunteer for service as a lay assessor, and may apply to the Registrar to be included on the lay assessors list, and the Registrar if satisfied that the person has the necessary qualifications for a lay assessor, must include his or her name on the lay assessor list accordingly.

(3) A person is qualified for inclusion on the lay assessors list if he—

- (a) is qualified to be a juror under Part III;
- (b) is approved by the Judicial Services Commission (in this part referred to as “the Commission”) as a person with relevant experience, qualifications and background to serve as a lay assessor in a trial of a complex financial offence; and
- (c) is able to devote adequate time to the hearing of such a trial.

(4) The procedure for approval by the Commission is as set out in section 27F.

(5) The provisions of section 19B relating to the publication, certifying and revision of the jury list do not apply to the lay assessors list.

Procedure for approval as a lay assessor.

27F.(1) A person who wishes to be approved as a lay assessor must apply to the Registrar in writing and provide relevant supporting documents.

(2) The Registrar must refer the application to the Commission as soon as practicable after receipt of the application.

(3) The Commission may make any enquiries it considers appropriate as to the experience and qualification of the applicant, including interviewing the applicant and any other person who may have relevant information.

(4) The Commission, upon reaching a decision, must notify its decision in writing to the applicant and to the Registrar.

(5) Members of the Commission are not eligible to serve as lay assessors.

Inclusion on the lay assessors list.

27G.(1) A person who is on the lay assessors list may at any time, by writing to the Registrar, resign from the list, but not after having been called for service in a trial as a lay assessor until notified that his services are no longer required or until the conclusion of the trial, whichever is the later.

(2) Inclusion on the lay assessors list does not affect a person's liability to jury service as provided by Part III.

(3) A person who ceases to be qualified for jury service ceases by virtue of that fact to be included on the lay assessors list.

(4) The lay assessors list must be reviewed at the end of 2 years from first publication and every 2 years thereafter.

(5) A person on the lay assessors list at the time of a review who is still qualified to serve is deemed to apply for renewal of the approval unless he notifies the Registrar in writing that he does not seek renewal of approval.

Service of summons.

27H.(1) If the Registrar receives notice that the prosecution intends to apply for a case to be tried with lay assessors instead of a jury, he must give written notice to all the persons on the lay assessors list to stand by for attendance at court if the application is approved.

(2) If the application is approved, the trial must be adjourned for a sufficient period to enable the Registrar to summon the lay assessors for attendance at court.

(3) No two spouses may be summoned to serve as lay assessors for the same trial.

Attendance and excusal.

27I.(1) Sections 19E, 19F and 19H apply in respect of attendance by and excusing of persons summoned as lay assessors as they apply to persons summoned as jurors, except that in section 19F(1)(a) the reference to 2 years is to be read as a reference to 4 years.

(2) For the purpose of those sections, service as a lay assessor counts as jury service.

Number of lay assessors.

27J.(1) In a trial with lay assessors, there must be 2 lay assessors for the whole of the trial unless one of the assessors dies or becomes medically unfit to perform the duties of a lay assessor (as certified in writing by a medical practitioner), in which case the trial may continue with one lay assessor.

(2) If both lay assessors die or become unfit as mentioned in subsection (1), the trial may continue with the judge alone as the arbiter of fact as well as of law.

Selection of lay assessors.

27K.(1) The lay assessors are to be chosen from among the number of persons summoned to attend as lay assessors by ballot in open court, until 2 lay assessors, after all just causes of challenge have been allowed, remain as fair and indifferent.

(2) If it appears to the court that there are not 2 lay assessors to try the case, the court may proceed to try the case with one lay assessor.

(3) If it appears to the court that there is not one lay assessor to try the case, the judge may proceed to try the case alone as arbiter of fact as well as of law.

(4) Each lay assessor must be sworn as soon as he is chosen.

Challenge to lay assessors.

27L.(1) In proceedings for the trial of any person under this Part—

(a) that person may challenge all or any of the lay assessors for cause; and

(b) any challenge for cause must be tried by the judge before whom the person is to be tried.

(2) A challenge to a lay assessor must be made after his name has been drawn by ballot and before he is sworn.

(3) The fact that a person summoned to serve as a lay assessor is not qualified to serve is a ground of challenge for cause.

(4) There is no right—

(a) of peremptory challenge of a lay assessor;

(b) of challenge on the ground that the person responsible for summoning the lay assessors is biased or has acted improperly.

Discharge of assessors.

27M.(1) The judge may at any time discharge the assessors and order a retrial if he thinks fit to do so.

(2) If the judge is minded during a trial with lay assessors to discharge the assessors because they appear or either of them appears to have been the subject of improper influence by or on behalf of the defendant, then before taking any steps to discharge the assessors the judge must—

- (a) inform the parties that he is minded to discharge the assessors;
- (b) inform the parties of the grounds on which he is so minded; and
- (c) allow the parties an opportunity to make representations.

(3) If the judge, after considering any such representations, discharges the assessors, he may, subject to subsection (4), order that the trial is to continue without a jury if he is satisfied that—

- (a) improper influence has been brought; and
- (b) to continue the trial without assessors would be fair to the defendant or defendants.

(4) If the judge considers that it is necessary in the interests of justice for the trial to be terminated, he must terminate the trial.

Commencing or continuing trial without assessors.

27N.(1) If a trial is commenced or continued without assessors, the court has all the powers, authorities and jurisdiction which the court would have had if the trial had been continued with assessors (including power to determine any question and to make any finding which would be required to be determined or made by assessors).

(2) Unless the context otherwise requires, any reference in an enactment to a jury, the verdict of a jury or the finding of a jury is to be read, in relation to a trial commenced or continued without a jury, as a reference to the court, the verdict of the court or the finding of the court.

(3) If a trial is commenced or continued without assessors and the court convicts a defendant—

- (a) the court must give a judgment which states the reasons for the conviction at, or as soon as reasonably practicable after, the time of the conviction; and
- (b) for purposes of an appeal (or any other purpose) the date of the conviction is to be read as a reference to the date of that judgment.

Role of lay assessors.

27O.(1) In a trial with lay assessors, the assessors and the judge together decide issues of fact and arrive at a verdict on the defendant.

(2) The lay assessors do not need to retire when points of law are being argued in the case, but do not take any part in the decision on such points.

(3) The lay assessors may ask questions of witnesses and may take notes.

(4) Section 22A applies to views by lay assessors as it applies to view by jurors.

(5) Section 22C does not apply to documents in trial with lay assessors, but all documents may be taken with them when they retire.

(6) At the conclusion of the evidence and before final speeches by counsel, the judge must direct the lay assessors in open court as to the admissible evidence and as to the law applicable in the case.

(7) After the judge's direction, counsel for the prosecution and counsel for the defence may in turn address the court.

(8) The lay assessors retire with the judge to consider the verdict, but if the lay assessors ask any questions which require a ruling on law by the judge, the judge must announce the question and his ruling in open court.

Verdict in trial with lay assessors.

27P.(1) The verdict in a case tried with lay assessors is the verdict of the judge and assessors (the "members of the court") and must be delivered orally in open court by the judge.

(2) In every case each member of the court must announce the verdict that he has reached, without stating his reasons for it.

