

Brunei, laws, statutes, etc. Revised statutes



**THE LAWS
OF
BRUNEI**

REVISED EDITION

PREPARED UNDER THE AUTHORITY OF
THE REVISED EDITION OF THE
LAWS ENACTMENT, 1951

BY

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VOLUME I

CONTAINING CHAPTERS 1 TO 31 OF THE ENACTMENTS

Price per set — £10 0s. 0d.

PRINTED BY

C. F. ROWORTH LTD., 88 FETTER LANE, LONDON, E.C.4.
1952.

*[Appointed by the Government of Brunei, the Government Printers for the purpose of this
Edition of the Laws]*

To be purchased from the British Resident's Office, Brunei, and from the Crown Agents
for the Colonies, 4, Millbank, London, S.W.1.

CHAPTER 7.

CRIMINAL PROCEDURE CODE.*

No. 16 of
1951.

TO ESTABLISH A CODE OF CRIMINAL PROCEDURE.

[1st May, 1952.]

PART I.

PRELIMINARY.

Chapter I.

1. (1) This Enactment may be cited as the Criminal Procedure Code, and is generally referred to in this Enactment as "this Code." Short title and application.

(2) This Enactment shall not apply to Native Courts.

2. (1) In this Code unless there is something repugnant in the subject or context— Interpretation.

"bailable offence" means an offence shown as bailable in the First Schedule to this Code or which is made bailable by any other law for the time being in force and "non-bailable offence" means any other offence;

"Chief Justice" means the Chief Justice of Sarawak, North Borneo and Brunei;

"Chief Police Officer" means the Chief Police Officer, Brunei Police Force;

"complaint" means the allegation made orally or in writing to a Magistrate with a view to his taking action under this Code that some person whether known or unknown has committed or is guilty of an offence;

*NOTE: The numbering of the sections follows that in the corresponding Code in the Colony of Sarawak.

“ Court ” means the High Court and the Court of a Magistrate of any class;

“ Court of Appeal ” means the Court of Appeal of Sarawak, North Borneo and Brunei established by the Sarawak, North Borneo and Brunei (Courts) Order in Council, 1951;

“ District Officer ” includes, where the context so permits, a Dato Penghulu, a Penghulu and a Ketua;

“ fine ” includes any fine, pecuniary penalty or forfeiture or compensation adjudged upon any conviction of any crime or offence or for the breach of any law for the time being in force by any Court in the State;

“ High Court ” means the High Court of Sarawak, North Borneo and Brunei established by the Sarawak, North Borneo and Brunei (Courts) Order in Council, 1951;

“ inquiry ” includes every inquiry conducted under this Code before a Magistrate;

“ Judge ” means a Judge of the Supreme Court and includes, where the context so permits, the Chief Justice;

“ judicial proceeding ” means any proceeding in the course of which evidence is or may be legally taken;

“ local limits of the jurisdiction ” of the Court of a Magistrate means the limits of the ordinary administrative in which the Court house is situate; provided that the Chief Justice may declare by notification in the *Government Gazette* that for the purposes of the Code any administrative districts shall be amalgamated or a district may be divided as set out therein;

“ Magistrate in charge of a station ” means the senior Magistrate actually residing in, or immediately responsible for, that station;

“ medical officer ” means a registered medical practitioner employed by Government and if no such officer is available then any other duly registered medical practitioner or any hospital assistant authorised by the State Medical Officer either generally or for any

specific purpose to exercise the functions of a medical officer under this Code;

“ non-seizable offence ” means an offence for which and “ non-seizable case ” means a case in which a police officer may not ordinarily arrest without warrant;

“ offence ” means any act or omission made punishable by any law for the time being in force;

“ officer in charge of a Police District or station ” means the officer appointed to perform the duties of that office and when such officer is absent therefrom or unable from illness to perform his duties the police officer present and acting in the district or station who is next in rank below such officer;

“ place ” includes a house, building, tent and vessel;

“ Police District ” means any area which has been constituted a Police District by regulations made under the Police Force Enactment (*Chapter 50*), and unless and until districts are so constituted means an ordinary administrative district;

“ police officer ” means any member of the Brunei Police Force and includes a special police officer when mobilised or deemed to be mobilised for active service;

“ postal article ” means any letter, postcard, book, document, pamphlet or sample parcel or package or other article whatsoever transmitted by post;

“ Registrar ” means the Chief Registrar or a Registrar of the Supreme Court and includes a Deputy or Assistant Registrar;

“ seizable offence ” means an offence for which and “ seizable case ” means a case in which a police officer may ordinarily arrest without warrant according to the third column of the First Schedule or under the provisions of any other written law for the time being in force;

“ summons case ” means a case relating to an offence not being a warrant case;

“ Supreme Court ” means the Supreme Court of Sarawak, North Borneo and Brunei established by the Sarawak, North Borneo and Brunei (Courts) Order in Council, 1951;

“ warrant case ” means a case relating to an offence punishable with death or with imprisonment for a term exceeding six months;

“ youthful offender ” includes any child convicted of an offence punishable by fine or imprisonment who in the absence of legal proof to the contrary is above the age of seven and under the age of eighteen years in the opinion of the Court before which such child is convicted.

(2) Words which refer to acts done extend also to illegal omissions.

(3) All words and expressions used herein and defined in the Penal Code (*Chapter 22*) and not hereinbefore defined shall be deemed to have the meanings attributed to them by that Code.

(4) The marginal notes of this Code shall not affect the construction thereof.

Trial of offences under Penal Code and against other laws.

3. All offences under the Penal Code shall be inquired into and tried according to the provisions hereinafter contained, and all offences under any other law shall be inquired into and tried according to the same provisions, subject however to any Enactment for the time being in force regulating the manner or place of inquiring into or trying such offences.

Saving of powers of Supreme Court.

4. Nothing in this Code shall be construed as derogating from the powers or jurisdiction of the Supreme Court.

PART II.

CONSTITUTION AND POWERS OF CRIMINAL COURTS.

Chapter II.

CRIMINAL COURTS GENERALLY.

Classes of Criminal Courts.

5. (1) The Courts for the administration of criminal justice in the State to which this Code applies shall be the following:—

(a) The High Court.

(b) Courts of Magistrates of the First Class or District Courts.

(c) Courts of Magistrates of the Second Class or Police Courts.

(d) Courts of Magistrates of the Third Class or Petty Courts.

(2) Courts of Magistrates shall be constituted in accordance with the provisions of the Courts Enactment (*Chapter 6*).

(3) A Judge or Magistrate may sit in and constitute any Court lower than the Court which he has power to constitute as if he were a Magistrate of such lower Court.

6. (1) The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed an open Court, to which the public generally may have access, so far as the same can conveniently contain them.

Court to be open.

(2) The presiding Judge or Magistrate may, if he thinks fit, on special grounds of public policy or expediency in his discretion, order at any stage of any inquiry into, or trial of, any particular case that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court. In every such case the grounds on which the order is made shall be recorded.

(3) This section shall not apply to witnesses who shall ordinarily be excluded from the Court until they give evidence.

7. Subject to the other provisions of this Code the jurisdiction of the said Courts in criminal matters shall extend to offences committed—

Jurisdiction.

(a) within the State; or

(b) on the high seas on board ships registered in the State; or

(c) by subjects of His Highness the Sultan domiciled in the State whether the offence was committed within or without the State.

Powers of
Courts.

8. (1) Subject to the other provisions of this Code any offence under the Penal Code may be tried—

(a) by the High Court;

(b) by any other Court by which such offence is shown in the eighth column of the First Schedule to be triable.

(2) Where a Court is given power by the eighth column of the First Schedule to try an offence for which such Court has not power to award the maximum punishment, the Court shall, if it is of the opinion that the punishment it has power to award is inadequate, commit the accused person for trial by a higher Court.

Offences
under other
laws.

9. (1) Subject to the other provisions of this Code, any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court.

(2) When no Court is so mentioned it may be tried by the High Court or any other Court to which this Code applies:

Provided that—

(a) no Court of a Magistrate of the First Class shall try an offence which is punishable with imprisonment for a term which may exceed two years or by a fine which may exceed five thousand dollars;

(b) no Court of a Magistrate of the Second Class shall try any offence which is punishable with imprisonment for a term which may exceed six months or by a fine which may exceed one thousand dollars;

(c) no Court of a Magistrate of the Third Class shall try any offence which is punishable with imprisonment for a term which may exceed six months or by a fine which may exceed two hundred and fifty dollars.

10. The High Court may pass any sentence authorized by law.

Sentences which High Court may pass.

11. (1) (a) Courts of Magistrates of the First Class may pass a sentence of imprisonment for a term not exceeding twelve months or a fine not exceeding one thousand dollars or, where the Chief Justice by notification in the *Government Gazette* confers upon any Magistrate special jurisdiction then in a Court presided over by such Magistrate, the sentence may be increased to imprisonment for a term of two years or a fine of two thousand dollars;

Sentences which lower Courts may pass.

(b) Courts of Magistrates of the Second Class may pass a sentence of imprisonment for a term not exceeding six months or a fine not exceeding two hundred and fifty dollars;

(c) Courts of Magistrates of the Third Class may pass a sentence of imprisonment for a term not exceeding two months or a fine not exceeding one hundred dollars.

(2) The Court of any Magistrate may pass any lawful sentence, combining any of the sentences which it is authorized by law to pass.

(3) The Sultan may limit the jurisdiction of any Magistrate appointed to hold any of the Courts referred to in this section.

12. (1) The Court of any Magistrate may award such term of imprisonment in default of payment of fine as is authorized by section 254 of this Code:

Power of Magistrates to sentence to imprisonment in default of fine.

Provided that the term is not in excess of the Magistrate's powers under this Code.

(2) The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 11.

13. (1) When a person is convicted at one trial of two or more distinct offences, the Court may, subject to the provisions of section 71 of the Penal Code, sentence him for such offences to the several punishments prescribed therefor which such Court is competent to inflict, such

Sentence in case of conviction of several offences at one trial.

punishments to commence the one after the expiration of the other in such order as the Court may direct unless the Court directs that such punishments shall run concurrently.