(3) The judge—

(a) may accept a verdict upon which at least 2 of the members of the court agree; or

(b) if there is only one lay assessor - may only accept a verdict on which he and that assessor agree.

(4) The verdict of a majority of the members of the court (or of the 2 remaining members) announced by the judge under this section is as good and valid in all respects as a unanimous verdict.

(5) When announcing the verdict of the court, the judge must state the facts and the matters of law which were relied on in reaching the verdict,

and if the verdict was by a majority, must indicate the nature of the difference of opinion.

Judgment in trial by judge alone.

27Q.(1) The order of speeches in a trial commenced or continued by judge alone is as in section 27O.

(2) The verdict in a case tried or continued by the judge alone must be delivered orally in open court by the judge, who must state his findings of fact and ruling on matters of law.

Stay or reversal of judgment.

27R.(1) No judgment after verdict in a trial by lay assessors in any court may be stayed or reversed by reason that—

- (a) the provisions of this Part about the summoning or impanelling of lay assessors, or the selection of assessors by ballot, have not been complied with;
- (b) a lay assessor was not qualified in accordance with section 27E(3);
- (c) any lay assessor was wrongly named or described; or
- (d) any lay assessor was unfit to serve.

(2) Subsection (1)(a) does not apply to any irregularity if objection is taken at, or as soon as practicable after, the time it occurs, and the irregularity is not corrected.

(3) Nothing in subsection (1) applies to any objection to a verdict on the ground of personation.

Refreshment and payment.

27S.(1) Lay assessors, after being sworn and for the duration of the case, are entitled to reasonable refreshment during sittings of the court at the court's expense.

(2) The provisions of section 22E as to payment of jurors apply equally to lay assessors.

Offences by lay assessors.

27T.(1) Subject to subsection (2), a person who—

- (a) when duly summoned under this Part fails to attend (on the first or on any subsequent day on which he is required to attend

by the summons or by the Registrar) in compliance with the summons; or

- (b) after attending pursuant to a summons, is not available when called on to serve as a lay assessor, or is unfit for service by reason of drink or drugs,

commits an offence.

(2) A person does not commit an offence under subsection (1) if he can show some reasonable cause for his failure to comply with the summons, or for not being available when called on to serve.

(3) A person who knowing that he is not qualified as a lay assessor serves as an assessor, commits an offence.

(4) A person who commits an offence under subsection (1) or (3) is liable on summary conviction to the statutory maximum fine.

Rules of court.

27U.(1) The Chief Justice may by rules of court make such provision as appears to him necessary or expedient for the purposes of this Part.

(2) Without limiting subsection (1), rules of court may in particular make provision for time limits within which applications under this Part must be made or within which other things in connection with this Part must be done.

(3) Nothing in this section limits any other enactment conferring powers to make rules of court, including section 27C(3).

Amendment of Schedule 4.

27V. The Minister may, after consultation with the Chief Justice, by order amend Schedule 4.

PART IV.

BARRISTERS AND SOLICITORS.

Admission of barristers.

28.(1) The Chief Justice may approve, admit and enroll as barristers of the Supreme Court any person who satisfies the following requirements, that is to say—

- (a) he has been called to the Bar in England or Northern Ireland, or has been admitted as an advocate in the Court of Session in Scotland;
- (b) he is not at the time of his application for admission disbarred, or removed from the roll of advocates in Scotland, or suspended from practice as such barrister or advocate;
- (c) since his admission in the United Kingdom or the Republic of Ireland he has completed a period of at least six months' pupillage with a practising barrister of at least five years professional standing in England, Northern Ireland, the Republic of Ireland or Gibraltar, or a practising advocate of at least five years professional standing in Scotland, or has completed a practical training course approved by the Council of Legal Education in England or by an equivalent body in Northern Ireland, the Republic of Ireland or Scotland; and
- (d) he intends on admission to practise in Gibraltar either alone or in partnership with another barrister or solicitor.

(2) The Chief Justice may admit a person as a barrister under this section for the purpose of any particular case or cases, notwithstanding that such person does not satisfy the requirements of paragraphs (c) and (d) of sub-section (1), and may impose on a person so admitted such restrictions and conditions as he may think fit.

(3) Every person holding the office of Attorney General, Senior Crown counsel or Crown Counsel shall, so long as he continues to hold such office, have and enjoy all the rights and privileges of a barrister entitled to practice in Gibraltar.

Admission of solicitors.

29.(1) The Chief Justice may approve admit and enroll as solicitors of the Supreme Court of Gibraltar any person who satisfies the following requirements, that is to say—

- (a) he has been admitted as a solicitor of the Supreme Court of Judicature in England, or in any court of record in Northern Ireland or the Republic of Ireland, or as a solicitor admitted to practice in Scotland;
- (b) he is not at the time of his application for admission struck off the rolls or suspended from practice as a solicitor; and
- (c) he intends on admission to practise in Gibraltar either alone or in partnership with another barrister or solicitor.

(2) Every person duly approved, admitted and enrolled as a solicitor of the Supreme Court of Gibraltar shall be at liberty to act also as a barrister.

Enrolment of solicitors.

30.(1) Every person admitted or entitled to practice as a solicitor of the court as aforesaid, shall cause his name to be enrolled in a book to be kept for the purpose in the office of the Registrar, and to be called the Roll of the Court, and he shall be entitled to a certificate of enrolment under the seal of the court. No person whose name shall not be enrolled as aforesaid shall be entitled to practise in any of the courts of Gibraltar, and no solicitor shall actually practise without first taking out a certificate.

(2) No solicitor not duly certificated shall be entitled to sue for, or recover, any fee, reward or disbursement on account of, or in relation to any act or proceeding done, or taken by him in his professional capacity.

Barristers and solicitors may practice in all courts.

31. It shall be lawful for persons enrolled as barristers or solicitors to practise as such in all the courts in Gibraltar.

Barristers may act as solicitors.

32. All barristers shall be at liberty to act also as solicitors and shall be entitled to sue for and recover, any fee, reward or disbursement on account of, in relation to any act or proceeding done, or taken by them in their professional capacity as such solicitors:

Provided that a Barrister who attains the rank of Queen's Counsel shall not undertake or perform any professional function unless instructed by a solicitor or another barrister not having the rank of Queen's Counsel. Nothing herein contained will preclude the barrister having the rank of Queen's Counsel from continuing or engaging in partnership with another barrister or solicitor.

Law relating to barristers and solicitors.

33.(1) Subject to the provisions of this Act and of any rules of court for the time being in force the law in England for the time being in force relating to barristers and solicitors shall extend to Gibraltar, and shall apply to all persons practicing as barristers or solicitors in Gibraltar.

(2) The rules prescribed from time to time by the Bar Council and the Law Society in England in regard to the professional conduct of barristers and solicitors shall with such modifications as the Chief Justice may deem fit to allow be respectively observed by barristers and solicitors in Gibraltar.

Disciplinary powers of Chief Justice.

34.(1) The Chief Justice may, for reasonable cause—

- (a) order the name of any barrister or solicitor to be struck off the Roll of the Court;
- (b) suspend any barrister or solicitor from practising within Gibraltar during any period specified by the Chief Justice;
- (c) administer any reprimand to any barrister or solicitor;
- (d) order any barrister or solicitor to repay or forego any fee; or
- (e) on the investigation of any complaint relating to the professional conduct of a barrister or solicitor, or on the determination of any proceedings relating to the professional conduct of a barrister or solicitor, make such order as he thinks fit as the payment by the barrister or solicitor or the complainant or any other party of the costs of the investigation or proceedings.