(2) In the case of consecutive sentences, it shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Provided that—

(a) in no case shall such person be sentenced to imprisonment for a longer period than fifteen years;

(b) the aggregate punishment shall not exceed twice the amount of punishment which the Magistrate in the exercise of his ordinary jurisdiction is competent to inflict.

(3) For the purpose of appeal, aggregate sentences passed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.

Criminal
jurisdiction
of
Magistrates.

14. Subject to the provisions of this Code every Magistrate shall have cognizance of and power and authority to—

(a) hear, try, determine and dispose of in a summary way prosecutions for offences committed wholly or in part within the local jurisdiction of such Magistrate and cognizable by such Magistrate;

(b) inquire into offences committed or alleged to have been committed within the local jurisdiction of such Magistrate or respecting which such Magistrate has jurisdiction with a view to committal for trial by the High Court;

(c) inquire into offences committed or alleged to have been committed on the high seas and cognizable by the High Court with a view to committal for trial by such Court;

(d) inquire into complaints of offences and summon and examine witnesses touching such offences and summon and apprehend and issue warrants for the

apprehension of criminals and offenders, and deal with them according to law;

(e) issue search warrants under the provisions of this Code in that behalf, and require persons to furnish security for the peace or for their good behaviour according to law;

(f) hold inquests; and

(g) do all other matters and things which a Magistrate is empowered to do by this Code or any other Enactment.

PART III.

GENERAL PROVISIONS.

Chapter III.

AID AND INFORMATION TO MAGISTRATES AND POLICE AND PERSONS MAKING ARRESTS.

15. (1) Every person is bound to assist a Magistrate, police officer or District Officer reasonably demanding his aid—

Public,
when to
assist
Magistrates
and police.

(a) in the taking or preventing the escape of any other person whom such Magistrate, police officer or District Officer is authorized to arrest;

(b) in the prevention of a breach of the peace or of any injury attempted to be committed to any railway, tramway, canal, dock, wharf, telegraph or public property;

(c) in the suppression of a riot or affray.

(2) Every person failing to give such assistance as is required by this section shall be guilty of an offence under section 187 of the Penal Code.

16. When a warrant is directed to a person other than a police officer any other person may aid in the execution of such warrant if the person to whom the warrant is directed is near at hand and acting in the execution of his warrant.

Aid to
persons other
than police
officer
executing
warrant.

Public to
give infor-
mation of
certain
matters.

17. (1) Every person aware—

(a) of the commission of or the intention of any other person to commit any offence punishable under the following sections of the Penal Code: 121, 121A, 122, 123, 124A, 130, 143, 144, 145, 147, 148, 194, 232, 234, 302, 304, 307, 308, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459, 460, 489A, 489D;

(b) of any sudden or unnatural death or death by violence or of any death under suspicious circumstances, or of the body of any person being found dead without its being known how such person came by death;

shall in the absence of reasonable excuse, the burden of proving which shall lie upon the person so aware, forthwith give information to the officer in charge of the nearest police station or to a police officer or to the nearest District Officer of such commission or intention or of such sudden, unnatural or violent death or of the finding of such dead body as the case may be.

(2) If any person discovers any dead body and he has reason to believe that the deceased met with his death through an unlawful act or omission he shall not remove or in any way alter the position of the body except so far as is necessary for its safety.

(3) Every person failing to give such information as is required by this section shall be guilty of an offence under section 176 of the Penal Code.

Police officer
bound to
report cer-
tain matters.

18. Every police officer and every District Officer shall forthwith communicate to the nearest Magistrate or police officer in charge of a police station any information which he may have or obtain respecting—

(a) the occurrence of any sudden or unnatural death or of any death under suspicious circumstances;

(b) the finding of the dead body of any person without its being known how such person came by his death.

Chapter IV.

ARREST, ESCAPE AND RE-TAKING.

19. (1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested unless there be a submission to the custody by word or action. Arrest, how made.

(2) If such person forcibly resist the endeavour to arrest him or attempt to evade the arrest such officer or other person may use all means necessary to effect the arrest.

(3) The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

(4) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for fifteen years.

20. (1) If any person acting under a warrant of arrest or any police officer or District Officer having authority to arrest has reason to believe that any person to be arrested has entered into or is within any place the person residing in or in charge of such place shall, on demand of such person acting as aforesaid or of such police officer or District Officer, allow him free ingress thereto and afford all reasonable facilities for a search therein. Search of place entered by person sought to be arrested.

(2) If ingress to such place cannot be obtained under the preceding subsection it shall be lawful in any case for a person acting under a warrant, and in any case in which a warrant may issue but cannot be obtained without affording the person to be arrested an opportunity to escape, for a police officer or District Officer to enter such place and search therein, and in order to effect an entrance into such place to break open any outer or inner door or window of any place whether that of the person to be arrested or of any other person if, after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance.