(2) The Chief Justice may at any time, for good cause, set aside or annul any order made under subsection (1).

(3) Where the Chief Justice—

- (a) makes or refuses to make an order under subsection (1); or
- (b) on application refuses to set aside or annul under subsection (2) any such order, in respect of any barrister or solicitor, that barrister or solicitor may appeal against the decision to the Court of Appeal, but in every other case the decision of the Chief Justice in any proceedings referred to in subsection (1) or subsection (2) shall be final.

Unqualified person practising.

35.(1) A person not being enrolled as a barrister or solicitor in Gibraltar, and not being a notary public, who, unless he proves that the act was not done for, or in expectation of, any fee, gain or reward, either directly or indirectly draws or prepares any instrument—

- (a) relating to movable or immovable property or any legal proceeding;

- (b) for or in relation to the formation of any limited liability company whether private or public;
- (c) for or in relation to the making of a deed of partnership or the dissolution of a partnership,

is guilty of an offence and is liable on summary conviction to a fine of £50.

(2) Notwithstanding anything in any other law or Act contained, proceedings in respect of any offence under this section may be brought at any time within two years next after the commission of the offence or within six months next after the first discovery thereof by the prosecutor whichever period is the shorter.

(3) This section shall not extend to—

- (a) any public officer drawing or preparing instruments in the course of his duty; or
- (b) any person employed merely to engross any instrument.

(4) For the purposes of this section the expression “instrument” does not include—

- (a) a will or other testamentary instrument; or
- (b) a letter or power of attorney; or
- (c) a transfer of stock or shares containing no trust or limitation thereof.

PART IV A EEA LAWYERS

Interpretation of Part IVA.

35A.(1) In this Part unless the context otherwise requires –

“barrister” and “solicitor” mean a person admitted or entitled to practise under sections 28 or 29 as a barrister or solicitor, as the case may be;

“the Directive” means the European Communities Council Directive 77/249/EEC to facilitate the effective exercise by lawyers of freedom to provide services;

“EEA State” means a state which is a contracting party to the Agreement on the European Economic Area;

“EEA lawyer” means a national of an EEA State mentioned in column 1 of Part I of the Schedule 1 who is entitled to pursue his professional activities under the designation mentioned in column 2 of that Part of the Schedule 1 in respect of that EEA State;

“EEA State of origin” in relation to an EEA lawyer, means the EEA State (other than the United Kingdom) or States in which he is established; and

“own professional authority”, in relation to an EEA lawyer, means an authority entitled to exercise disciplinary authority over him in his EEA State of origin.

- (2) A person who –
- (a) is not a national of an EEA State; but
 - (b) is by virtue of a right conferred by Article 11 of Council Regulation (EEC) 1612/68 or any other enforceable Community right entitled to be treated for the purpose of access to the profession of lawyer,

shall be treated for the purpose of this Act as if he were such a national.

Purpose of Part.

35B. The provisions of this Part shall have effect for the purpose of enabling an EEA lawyer to pursue his professional activities in Gibraltar by providing, under the conditions specified in or permitted by the Directive, services otherwise reserved to barristers or solicitors; and services which may be so provided are hereafter in this Part referred to as “services”.

Representation in legal proceedings.

35C.(1) No enactment or rule of law or practice shall prevent an EEA lawyer from providing any service in relation to any proceedings, whether civil or criminal, before any court, tribunal or public authority (including appearing before and addressing the court, tribunal or public authority) by reason only that he is not a barrister or solicitor; provided that throughout he is instructed with, and acts in conjunction with, a barrister or solicitor who is entitled to practise before the court, tribunal or public authority concerned and who could properly provide the service in question.

- (2) An EEA lawyer in salaried employment who is instructed with and acts in conjunction with a barrister in any proceedings may provide a

service on behalf of his employer in those proceedings only in so far as a barrister in such employment could properly do so.

Drawing of documents, etc, not related to legal proceedings.

35D.(1) No enactment or rule of law or practice shall prevent an EEA lawyer from drawing or preparing for payment an instrument relating to personal estate by reason only that he is not a barrister or solicitor.

(2) Nothing in this Part shall entitle an EEA lawyer to draw or prepare for payment an instrument—

- (a) creating or transferring an interest in land; or
- (b) for obtaining title to administer the estate of a deceased person.

Legal aid.

35E. Services may be provided by an EEA lawyer by way of legal advice and assistance or legal aid.

Title and description to be used by EEA lawyers.

35F. In providing any services, an EEA lawyer shall use the professional title and description applicable to him in his EEA State of origin, expressed in the language or one of the languages of that State, together with the name of the professional organisation by which he is authorised to practise or the court of law before which he is entitled to practise in that State.

Power to require an EEA lawyer to verify his status.

35G.(1) The Chief Justice may at any time request a person seeking to provide any services in Gibraltar to verify his status as an EEA lawyer.

(2) Where a request has been made under sub-section (1), the person to whom it is made shall not, except to the extent (if any) allowed by the Chief Justice, be entitled to provide services in Gibraltar until he has verified his status as an EEA lawyer to the satisfaction of the Chief Justice.

Professional misconduct.

35H.(1) A complaint may be made to the Chief Justice that an EEA lawyer providing any services has failed to observe a condition or rule of professional Conduct referred to in Part II of the Schedule and applicable to him.

(2) Where a complaint is made under sub-section (1), the Chief Justice shall consider and adjudicate upon it in accordance with the same

procedure, and subject to the same rights of appeal, as apply in relation to a barrister or solicitor over whom he has jurisdiction.

(3) Where the Chief Justice finds that an EEA lawyer against whom a complaint has been made under sub-section (1) has committed a breach of a condition or a rule of professional conduct mentioned in that sub-section he—

- (a) shall report that finding to the EEA lawyer's own professional authority; and
- (b) may, if he thinks fit, direct the EEA lawyer not to provide services in Gibraltar, except to such extent and under such conditions (if any) as he may specify in the direction.

(4) The Chief Justice may at any time, if he thinks fit, vary, cancel or suspend the operation of a direction given by him under sub-section (3)(b).

(5) An EEA lawyer in respect of whom a direction is made under sub-section (3)(b) shall not be entitled to provide services in Gibraltar except as allowed by the direction.

PART V. MISCELLANEOUS.

Interest on judgment debts.

36. Every judgment debt shall carry interest, from the time the judgment is entered until it is satisfied, at such rate as the Minister with responsibility for justice may by order direct and such interest may be levied under a writ of execution on the judgment.

Fees to be taken in the Supreme Court.

36A. Without prejudice to the provisions of sections 37 and 38, the Chief Justice has, and is deemed always to have had, the power by rules to prescribe, vary or abolish the fees to be taken in the Supreme Court.

Recovery of insurance premiums by way of costs.

36B. Where in any proceedings a costs order is made in favour of any party who has taken out an insurance policy against the risk of incurring a liability in those proceedings, the costs payable to him may, subject in the case of court proceedings to rules of court, include costs in respect of the premium of the policy.

Rules regulating funds in Court.

37. It shall be lawful for the Chief Justice, with the concurrence of the Minister responsible for Justice, to make rules regulating the payment of moneys into court and the lodgment of securities and effects in court, the investment of funds in court and the payment out of moneys in court, the transfer of securities and the delivery out of effects, and, without prejudice of the generality of the foregoing, such rules may—

- (a) prescribe what moneys are to be invested, and in what manner, and what moneys are to be retained un-invested;
- (b) authorize the payment of interest on moneys that are un-invested, prescribe the rate of interest from time to time payable, and specify the moneys on which interest shall accrue and the moneys on which interest shall not accrue;
- (c) subject to the provisions of the Exchange Control Act, make any necessary provision regarding moneys in foreign currencies;
- (d) authorize the employment of an agent in transacting any business relating to funds in court and the payment to him of any commission or fee subject to such rules and to any order of the court;
- (e) make provision for the transfer to the Consolidated Fund of moneys lying unclaimed, without prejudice to the right of the persons, if any, entitled thereto;
- (f) prescribe the accounts to be kept, the forms to be used and the returns to be rendered.

Rules of court.

♦38.(1) It shall be lawful for the Chief Justice to make rules of court for carrying this Act into effect and in particular for all or any of the following matters:-

- (a) for regulating the sittings of the Supreme Court for the dispatch of civil business therein and of a judge sitting in chambers;
- (b) for regulating the pleading, practice and procedure in the Supreme Court in civil cases and in matters which in Her Majesty's High Court of Justice in England come within the

♦ *The powers conferred by this section were enlarged by section 5 of the Judgments (Reciprocal Enforcement) Ordinance and by section 14 of the Evidence Ordinance.*

jurisdiction of the Crown side of the Queen's Bench Division thereof;

- (cc) for regulating pupillage generally, including the qualifications for admission to pupillage, the manner in which pupillage may be served, appeals in respect of pupillage, and the approval and termination of pupillage.
- (c) the summoning, impanelling and challenging of jurors and the fees to be paid in respect of trials of civil actions by jury;
- (d) for regulating the admission of barristers and solicitors to practise in the Supreme Court, their professional practice, conduct and discipline and for those purposes for delegating to any two or more persons (being barristers or solicitors) on such terms as may be specified in the rules, any of the powers conferred on him by section 34 (other than the powers of disenrolment and suspension);
- (e) for regulating the powers of commissioners for oaths, the fees and costs of barristers and solicitors and the hours of opening and closing the offices of the court;
- (f) generally for regulating any matters relating to the practice and procedure of the court or to the duties of the officers thereof or the costs of proceedings therein;
- (g) regulating access to and the use of the Law Library of the Supreme Court, prescribing fees for such access and use and the penalties to be paid for any damage to or loss of books therein and the method of recovering of such penalties.

(2) Rules made under this section may empower the making of orders at any stage of any proceedings directing that specified facts may be proved at the trial by affidavit with or without the attendance of the deponent for cross-examination, notwithstanding that a party desires his attendance for cross-examination and that he can be produced for that purpose.

(3) The power to make rules conferred by this section shall include the power to make rules with respect to all or any of the matters dealt with by the rules of the Supreme Court in England made from time to time.

(4) Where any provision in respect of the practice or procedure of any of Her Majesty's Courts the jurisdiction of which or of any courts substituted for or united and consolidated with which is vested by this Act in the Supreme Court are contained in any Act of the Parliament at Westminster rules of court may be made under this section modifying those provisions to

any extent that may be deemed necessary by the Chief Justice for adapting the same to the Supreme Court.

Civil Procedure Rules.

38A.(1) Subject to this and any other Act (and without prejudice to the generality of sections 15 and 38), and to rules made under this Act specifying otherwise, the Civil Procedure Rules made (and as amended from time to time) under the Civil Procedure Act 1997 in England and Wales shall apply in Gibraltar with such modifications (for example, in nomenclature) as the circumstances in Gibraltar may require.

(2) The Chief Justice may make Rules supplementing, amending or modifying the Civil Procedure Rules as they apply to Gibraltar.

Masters.

38B.(1) The small claims jurisdiction of the court (as defined in the Civil Procedure Rules), may be exercised by a judicial officer to be known as a Master.

(2) The Chief Justice may direct such other matters as he may determine to be heard by a Master, but such matters shall be limited to those which may be heard by a Master or district judge in England and Wales.

(3) A Master shall also have jurisdiction to hear and determine any summons issued under section 5 of the Debtors Act 1869 in respect of any judgment or decree, irrespective of the amount concerned.

(4) The Governor acting on the advice of the Judicial Service Commission may appoint any person appearing to him to have the requisite knowledge and experience to act as a Master.

(5) An appeal from a decision of a Master shall lie to the Chief Justice or an additional judge.

PART VI

EUROPEAN LAWYERS: INTRODUCTORY

Purpose of this Part and Part VII to XI.

39.(1) The purpose of this Part and Part VII to XI is to implement the Directive in Gibraltar.

(2) The provisions of this Part and Part VII to XI shall have effect for the purposes of facilitating the practice of the profession of lawyer on a permanent basis by a European lawyer in Gibraltar.

(3) The provisions of this Part and Part VII to XI shall not affect the provision of services by lawyers within the meaning of Part IVA

Transitional provisions.

40.(1) On or after the coming into force of this Part and Part VII to XI, a European lawyer –

- (a) shall not practise professional activities under his home professional title in Gibraltar on a permanent basis, or
- (b) commence such practice,

without being registered in accordance with section 52 unless he was already practising before that date and has made an application for registration under Part VIII which has not been determined.

(2) In subsection (1) and (3), an application for registration shall, as at a particular date, be taken not to have been determined if as at that date the applicant–

- (a) has not received a rejection of his application and the period for such a rejection or a deemed rejection has not yet expired; or
- (b) is appealing against a rejection of the application (including a deemed rejection) and the appeal has not been determined.

(3) Section 56(1)(b) and (57) shall not apply to a European lawyer who satisfies all the following conditions–

- (a) immediately before the entry into force of this Part and Part VII to XI he was practising on a permanent basis in Gibraltar;
- (b) before the entry into force of this Part and Part VII to XI he applied for registration to the competent authority; and
- (c) as at the date in question his application for registration had not been determined.

Interpretation of this Part and Part VII to XI.

41.(1) In this Part and Part VII to XI, unless the context otherwise requires–

“barrister” means a barrister of the Supreme Court of Gibraltar;

“competent authority”, in relation to Gibraltar, means the Chief Justice;

“the Directive” means the European Communities Parliament and Council Directive No. 98/5/EC to facilitate practice of the profession of lawyer on a permanent basis in certain States other than the State in which the professional qualification was obtained;

“European lawyer” has the meaning given in subsection (2);

“home State” means the State in Part III of the Schedule in which a European lawyer acquired his authorisation to pursue professional activities and, if he is authorised in more than one of those States, it shall mean any of those States;

“home professional title” means, in relation to a European lawyer, the professional title or any of the professional titles specified in relation to his home State in Part III of the Schedule under which he is authorised in his home State to pursue professional activities;

“member of the Gibraltar Bar” means a solicitor or barrister of the Supreme Court of Gibraltar;

“Qualification Act” means the Recognition of Professional Qualifications Act (Act 31 of 1997);

“registered European lawyer” means a European lawyer who is registered with the competent authority in accordance with section 53 and whose registration has not been withdrawn or suspended;

“solicitor” means, in relation to Gibraltar, a person who is a solicitor of the Supreme Court of Gibraltar.