(3) If any place to be searched is an apartment in the actual occupancy of a woman (not being the person to be arrested), who, according to custom, does not appear in

public, such person or police officer shall before entering such apartment, give notice to such woman that she is at liberty to withdraw, and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

Search of persons in place searched under warrant.

21. Whenever a search for anything is or is about to be lawfully made in any place in respect of any offence all persons found therein may be lawfully detained until the search is completed, and they may, if the thing sought is in its nature capable of being concealed upon the person, be searched for it by or in the presence of a Magistrate or of a police officer not below the rank of assistant sub-inspector or of a police officer in charge of a police station.

Power to break open any place for purposes of liberation.

22. Any police officer or other person authorized to make an arrest may break open any place in order to liberate himself or any other person who having lawfully entered for the purpose of making an arrest is detained therein.

Mode of searching women.

23. Whenever it is necessary to cause a woman to be searched the search shall be made by another woman with strict regard to decency.

Search of persons arrested.

24. Whenever a person is arrested—

(a) by a police officer under a warrant which does not provide for the taking of bail or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail;

(b) without warrant or by a private person under a warrant and the person arrested cannot legally be admitted to bail or is unable to furnish bail;

the police officer making the arrest or, when the arrest is made by a private person, the police officer to whom such private person makes over the person arrested may search such person and place in safe custody all articles other than necessary wearing apparel found upon him, and any of such articles which there is reason to believe were the instruments or the fruits or other evidence of the crime may be detained until his discharge or acquittal.

26. The officer or other person making any arrest under this Code may take from the person arrested any offensive weapons which he has about his person and shall deliver all weapons so taken to the Court or officer before which or whom the officer or person making the arrest is required by law to produce the person arrested.

Power to
seize
offensive
weapons.

27. Every person lawfully in custody, who by reason of incapacity from intoxication, illness, idiocy, lunacy or infancy is unable to give a reasonable account of himself, may be searched for the purpose of ascertaining his name and place of abode.

Search of
person for
name and
address.

28. (1) Any police officer or District Officer may without an order from a Magistrate and without a warrant arrest—

When police
officer may
arrest with-
out warrant.

(a) any person who has been concerned in any seizable offence or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been so concerned;

(b) any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking;

(c) any person who has been proclaimed under section 49;

(d) any person in whose possession anything is found which may reasonably be suspected to be stolen or fraudulently obtained property and who may reasonably be suspected of having committed an offence with reference to such thing;

(e) any person who obstructs a police officer while in the execution of his duty or who has escaped or attempts to escape from lawful custody;

(f) any person reasonably suspected of being a deserter from Her Majesty's Army, Navy or Air Force or from any police force maintained or paid by the Government;

(g) any person taking precautions to conceal his presence under circumstances which afford reason to

believe that he is taking such precautions with a view to committing a seizable offence;

(h) any person who has no ostensible means of subsistence or who cannot give a satisfactory account of himself;

(i) any person who is by repute an habitual robber, housebreaker or thief or an habitual receiver of stolen property knowing it to be stolen or who by repute habitually commits extortion or in order to commit extortion habitually puts or attempts to put persons in fear of injury;

(j) any person in the act of committing in his presence a breach of the peace;

(k) any person subject to the supervision of the police who fails to comply with the requirements of section 265 of this Code.

(2) Nothing in this section shall be held to limit or to modify the operation of any other law empowering a police officer or District Officer to arrest without a warrant.

Refusal to
give name
and residence
or naming a
residence out
of the State.

29. (1) When any person in the presence of a police officer or District Officer commits or is accused of committing a non-seizable offence and refuses on the demand of a police officer or District Officer to give his name and residence or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such police officer or District Officer in order that his name or residence may be ascertained, and he shall, within twenty-four hours of the arrest, exclusive of the time necessary for the journey, be taken before the nearest Magistrate unless before that time his true name and residence are ascertained, in which case such person shall be forthwith released on his executing a bond for his appearance before a Court if so required.

(2) When any person is thus taken before a Magistrate such Magistrate may either require him to execute a bond, with or without a surety, for his appearance before a Court if so required, or may order him to be detained in custody until he can be tried.

(3) When any person in the presence of a police officer or District Officer commits or is accused of committing a

non-seizable offence and on the demand of a police officer or District Officer to give his name and residence gives as his residence a place not within the State, he may be arrested by such police officer or District Officer and shall be taken forthwith either before the nearest Magistrate who may require him to execute a bond, with or without a surety, for his appearance before a Court if so required, or may order him to be detained in custody until he can be tried, or before a police officer in charge of a police station who may require him to furnish a bond, with or without a surety, for his appearance before a Court if required.

30. A District Officer making an arrest without a warrant shall without unnecessary delay make over the person so arrested to the nearest police officer or in the absence of a police officer take such person to the nearest police station, and a police officer shall receive every such person into custody.

Person arrested by District Officer, how dealt with.

31. For the purpose of arresting any person whom he has power to arrest without a warrant a police officer may pursue any such person into any part of the State, but he shall inform the Magistrate or District Officer of any District in which he is conducting the pursuit.

Pursuit of offenders.