(2) In this Part and Part VII to XI, “European lawyer” means a person who is—

- (a) a national of the United Kingdom or of a State listed in Part III of the Schedule;
- (b) authorised in any of the States listed in Part III of the Schedule to pursue professional activities under any of the professional titles appearing in that subsection; and
- (c) subject to subsection (3), not a solicitor or barrister of the Supreme Court of Gibraltar.

(3) *Repealed.*

Exchange of information.

42.(1) In order to facilitate the application of the Directive and to prevent its provisions from being misapplied, the competent authority may supply to or receive from an authority in any of the States listed in section 41(3) which has been designated by that State under the Directive as a competent authority in that State, any information relating to a European lawyer or to any person with whom he jointly practises.

(2) Subject to subsection (1), the competent authority shall preserve the confidentiality of any information received in accordance with subsection (1) relating to a European lawyer or to any person with whom he jointly practises.

(3) The competent authority shall provide a certificate attesting to the authorisation of any member of the Bar to practise when requested to do so by that member or by a competent authority in a State listed in section 41(3).

PART VII
PRACTICE OF PROFESSIONAL ACTIVITIES
BY A REGISTERED EUROPEAN LAWYER

Practice of professional activities.

43.(1) Subject to the provisions of this Part and Part VII to XI, a registered European lawyer shall be entitled to carry out under his home professional title any professional activity that may lawfully be carried out by a member of the Gibraltar bar and any enactment or rule of law or practice with regard to the carrying out of professional activities by members of the Gibraltar Bar shall be interpreted and applied accordingly.

(2) A registered European lawyer who is in salaried employment may carry out professional activities under his home professional title to the same extent that an employed member of the Gibraltar bar may do so.

Title and description to be used by a registered European lawyer.

44.(1) Where a registered European lawyer is engaged in—

- (a) any professional activity authorised by the professional organisation in his home State which gave him the authorisation to practise; or
- (b) any professional activity that may be carried out by a member of the Gibraltar Bar,

he shall comply with the requirements set out in subsection (2).

(2) The requirements referred to in subsection (1) are that a registered European lawyer shall—

- (a) use his home professional title expressed in an official language of his home State in a manner which avoids confusion with the title of solicitor or barrister;
- (b) indicate the professional organisation by which he is authorised to practise or the court of law before which he is entitled to practise in that State; and
- (c) indicate the fact that he is a registered European Lawyer under the provisions of this Act.

Joint practice.

45.(1) A registered European lawyer may carry out professional activities under his home professional title as part of a joint practice—

- (a) to the same extent and in the same manner as a member of the Gibraltar Bar may do so, with—
 - (i) another member of the Gibraltar Bar;
 - (ii) a person who is a registered European lawyer; or
 - (iii) any other person permitted under the provisions of this Act; or
- (b) with another European lawyer who is practising on a permanent basis under his home professional title in that registered European lawyer's home State.

Name of joint practice.

46.(1) Subject to subsection (2), where a registered European lawyer is a member of a joint practice in his home State, he may use the name of that practice with his home professional title when practising as a registered European lawyer.

(2) Rules made under section 38 may prohibit the use by a European lawyer of the name of a joint practice to the extent that—

- (a) that name is also used by persons who are not European lawyers or members of the Gibraltar Bar; and

- (b) those rules prohibit members of the Gibraltar Bar from using that name.

Notification of joint practice.

47.(1) Where a European lawyer is a member of a joint practice in his home State and intends to register under Part VIII, he shall inform the competent authority of the fact and provide it with the following information—

- (a) the name of the joint practice;
- (b) his place of business;
- (c) the name and place of business of any member of his joint practice;
- (d) any other information about the joint practice requested by the competent authority.

(2) A European lawyer to whom this section applies shall notify the competent authority of any changes in the information whether before or after registration.

Representation in legal proceedings.

48.(1) Subject to subsection (2), no enactment or rule of law or practice shall prevent a registered European lawyer from pursuing professional activities relating to the representation of a client in any proceedings before any court, tribunal or public authority (including addressing the court, tribunal or public authority) only because he is not a solicitor or barrister.

(2) In proceedings referred to in subsection (1), where the professional activities in question may (but for this Part and Part VII to XI) be lawfully provided only by a solicitor, barrister or other qualified person, a registered European lawyer shall act in conjunction with a solicitor or barrister who is entitled to practise before the court, tribunal or public authority concerned and who could lawfully provide those professional activities.

(3) The solicitor or barrister referred to in subsection (2) shall, where necessary, be answerable to the court, tribunal or public authority concerned.

Property transactions and probate.

49. A registered European lawyer is not entitled, by virtue of section 43(1)—

- (a) to prepare for remuneration any instrument creating or transferring an interest in land unless he has a home professional title obtained in Denmark, the Republic of Ireland, Finland or Sweden,
- (b) to prepare for remuneration any instrument for obtaining title to administer the estate of a deceased person unless he has a home professional title obtained in Denmark, Germany, the Republic of Ireland, Austria, Finland or Sweden.

Legal aid.

50. A registered European lawyer may provide professional activities by way of legal advice and assistance or legal aid under the Legal Aid and Assistance Act and references to a solicitor, counsel or legal representative in that or any other enactment relating to legal advice and assistance or legal aid shall be interpreted accordingly.

PART VIII
REGISTRATION OF EUROPEAN LAWYERS

Establishment and maintenance of registers of European lawyers.

51. The competent authority shall establish and maintain a register of registered European lawyers.

Application to be entered on a register.

52.(1) A European lawyer who wishes to pursue professional activities under his home professional title on a permanent basis in Gibraltar shall apply to be entered on the register maintained by the competent authority.

(2) A European lawyer who wishes to register with the competent authority in accordance with subsection (1) shall provide the competent authority with a certificate confirming his registration with the competent authority in each home State under whose home professional title he intends to practise.

(3) The competent authority may require that the certificate referred to in subsection (2) shall not have been issued more than three months before the date of the application under this section.

(4) An application for registration under this section shall comply with the provisions of this Act and be accompanied by the prescribed fee (if any).

Registration by competent authority.

53.(1) The competent authority shall enter on its register the name of a European lawyer who applies to it in accordance with section 52.

(2) Where the competent authority registers a European lawyer in accordance with subsection (1), it shall inform the competent authority in the home State of the registration.

Time limit for decision and notification by competent authority.

54.(1) The competent authority shall consider an application for registration under section 52 as soon as is reasonably practicable, and shall notify the European lawyer of its decision, and if the application is rejected or granted subject to conditions, the reasons upon which the rejection or the imposition of conditions is based, within four months of receipt of an application complying with section 52(2) and (4).

(2) Where the competent authority fails to take a decision and notify the European lawyer within four months in accordance with subsection (1), it shall be deemed to have taken a decision to reject his application and to have notified it to him on the last day of that period.

(3) Where the competent authority withdraws or suspends a registration, it shall notify the European lawyer of its decision and of the reasons upon which the withdrawal or suspension is based.

Appeal by European lawyer.

55.(1) Within three months of the notification to him of the competent authority's decision, or later with the permission of the Court of Appeal, the European lawyer may appeal against the decision to the Court of Appeal.

(2) The Court of Appeal may, for the purpose of determining any appeal under this Part—

- (a) order the competent authority to register the European lawyer;
- (b) refuse the appeal; or
- (c) remit the matter to the competent authority with such directions as the court sees fit.

(3) The court shall give reasons for its decision.

Offence of pretending to be a registered European lawyer.

56.(1) A person who is not registered in Gibraltar as a European lawyer (including a person whose registration has been suspended) and –

- (a) wilfully pretends to be a registered European lawyer or takes or uses any name, title, designation or description implying that he is a registered European lawyer; or
- (b) subject to subsection (2), carries on professional activities under one of the professional titles listed in section 41(3) or under any name, designation or description implying that he is entitled to pursue those activities under one of those professional titles; shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(2) Subsection (1)(b) shall not apply to a person who satisfies any of the following conditions–

- (a) he is not a national of the United Kingdom or of any of the States listed in section 41(3);
- (b) he is a solicitor or barrister of the Supreme Court of Gibraltar; or
- (c) he is providing services within the meaning of Part IVA at the time his activities fall within subsection (1)(b).

Costs and fees of an unregistered European lawyer.

57. Where a European lawyer is carrying on professional activities under his home professional title in Gibraltar but is not registered as a European lawyer (including a person whose registration has been suspended), any costs or fees in respect of those activities shall not be recoverable by him or any other person.

Evidence of registration.

58. Any certificate purporting to be signed by the competent authority and stating that a person–

- (a) is, or is not, registered with the competent authority; or
- (b) was, or was not, registered with the competent authority during a period specified in the certificate,

shall, unless the contrary is proved, be evidence of that fact and be taken to have been so signed.

Publication of names of registered European lawyers.

59.(1) Where the competent authority publishes the names of solicitors or barristers registered with it, it shall also publish the names of any European lawyers registered with it.

(2) In this section, “publishes” or “publish” includes the provision of information to a legal or other publisher.

PART IX REGULATION AND DISCIPLINE

Rules of professional conduct applicable.

60. Where a registered European lawyer is practising under his home professional title in Gibraltar, he shall be subject to the same rules of professional conduct as a member of the Gibraltar Bar.

Disciplinary proceedings applicable.

61.(1) Where a registered European lawyer fails to comply with the rules of professional conduct to which he is subject under section 60, he shall be subject to the same rules of procedure, penalties and remedies as a member of the Gibraltar Bar and shall, if appropriate, be subject to disciplinary proceedings brought by the competent authority.

(2) Any sanction against a registered European lawyer in relation to disciplinary proceedings may include withdrawal or suspension of his registration.

(3) The competent authority shall give reasons for its decision.

Disciplinary proceedings against a registered European lawyer.

62.(1) Where the competent authority intends to begin disciplinary proceedings against a registered European lawyer, it shall—

- (a) inform the competent authority in his home State of the intention to begin those proceedings and furnish it with all the relevant details;
- (b) co-operate with that authority throughout those proceedings; and
- (c) inform that authority of the decision reached in those proceedings, including the decision in any appeal, as soon as practicable after the decision is given.

(2) Subject to subsection(3), where the competent authority in the registered European lawyer's home State withdraws his authorisation to practise under the home professional title either temporarily or permanently, his registration with the competent authority in Gibraltar shall be automatically withdrawn to the same extent.

(3) Where a registered European lawyer is authorised to practise under a home professional title in two or more home States, his registration shall be withdrawn in accordance with subsection (2) only if his authorisation to practise under a home professional title has been withdrawn in all those home States.

(4) Where there is an appeal against a decision in disciplinary proceedings against a registered European lawyer, the court shall afford the competent authority in the registered European lawyer's home State an opportunity to make representations in relation to that appeal.

Disciplinary proceedings against a solicitor or barrister.

63. Where the competent authority intends to begin disciplinary proceedings against a solicitor or barrister of the Supreme Court of Gibraltar practising in a State listed in section 41(3) it shall inform the competent authority in that State of—

- (a) the intention to begin those proceedings and furnish it with all the relevant details; and
- (b) the decision reached in those proceedings, including the decision in any appeal, as soon as practicable after the decision is given.

PART X

**ENTRY OF EUROPEAN LAWYERS INTO
THE PROFESSION OF SOLICITOR OR BARRISTER**

Application by registered European lawyer.

64.(1) Where a registered European lawyer applies to the competent authority to become a solicitor or barrister as the case may be, and the competent authority requires him to pass an aptitude test under the provisions of the Qualification Act, he may apply to the competent authority for an exemption from that requirement on the grounds that he falls within subsection (2) or (3) of this section.

- (2) A person falls within this subsection if—

- (a) he is a European lawyer and has been registered with the competent authority for at least three years; and
 - (b) he has for a period of at least three years effectively and regularly pursued in Gibraltar, professional activities under his home professional title in the law of Gibraltar.
- (3) person falls within this subsection if—
- (a) he is a European lawyer and has been registered with the competent authority for at least three years; and
 - (b) he has for a period of at least three years effectively and regularly pursued in Gibraltar professional activities under his home professional title; and
 - (c) he has for a period of less than three years effectively and regularly pursued in Gibraltar, professional activities under his home professional title in the law of Gibraltar.

Decision by the competent authority.

65.(1) Subject to subsection (3), the competent authority shall grant an exemption applied for under section 64 if it considers that the requirements under subsection (2) or (3) of section 64 have been met.

(2) The registration of a registered European lawyer shall cease from the date he is granted entry into the profession of solicitor or barrister.

(3) The competent authority may refuse to grant an exemption if it considers that the registered European lawyer would be unfit to practise as a solicitor or barrister.

Evidence in support of application for exemption under section 64(2).

66.(1) Where a registered European lawyer makes an application under subsection (2) of section 64, he shall provide the competent authority with any relevant information and documents which it may reasonably require.

(2) The competent authority may verify the effective and regular nature of the professional activity pursued and may, if necessary, request the registered European lawyer to provide, orally or in writing, clarification of, or further details on, the information and documents referred to in subsection (1).

Evidence in support of application for exemption under section 64(3).

67.(1) Where a registered European lawyer makes an application under subsection (3) of section 64, he shall provide the competent authority with any relevant information and documents it may reasonably require.

(2) When deciding whether to grant an application under subsection (3) of section 64, the competent authority shall take into account the professional activities the registered European lawyer has pursued during the period he has been registered and any knowledge and professional experience he has gained of, and any training he has received in, the law of Gibraltar and the rules of professional conduct of the profession concerned.

(3) Subject to subsection (4), in the case of an application under subsection (3) of section 64, the competent authority shall assess and verify the registered European lawyer's effective and regular professional activity and his capacity to continue the activity he has pursued at an interview.

(4) Where the competent authority believes that an interview is unnecessary and intends to grant an application under subsection (3) of section 64, it may dispense with that requirement.

Meaning of “effectively and regularly pursued”.

68. For the purposes of section 64 to 67 activities shall be regarded as effectively and regularly pursued if they are actually exercised without any interruption other than those resulting from the events of everyday life.