32. (1) Any private person may arrest any person who, in his view, commits a non-bailable and seizable offence or who has been proclaimed under section 49 and shall without unnecessary delay make over the person so arrested to the nearest police officer or, in the absence of a police officer, take such person to the nearest police station.

Arrest by private persons.

(2) If there is reason to believe that such person comes under the provisions of section 28 a police officer shall re-arrest him.

(3) If there is reason to believe that he has committed a non-seizable offence and he refuses on the demand of a police officer to give his name and residence or gives a name or residence which such officer has reason to believe to be false or gives a residence which is not within the State he shall be dealt with under section 29.

(4) If there is no reason to believe that he has committed an offence he shall be at once released.

(5) Any person who commits an offence on or with respect to the property of another may if his name and address are unknown be apprehended by the person injured or by any person who is using the property to which the injury is done, or by the servant of either of such persons or by any person authorized by or acting in aid of either of such persons, and may be detained until he gives his name and address and satisfies such person that the name and address so given are correct or until he can be delivered into the custody of a police officer.

(6) If any person lawfully apprehended under subsection (5) assaults or forcibly resists the person by whom he is so apprehended or any person acting in his aid he shall be liable to a fine not exceeding one hundred dollars.

How person
arrested is to
be dealt
with.

33. (1) A police officer making an arrest without a warrant shall without unnecessary delay and subject to the provisions herein as to bail or previous release take or send the person arrested before a Court having jurisdiction in the case, or, if such Court cannot be constituted, before a Court of lower jurisdiction.

(2) No police officer shall detain in custody a person arrested without a warrant for a longer period than under all the circumstances of the case is reasonable.

(3) Such period should not ordinarily exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Court, unless there are exceptional circumstances which render this not reasonably practicable.

(4) Any police officer making an arrest under this section shall, unless the circumstances are such that the person arrested can be in no doubt with regard to the reason for his arrest, immediately such arrest is effected notify to the arrested person the reason for his arrest.

Release of
person
arrested.

34. No person who has been arrested by a police officer shall be released except on his own bond or on bail or under the order in writing of a Judge or Magistrate or officer in charge of a police district.

35. When any offence is committed in the presence of a Magistrate within the local limits of his jurisdiction he may himself arrest or authorize any person to arrest the offender, and may thereupon, subject to the provisions herein as to bail, commit the offender to custody.

Offence committed in Magistrate's presence.

36. Any Magistrate may at any time arrest or authorize the arrest in his presence within the local limits of his jurisdiction of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

Arrest by or in presence of Magistrate.

37. If a person in lawful custody escapes or is rescued the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place, either within or without the jurisdiction where he was so in custody, and deal with such person as he might have done on the original taking.

Power on escape to pursue and re-take.

38. The provisions of sections 20 and 22 shall apply to arrests under section 37 although the person making the arrest is not acting under a warrant and is not a police officer having authority to arrest.

Provisions of sections 20 and 22 to apply to arrests under section 37.

Chapter V.

PROCESSES TO COMPEL APPEARANCE.

Summons.

39. (1) Every summons to appear issued by a Court under this Code shall be in writing and signed by a Magistrate or, in the case of the Supreme Court, by the Chief Justice, a Judge or the Registrar, and it shall bear the seal of the Court.

Form of summons; by whom served.

(2) Such summons shall ordinarily be served by a police officer but the Court issuing the summons may if it sees fit direct it to be served by any other person.

40. (1) The summons shall if practicable be served personally on the person summoned by tendering or delivering to him a copy thereof under the seal of the Court.

Service of summons.

(2) Every person on whom a summons is so served shall if so required by the serving officer sign a receipt for the copy.

(3) In the case of a corporation the summons may be served on the secretary or other like officer of the same.

(4) Where the person to be summoned cannot by the exercise of due diligence be found the summons may be served by leaving a copy thereof for him with some adult member of his family or with his servant residing with him.

(5) Where the person summoned is in the service of the Government, the Court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed, and such head shall thereupon cause the summons to be served in the manner provided by this section, and shall return it to the Court under his signature and duly indorsed by the person on whom it was served as required by subsection (2).

(6) When a Court of a Magistrate desires that a summons issued by it shall be served at any place outside the local limits of its jurisdiction, it shall ordinarily send such summons in duplicate to a Magistrate within whose jurisdiction such place is situate, to be there served.

Procedure when personal service cannot be effected.

41. When the person to be summoned cannot by the exercise of due diligence be found and service cannot be effected as directed by section 40 (4) the serving officer shall in the presence of two witnesses affix a copy of the summons to some conspicuous part of the house or other place in which the person summoned ordinarily resides and in such case the summons, if the Court so directs either before or after such affixing, shall be deemed to have been duly served.

Proof of service.

42. When a summons issued by a Court is served, an affidavit of such service purporting to be made before an officer duly authorized to administer an oath shall be admissible in evidence.

Warrant of Arrest.

Form of warrant of arrest.

43. (1) Every warrant of arrest issued by a Court under this Code shall be in writing and signed by a Magistrate or,

in the case of the Supreme Court, by the Chief Justice, a Judge or the Registrar, and it shall bear the seal of the Court.