Time limit for decision and notification by professional body.

69.(1) The competent authority shall consider an application under section 64 as soon as is reasonably practicable, and shall notify the applicant of its decision and, if the application is rejected, the reasons for the rejection, within four months of receipt of all the relevant documents.

(2) Where the competent authority fails to take a decision and notify the registered European lawyer within four months in accordance with subsection (1), it shall be deemed to have taken a decision to reject his application and to have notified it to him on the last day of that period.

Appeal by registered European lawyer.

70.(1) Within three months of the notification to him of the competent authority's decision, or later with the permission of the Court of Appeal, the European lawyer may appeal against the decision to the Court of Appeal.

(2) The court may, for the purpose of determining any appeal under this Part—

- (a) give the exemption and the authorisation to enter into the profession of solicitor or barrister, as the case may be;
 - (b) refuse the appeal; or
 - (c) remit the matter to the competent authority with such directions as the court sees fit.
- (3) The court shall give reasons for its decision.

Practice under the title of solicitor or barrister.

71.(1) This section applies where a registered European lawyer (“the lawyer”) is granted entry into the profession of solicitor or barrister.

(2) Subject to subsection (3), the lawyer shall be entitled to continue to practise in Gibraltar, as the case may be, under his home professional title, and to use his home professional title, expressed in an official language of his home State, alongside the title of solicitor or barrister, provided that he continues to be authorised in his home State to pursue professional activities under that title.

(3) For the purposes of rules of professional conduct, including those relating to disciplinary and complaints procedures, the lawyer's continuing practice in Gibraltar under his home professional title shall be deemed to form part of his practice as a solicitor or barrister, and those rules shall apply to his practice under his home professional title as they do to his practice as a solicitor or barrister.

(4) Where this section applies, a lawyer's registration as a European lawyer in accordance with section 53 shall cease from the date he is entitled to use the title of solicitor or barrister, as the case may be.

PART XI
EUROPEAN LAWYERS:
SUPPLEMENTARY PROVISIONS

Modification of enactments.

72.(1) References in this Act to unqualified persons, however expressed shall not include a reference to registered European lawyers pursuing professional activities within the meaning of this Part and Part VII to XI.

(2) The power to make rules under section 38 shall also be exercisable in relation to registered European lawyers.

(3) Registered European lawyers shall be treated as if they were officers of the Supreme Court of Gibraltar and shall be subject to the inherent jurisdiction of that court in like manner and to the same extent as if they were barristers or solicitors.

PART XIA
CROSS-BORDER MEDIATION

Application of Part XIA.

72A.(1) This Part shall apply in cross-border disputes to civil and commercial matters except as regards rights and obligations which are not at the parties' disposal under any provisions of law.

(2) This Part shall not apply to revenue, customs or administrative matters or to the liability of the Government for acts or omissions in the exercise of its public authority.

Interpretation under Part XIA.

72B.(1) In this Part–

“Civil Procedure Rules” means the Civil Procedure Rules of the United Kingdom which apply to Gibraltar by virtue of section 38A;

“court” means the Supreme Court;

“cross-border dispute” has the meaning given to it by section 72C;

“mediation” means a structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator and this process may be initiated by the parties, or suggested or ordered by the court or prescribed by any provisions of law;

“Mediation Directive” means Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspect of mediation in civil and commercial matters, as amended from time to time;

“mediation evidence” means evidence arising out of or in connection with a mediation process;

“mediation settlement” means the content of a written agreement resulting from mediation of a relevant dispute;

“mediation settlement agreement” means a written agreement resulting from mediation of a relevant dispute;

“mediator” means any third person who is asked to conduct a mediation in an effective, impartial and competent way, regardless of the denomination or profession of that third person and of the way in which the third person has been appointed or requested to conduct the mediation;

“Member State” means a Member State of the European Union with the exception of Denmark;

“relevant dispute” means a cross-border dispute that is subject to the Mediation Directive.

- (2) The definition of “mediation” in subsection (1)–
- (a) includes mediation conducted by a judge who is not responsible for any judicial proceedings concerning the dispute in question; and
 - (b) excludes attempts made by the court or the judge seised to settle a dispute in the course of judicial proceedings concerning the dispute in question.

Cross-border disputes.

72C.(1) For the purposes of this Part a cross-border dispute shall be one in which at least one of the parties is domiciled or habitually resident in Gibraltar other than that of any other party on the date on which–

- (a) the parties agree to use mediation after the dispute has arisen;
- (b) mediation is ordered by a court;
- (c) an obligation to use mediation that arises under any provisions of the law of Gibraltar; or
- (d) for the purposes of section 72D an invitation is made to the parties.

(2) Notwithstanding subsection (1), for the purposes of Article 7 and Article 8 of the Mediation Directive, a cross-border dispute shall also be one in which judicial proceedings or arbitration following mediation between the parties are initiated in Gibraltar or in a Member State other than that in which the parties were domiciled or habitually resident on the date referred to in paragraph (a), (b) or (c) of subsection (1).

(3) For the purposes of subsections (1) and (2), domicile shall be determined in accordance with Articles 59 and 60 of Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, as amended from time to time.

Recourse to mediation.

72D. Where a judicial proceedings or arbitration is brought before the court, it may, when appropriate and having regard to all the circumstances of the case, invite the parties to—

- (a) use mediation in order to settle the dispute; and
- (b) attend an information session on the use of mediation if such sessions are held and are easily available.

Making a mediation settlement enforceable.

72E.(1) Where the parties, or one of them with the explicit consent of the others, wish to apply for a mediation settlement to be made enforceable, the parties or a party may apply to the court in accordance with the Civil Procedure Rules.

(2) Where an application is made under subsection (1), the mediation settlement agreement must be annexed to the application notice or claim form when it is filed in accordance with the Civil Procedure Rules.

(3) Except to the extent that subsection (6) applies, the parties must file any evidence of explicit consent to the application under subsection (1) when the parties file the application or claim form in accordance with the Civil Procedure Rules.

(4) Subject to subsection (5), where an application is made under subsection (1), the court shall make an order making the mediation settlement enforceable.

(5) The court shall not make an order under subsection (4)—

- (a) if the content of the mediation settlement agreement is contrary to the law of Gibraltar;
- (b) unless the court has evidence that each of the parties to the mediation settlement agreement has given explicit consent to the application for the order.

(6) Where a party to the mediation settlement agreement—

- (a) has agreed in the mediation settlement agreement that a mediation settlement enforcement order should be made in respect of that mediation settlement;
- (b) is a party to the application under subsection (1); or
- (c) has written to the court consenting to the application for the mediation settlement enforcement order,

that party is deemed to have given explicit consent to the application for the mediation settlement enforcement order.

(7) An application under subsection (1) shall be dealt with without a hearing, unless the court otherwise directs.

Mediation Evidence.

72F.(1) Subject to subsection (2), a mediator has the right to withhold mediation evidence in civil and commercial judicial proceedings and arbitration.

- (2) The court may order that a mediator must give or disclose mediation evidence where—
 - (a) all parties to the mediation agree to the giving or disclosure of the mediation evidence;
 - (b) the giving or disclosure of the mediation evidence is necessary for overriding considerations of public policy, in accordance with Article 7(1)(a) of the Mediation Directive; or
 - (c) the giving or disclosure of the mediation settlement is necessary to implement or enforce the mediation settlement agreement.