(2) Every such warrant shall remain in force until it is cancelled by the Court which issued it or until it is executed.

44. (1) Any Court issuing a warrant for the arrest of any person may, in its discretion, direct by indorsement on the warrant that if such person execute a bond with sufficient sureties for his attendance before the Court at a specified time and thereafter until otherwise directed by the Court, the officer to whom the warrant is directed shall take such security and shall release such person from custody.

Court may by indorsement on warrant direct security to be taken.

(2) The indorsement shall state—

(a) the number of sureties;

(b) the amount in which they and the person for whose arrest the warrant is issued are to be respectively bound;

(c) the time at which he is to attend before the Court.

(3) Whenever security is taken under this section the officer to whom the warrant is directed shall forward the bond to the Court.

45. (1) A warrant of arrest shall ordinarily be directed to the officer in charge of police of the District in which it is issued and to all other police officers of the State, and any police officer may execute such warrant in any part of the State.

Warrants, to whom directed.

(2) The Court issuing a warrant may direct it to any person or persons by name not being police officers and all or any one or more of such persons may execute the same.

46. Any warrant of arrest lawfully issued may be executed by any police officer at any time notwithstanding that the warrant is not in his possession at the time, but a police officer or other person executing a warrant of arrest shall notify the substance thereof to the person arrested, and shall, if so required by the person arrested, show him the

Notification of substance of warrant.

warrant or a copy thereof under the seal of the Court issuing the warrant as soon as practicable after the arrest.

Person arrested to be brought before Court without delay.

47. The police officer or other person executing a warrant of arrest shall, subject to the provisions of section 44 as to security, without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person.

Procedure on arrest of person against whom warrant is issued.

48. (1) When a warrant of arrest is executed outside the local limits of the jurisdiction of the Court by which it was issued the person arrested shall, unless security is taken under section 44, be brought before the nearest Magistrate.

(2) Such Magistrate shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to the Court named in the warrant:

Provided that, if the offence is bailable and the person arrested is ready and willing to give bail to the satisfaction of the Court before which he is brought or a direction has been indorsed under section 44 on the warrant and such person is ready and willing to give the security required by such direction, such last mentioned Court shall take such bail or security, as the case may be, and forward the bond to the Court named in the warrant.

(3) Nothing in this section shall be deemed to prevent a police officer from taking security under section 44.

Proclamation and Attachment.

Proclamation for person absconding.

49. (1) If the High Court or a Court of a Magistrate of the First Class has reason to believe, whether after taking evidence or not, that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time.

(2) The proclamation shall be published as follows—

(a) it shall be publicly read in some conspicuous place of the town, village or kampong in or near which such person ordinarily resides;

(b) it shall be fixed to some conspicuous part of the house or other place in which such person ordinarily resides or to some conspicuous place of such town, village or kampong; and

(c) a copy thereof shall be affixed to some conspicuous part of the Court house.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day shall be conclusive evidence that the requirements of this section have been complied with and that the proclamation was published on such day.

50. (1) The Court issuing a proclamation under section 49 may at any time order the attachment of any property movable or immovable or both belonging to the proclaimed person. Attachment of property of person proclaimed.

(2) Such order shall authorize the attachment of any property belonging to such person within the local jurisdiction of the Court by which it is made, and it shall authorize the attachment of any property belonging to such person without such jurisdiction when indorsed by a Magistrate within whose jurisdiction such property is situate.

(3) If the property ordered to be attached consists of debts or other movable property the attachment shall be made—

(a) by seizure;

(b) by the appointment of a receiver;

(c) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf; or

(d) by all or any two of such methods as the Court thinks fit.

(4) If the property ordered to be attached be immovable the attachment under this section shall be made through the District Officer of the district in which the property is situate; and upon the receipt of an order of attachment the said District Officer shall execute the same—

- (a) by taking possession;
- (b) by the appointment of a receiver;
- (c) by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person or to any one on his behalf; or
- (d) by all or any two of such methods as he thinks fit.

(5) No such attachment of any land held under a title required by law to be registered shall take effect until the order of attachment is duly registered under the law for the registration of dealings with such land for the time being in force.

(6) If the proclaimed person does not appear within the time specified in the proclamation the property shall be at the disposal of the Government, but it shall not be sold until the expiration of six months from the date of the attachment unless it is subject to speedy and natural decay, or the Court considers that the sale would be for the benefit of the owner, in either of which cases the Court may cause it to be sold whenever it thinks fit.

(7) Any person other than the person proclaimed may appear before the Court which made the order of attachment and claim, stating his title thereto, the property or any part thereof attached or ordered to be attached:

Provided that such claim is made within three months from the order of attachment.

(8) The Court shall record the claim so made and shall cause a copy thereof to be served upon the prosecutor together with a notice requiring him to attend before the Court on a day and at a time to be stated therein to show cause why such property, if attached, should not be released, or why such order of attachment should not be cancelled so far as it relates to the property so claimed.

(9) At the hearing the Court shall proceed to inquire into the truth and justice of the claim so made and to take such evidence as may be necessary.