Competent authority.

72G.(1) The Minister of Justice shall be the competent authority for the purpose of Article 6(3) of the Mediation Directive.

(2) The Government shall ensure that the European Commission is informed that the Minister of Justice is the competent authority for the purpose of Article 6(3) of the Mediation Directive.

Part X

Regulations

73. The Government may make regulations in order to amend any Schedule to this Act for the purpose of giving effect to the law of the European Communities or European Union.

SCHEDULE 1

Part I

Section 35A(1)

EEA Lawyer

Lawyers listed in Article 1 of Directive 77/249/EEC

EEA State	Description of EEA lawyer
Austria:	Rechtsanwalt
Belgium:	Avocat - Advocaat
Bulgaria:	Адвокат
Cyprus:	Δικηγόρος
Czech Republic:	Advokát
Denmark:	Advokat
Estonia:	Vandeadvokaat
Finland:	AsianajajaAdvokat
France:	Avocat
Germany:	Rechtsanwalt
Greece:	Δικηγόρος
Hungary:	Ügyvéd
Ireland:	Barrister /Solicitor
Italy:	Avvocato
Latvia:	Zvērināts advokāts
Lithuania:	Advokatas
Luxembourg:	Avocat-avoué
Netherlands:	Advocaat Advocate
Malta:	Avukat/Prokuratur Legali
Poland:	Adwokat/Radca prawny
Portugal:	Advogado
Romania:	Avocat
Spain:	Abogado
Slovakia:	Advokát/Komerčný právnik
Slovenia:	Odvetnik/Odvetnica
Sweden:	Advokat
United Kingdom:	Barrister/ Solicitor;

PART II

Section 35H (1)

1. Activities relating to the representation of a client in legal proceedings or before public authorities shall be pursued in Gibraltar under the conditions laid down for lawyers established in Gibraltar, with the exception of any

conditions requiring residence or registration with a professional organisation in Gibraltar.

2. A lawyer pursuing these activities shall observe the rules of professional conduct of Gibraltar, without prejudice to his obligations in the EEA State from which he comes.

3. A lawyer pursuing activities other than those referred to in paragraph 1 shall remain subject to the conditions and rules of professional conduct of the EEA State from which he comes without prejudice to respect for the rules, whatever their source, which govern the profession in Gibraltar, especially those concerning the incompatibility of the exercise of the activities of a lawyer with the exercise of other activities in Gibraltar, professional secrecy, relations with other lawyers, the prohibition on the same lawyer acting for parties with mutually conflicting interests, and publicity. The latter rules are applicable only if they are capable of being observed by a lawyer who is not established in Gibraltar and to the extent to which their observance is objectively justified to ensure, in Gibraltar, the proper exercise of a lawyer's activities, the standing of the profession and respect for the rules concerning incompatibility.

Part III

Section 41

Lawyers listed in Article 1 Directive 98/5/EC

State	Professional title(s)
Austria	Rechtsanwalt
Belgium	Avocat/Advocaat/Rechtsanwalt
Bulgaria	Адвокат
Cyprus	Δικηγόρος
Czech Republic	Advokát
Denmark	Advokat
Estonia	Vandeadvokaat
Finland	Asianajaja/Advokat
France	Avocat
Germany	Rechtsanwalt
Greece	Δικηγόρος
Hungary	Ügyvéd
Ireland	Barrister/Solicitor
Italy	Avvocato
Latvia	Zvērināts advokāts
Lithuania	Advokatas
Luxembourg	Avocat
Malta	Avukat/Prokuratur Legali
Netherlands	Advocaat
Romania	Avocat

Poland	Adwokat/ Radca prawny
Portugal	Advogado
Slovenia	Odvetnik/Odvetnica
Slovakia	Advokát/Komerčný právnik
Sweden	Advokat
Spain	Abogado/Advocat/Avogado/Abokatu
United Kingdom	Advocate/Barrister/Solicitor

SCHEDULE 2

(Section 19A)

Persons disqualified from jury service**Part I - Mentally disabled persons.**

1. A person who suffers or has suffered from mental illness, psychopathic disorder, mental handicap or severe mental handicap and on account of that condition—

- (a) is resident in a hospital or similar institution; or
- (b) regularly attends for treatment by a medical practitioner; and
- (c) in the opinion of the judge is not capable of performing functions of a juror.

2. A person for the time admitted to hospital under Part II of the Mental Health Act.

3. A person whose property and affairs are managed by the court under Part IV of the Mental Health Act.

4. In this Part of this Schedule—

- (a) “mental handicap” means a state of arrested or incomplete development of mind (not amounting to severe mental handicap) which includes significant impairment of intelligence and social functioning;
- (b) “severe mental handicap” means a state of arrested or incomplete development of mind which includes severe impairment of intelligence and social functioning;
- (c) other expressions are to be construed in accordance with the Mental Health Act.

Part II – Other persons disqualified.

1. A person who is on bail in criminal proceedings.

2. A person who has at any time been sentenced in Gibraltar or elsewhere to—

- (a) imprisonment for life, detention for life or custody for life;

- (b) detention during Her Majesty's pleasure;
- (c) a custodial sentence of 5 years or more.

3. A person who at any time in the previous 10 years has in Gibraltar or elsewhere—

- (a) served any part of a custodial sentence; or
- (b) had passed on him a suspended custodial sentence.

SCHEDULE 3

(Sections 19A(6) and 19G)

Part I – Persons ineligible for jury service due to their profession.

1. Serving Judges and Magistrates.
2. Serving police officers, prison officers and customs officers.
3. Serving probation officers and other persons engaged in the administration of justice.
4. Doctors of medicine and dentists employed in Gibraltar in such capacity.

Part II – Persons who may be excused.

1. Ministers of religion.
2. Members of Parliament.
3. Practising barristers, solicitors and notaries.
4. Former Judges.
5. Members of Her Majesty's naval, military or air forces in respect of whom their commanding officer certifies that it would be significantly prejudicial to the service if they were absent from duty.

SCHEDULE 4

(Sections 27A(1) and 27B(1))

FINANCIAL OFFENCES

An offence under any of the following provisions is a financial offence for purposes of Part IIIA—

1. The following offences under the Criminal Offences Act:—

- 196(1) – Obtaining property by deception
- 197(1) – Obtaining a pecuniary advantage by deception
- 198(1) – Obtaining services by deception
- 199(1) – Evasion of liability by deception
- 200(1) – False accounting
- 202(1) – False statements by company directors, etc
- 203(1) – Suppression, etc., of documents

2. An offence under Part II of the Crime (Money Laundering and Proceeds) Act 2007, other than section 5A.

3. An offence under section 54, 55 or 56 of the Drug Trafficking Offences Act 1995.

4. An offence under the Market Abuse Act 2005.

5. The following offences under the Companies Act

- 312 – Falsification of books
- 313 – Fraud by officers of companies which have gone into liquidation
- 314 – Proper accounts not kept
- 315 – Responsibility of directors for fraudulent trading of companies in liquidation

6. An offence under the Terrorism Act in relation to funding.

7. An offence under section 75B of the Financial Services (Banking) Act (Fraudulent inducement to make a deposit).