(10) Such inquiry shall be made, as nearly as may be practicable, in the manner prescribed by Chapter XIX for conducting trials without the aid of assessors.

(11) The Court shall, if satisfied of the truth and justice of the claim, direct such property to be released or such order to be cancelled, or if satisfied as aforesaid as to part only of the claim shall direct such part to be released or so much of the order as relates thereto to be cancelled.

(12) The Court may in its discretion award to the claimant costs and such expenses as it thinks proper which shall be paid by Government.

51. If within two years from the date of the attachment any person whose property is or has been at the disposal of the Government under section 50 appears voluntarily or is apprehended and brought before the Court by whose order the property was attached and proves to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the proclamation as to enable him to attend within the time specified therein, such property or, if the same has been sold, the nett proceeds of the sale or, if part only thereof has been sold, the nett proceeds of the sale and the residue of the property shall, after satisfying thereout all costs incurred in consequence of the attachment, be delivered to him.

Restoration
of attached
property.

Other Rules Regarding Summonses to Appear and Warrants of Arrest.

52. A criminal Court may in any case in which it is empowered to issue a summons for the appearance of any person other than an assessor issue, after recording its reasons in writing, a warrant for his arrest—

Issue of
warrant in
lieu of or in
addition
to summons.

(a) if either before the issue of summons or after the issue of the same but before the time fixed for his appearance the Court sees reason to believe that he has absconded or will not obey the summons; or

(b) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.

Service and execution in any part of the State.

53. All summonses to appear and warrants of arrest issued by a Magistrate may be served or executed as the case may be in any part of the State.

Power to take bond for appearance.

54. When any person for whose appearance or arrest any Court is empowered to issue a summons or warrant is present in such Court it may require such person to execute a bond with or without sureties for his appearance in such Court.

Arrest on breach of bond for appearance.

55. When any person who is bound by any bond taken under this Code to appear before a Court does not so appear such Court may issue a warrant directing that such person be arrested and produced before it.

Chapter VI.

PROCESSES TO COMPEL THE PRODUCTION OF DOCUMENTS AND OTHER MOVABLE PROPERTY AND FOR THE DISCOVERY OF PERSONS WRONGFULLY CONFINED.

Summons to produce document or other thing.

56. (1) Whenever any Court or police officer making a police investigation considers that the production of any property or document is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer such Court may issue a summons or such officer a written order to the person in whose possession or power such property or document is believed to be requiring him to attend and produce it or to produce it at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce any property or document shall be deemed to have complied with the requisition if he causes such property or document to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed to affect the provisions of any law relating to evidence for the time being in force or to apply to any postal article, telegram or other document in the custody of the postal or telegraph authorities.

57. If any such postal article, telegram or other document is in the opinion of the Court of Appeal or the High Court wanted for the purpose of any investigation, inquiry, trial or other proceeding under this Code such Court may require the postal or telegraph authorities to deliver such postal article, telegram or other document to such person as it may direct.

Procedure as to postal articles, etc.

58. The provision of sections 39, 40, 41 and 42 shall apply in relation to summonses under this Chapter.

Provisions of sections 39 to 42 to apply.

Search Warrants.

59. (1) Where any Court has reason to believe that a person to whom a summons under section 56 or a requisition under section 57 has been or might have been addressed will not or would not produce the property or document as required by such requisition, or where such property or document is not known to the Court to be in the possession of any person, or where the Court considers that the purposes of justice or of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection, the Court may issue a search warrant and the person to whom such warrant is directed may search and inspect in accordance therewith and with the provisions hereinafter contained.

When search warrant may be issued.

(2) Nothing herein contained shall authorize any Court other than the Court of Appeal or the High Court to grant a warrant to search for a postal article, telegram or other document in the custody of the postal or telegraph authorities.

(3) A search warrant shall ordinarily be directed to the officer in charge of police of the District in which it is issued and to some other officers to be designated by name therein, and all or any of such police officers may execute such warrant.

(4) The Court issuing a search warrant may direct it to any person or persons by name, not being police officers, and all or any one or more of such persons may execute such warrant.

Power to
restrict
search
warrant.

60. The Court may if it thinks fit specify in the warrant the particular place or part thereof to which only the search or inspection shall extend, and the person charged with the execution of such warrant shall then search or inspect only the place or part so specified.

Search of
place
suspected to
contain
stolen
property,
forged
documents,
etc.

61. If a Magistrate upon information and after such inquiry as he thinks necessary has reason to believe—

(a) that any place is used for the deposit or sale of stolen property, contraband goods, or of property unlawfully obtained; or

(b) that any place is used for the deposit or sale or manufacture of forged documents, false seals or counterfeit stamps or coin or forged trade marks or instruments or materials for counterfeiting coin or stamps or for forging; or

(c) that any offence against any Enactment for the time being in force relating to gambling, pawnbrokers, opium, distillation of arrack or other spirit is being or is likely to be committed in any place; or

(d) that any offence against the Societies Enactment (*Chapter 66*) or any other Enactments relating thereto for the time being in force, or any offence against any written law relating to the protection of women and girls, is being or is likely to be committed in any place; or

(e) that any stolen property, contraband goods, or property unlawfully obtained, forged documents, false seals or counterfeit stamps or coin or forged trade marks or instruments or materials for counterfeiting coin or stamps or for forging or housebreaking are concealed, kept or deposited in any place;

he may by warrant authorize the person to whom it is directed to—

(i) enter, with such assistance as may be required, such place;

(ii) search the same in manner specified in the warrant in the presence, if practicable, of two or more inhabitants of the neighbourhood;

(iii) take possession of any property, goods, documents, seals, stamps, coins or trade marks therein

found which he reasonably suspects to be stolen, contraband, unlawfully obtained, forged, false or counterfeit and also of any such instruments and materials as aforesaid;

(iv) convey such property, goods, documents, seals, stamps, coins, trade marks or materials before a Judge or Magistrate, or guard the same on the spot until the offender is taken before a Judge or Magistrate or otherwise dispose thereof in some place of safety; and

(v) take into custody and bring before a Judge or Magistrate every person found in such place who appears to be guilty of any offence under paragraphs (c) and (d) of this section or to have been privy to the deposit, sale or manufacture or keeping of any such property, goods, documents, seals, stamps, coins, trade marks, instruments or materials knowing or having reasonable cause to suspect the said property or goods to have been stolen or to be contraband or otherwise unlawfully obtained, or the said documents, seals, stamps, coins, trade marks, instruments or materials to have been forged, falsified or counterfeited, or the said instruments or materials to have been used or to be intended to be used for counterfeiting coin or stamps or for forging.

62. (1) Every search warrant issued by a Court under this Code shall be in writing and signed by a Judge or Registrar or by a Magistrate, as the case may be, and it shall bear the seal of the Court. Form of search warrant.

(2) Every such warrant shall remain in force for a reasonable number of days to be specified in the warrant.

(3) Search warrants issued under this Code may be executed in any part of the State.

63. If any Magistrate has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence he may issue a search warrant, and the person to whom such warrant is directed may search for the person confined; such search shall be made in accordance therewith and the person, if found, Search for persons wrongfully confined.

shall be immediately taken before a Magistrate who shall make such order as in the circumstances of the case seems proper.

Persons in charge of closed places to allow search.

64. (1) Whenever any place liable to search or inspection under this Chapter is closed, any person residing in or being in charge of such place shall on demand of the officer or other person executing the warrant and on production of the warrant allow him free ingress thereto and afford all reasonable facilities for a search therein.

(2) If ingress to such place cannot be so obtained the officer or other person executing the warrant may proceed in manner provided by section 20 (2).

Magistrate issuing search warrant may attend at its execution.

65. The Magistrate by whom a search warrant is issued may attend personally for the purpose of seeing that the warrant is duly executed.

Magistrate may direct search in his presence.

66. Any Magistrate may orally direct a search to be made in his presence of any place for the search of which he is competent to issue a search warrant.

Search without warrant.

67. (1) If a police officer is informed that stolen property or contraband goods is or are concealed or lodged in any building or place, and that there is likelihood of the same being removed before a warrant under section 61 can be obtained, he may search such building or place without warrant and remove any such property or goods if—

(a) in the case of stolen property, the person claiming to be the owner or to be entitled to its possession, makes a declaration before him describing such property in detail and stating why he believes the same to have been stolen and to be in such building or place unlawfully, and accompanies such police officer in his search;

(b) in the case of contraband goods, he receives information from any Customs officer that certain contraband goods are believed to be in such building or place.

(2) If a Customs officer is informed, and has good reason to believe such information, that contraband goods

are concealed or lodged in any building or place and he has good reason to believe that such goods are likely to be removed before a warrant under section 61 can be obtained, he may search such building or place and remove any contraband goods found therein.

69. A list of all things seized in the course of a search made under this Chapter and of the places in which they are respectively found shall be prepared by the officer or other person making the search and signed by him.

List of all things seized to be made and signed.

70. The occupant of the place searched, or some person in his behalf, shall in every instance be permitted to attend during the search, and a copy of the list prepared and signed under this section shall be delivered to such occupant or person at his request.

Occupant may be present at search.

PART IV.

PREVENTION OF OFFENCES.

Chapter VII.

SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR.

71. (1) Whenever any person is convicted of any offence which involves a breach of the peace or of abetting the same or of committing criminal intimidation or criminal trespass or of being a member of an unlawful assembly and the Court before which such person is convicted is of opinion that it is necessary to require such person to execute a bond for keeping the peace, such Court may at the time of passing sentence on such person or in lieu of any sentence order him to execute a bond for a sum proportionate to his means, with or without sureties, for keeping the peace during such period in each instance as it thinks fit to fix, not exceeding two years if ordered by the High Court or one year if ordered by a lower Court.

Security for keeping the peace on conviction.

(2) If the conviction is set aside on appeal or otherwise the bond so executed shall become void.

72. Whenever it appears to a Magistrate that any person residing or being within the local limits of his

Security for keeping the peace in other cases.