



THE PARLIAMENT OF
TRINIDAD AND TOBAGO

BILL ESSENTIALS

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BILL ESSENTIALS NO. 28, 2019–2020

10 DECEMBER, 2019

The Administration of Justice (Indictable Proceedings) (Amdt) No. 3 Bill, 2019

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BACKGROUND

1. The **Administration of Justice (Indictable Proceedings) (Amendment) (No. 3) Bill, 2019**¹ (hereinafter referred to as “**the Bill**”) was introduced in the House of Representatives by the Honourable Attorney General and Minister of Legal Affairs on December 11, 2019 and seeks to amend the **Administration of Justice (Indictable Proceedings) Act, 2011 (Act No. 20 of 2011)**² (hereinafter referred to as “**the Act**”) to provide for the abolition of preliminary enquiries and for the conduct of initial and sufficiency hearings by a Master of the High Court.
2. The **Administration of Justice (Indictable Proceedings) Act, 2011 (Act No. 20 of 2011)** was previously amended by the **Administration of Justice (Indictable Proceedings) (Amendment) Bill, 2018**³ which was assented to on 13th February, 2019 and the **Administration of Justice (Indictable Proceedings) (Amendment) (No. 2) Bill, 2019**⁴ which was assented to on 21st June, 2019. This is the third phase of amendments being undertaken.


KEY FEATURES OF THE BILL

Application

3. **Clause 4** of the Bill seeks to amend the existing Section 4(1) for the Act to apply to unfinished preliminary enquiries referred to in Section 6(3)(d), in keeping with the intention of the Act.

Power to issue Search Warrant

4. **Clause 5** of the Bill seeks to amend the existing Section 5(1) to expressly provide for an aircraft to be searched based on a search warrant in addition to any building, vessel, vehicle, box, receptacle or place.
5. This Section would also be amended to allow for a Constable to be accompanied by another person/s in the execution of a search warrant.
6. **Clause 5** of the Bill also seeks to insert the following three (3) new subsections after the existing Section 5(1) as follows:-

 **Subsection 1A** provides that a search warrant can authorise the search of one or more premises as specified in the warrant. The search warrant can also authorise the search of any occupied premises controlled by the person specified in the search


¹ <http://www.ttparliament.org/publications.php?mid=28&id=877>


² <http://www.ttparliament.org/legislations/a2011-20.pdf>

³ <http://www.ttparliament.org/legislations/a2019-03g.pdf>


⁴ <http://www.ttparliament.org/legislations/a2019-11g.pdf>

warrant, provided that the Master is satisfied that there are reasonable grounds to suspect that it is necessary for the premises to be searched or if it is not reasonably practicable to specify in the application for the search warrant all the various premises occupied and controlled by the suspect which may need to be searched.


 **Subsection 1B** provides that one search warrant can authorise the search of a premises on multiple occasions if the Master is satisfied that it is necessary to authorise multiple searches to achieve the intended purposes for which the search warrant was issued.


 **Subsection 1C** establishes that for search warrants which authorises multiple searches, such number of authorised searches may be limited or unlimited based on the maximum amount specified in the search warrant.

7. **Clause 5** of the Bill also seeks to insert after the existing subsection (2), the following new subsection as follows:-

 **Subsection 2A** establishes the procedure for a Constable seeking to execute a search warrant on any premises such as identifying himself to the occupier or producing documentary evidence as proof that he is a Constable if not in uniform, producing the search warrant to the occupier of the premises and supplying the occupier with a copy of same.

8. **Clause 5** of the Bill also seeks to insert after the existing subsection (6), the following two (2) new subsection as follows:-

 **Subsection 6A** provides that the Commissioner of Police can authorise that anything seized upon execution of the search warrant can be photographed or digitally recorded in the presence of a Justice of the Peace, a Constable and where practicable the suspect or his designated representative, instead of the item being seized and detained.

 **Subsection 6B** provides that where such photographs or digital recordings are taken, the Returns in Form 2 and Form 3 in Schedule 1 must be duly completed and such photographs or digital recordings and the returns shall be admissible as sufficient evidence of the item seized and the item seized may be returned to the owner.

9. **Clause 5** of the Bill also seeks to repeal the existing subsection (7), and replace it with the new subsection (7) to allow for a Master, on the application of a prosecutor or the owner of the seized items, to Order that the photographs or digital recordings of the seized items be taken in the presence of a Justice of the Peace, the owner/suspect or his authorised representative, that the Returns in Form 2 and Form 3 in Schedule 1 be duly completed and filed together with the photograph/s and digital recording/s in the High Court and that the

seized item/s be returned to the original owner after the photograph/s, digital recording/s and the Returns have been filed. Such photograph/s, digital recording/s and the Returns would constitute sufficient admissible evidence of the item seized.

Institution of indictable proceedings and compelling appearance of accused

10. **Clause 6** of the Bill seeks to amend Section 6 to repeal the existing subsection (1) and (1A), and replace it with the three (3) new subsections which provides that where a complaint is made in writing to a Master that an indictable offence has been committed by an accused, the Master can issue a summons/arrest warrant to compel the appearance of the accused before him, if satisfied that there are reasonable grounds that an indictable offence has been committed. Such arrest warrant shall only be issued where the complaint is on oath and the complaint must be in the form set out in Form 4 in Schedule 1.
11. **Clause 6** also allows the DPP to file an indictment for a co-accused where the accused has been indicted and the co-accused is arrested, before the trial of the accused begins.

Summons for appearance of accused

12. **Clause 7** of the Bill seeks to amend Section 7 to repeal the existing subsection (8) and replace it with the following new subsection (8) which establishes that the Master, whom an accused is required to appear before under Summons, can receive proof of service of the summons primarily by affidavit of the Constable that served the summons or the Master can Order that the Constable appear before him to prove service if considered necessary.

Warrant for apprehension of accused

13. **Clause 8** of the Bill seeks to amend Section 8A which would require a person who is arrested and charged with an indictable offence to be brought before a Master as soon as practicable after being charged, instead of as soon as practicable after he is arrested.

Concurrent jurisdiction of Masters and Magistrates

14. **Clause 10** of the Bill seeks to amend Section 10 to authorise the Registrar of the Supreme Court to exercise the same concurrent jurisdiction that Magistrates, Magistracy Registrars and Clerks of the Court exercise with Masters.

Initial Hearing

15. **Clause 11** of the Bill seeks to amend existing Section 11(2) and (5) of the Act to allow Masters in their own discretion, to extend the statutory deadlines applicable to Scheduling Orders

and for the various parties at the initial hearing to obtain such extension as the Master deems fit for the purposes of facilitating compliance with any Scheduling Order.

16. **Clause 11** also proposes to insert a new subsection (6) to allow for the filing of electronic documents.

Summary trial for certain indictable offences


17. **Clause 12** of the Bill seeks to amend Section 12 by repealing subsection (3) which removes the application of the maximum penalty under subsection (2) where a person is summarily convicted of the indictable offence of kidnapping.


Sufficiency Hearing


18. **Clause 13** of the Bill seeks to amend Section 19 to allow for a Master to determine whether there is sufficient evidence to establish a prima facie case of an indictable offence, at a sufficiency hearing. The Master can also determine when it would be appropriate for a sufficiency hearing to not be conducted in open court.

Review of evidence

19. **Clause 14** of the Bill seeks to amend Section 20 to eliminate the need to produce an original exhibit or statement in court unless the prosecution elects to do so or the Master determines otherwise in the interest of justice.
20. Moreover, any witness statements or other documentary evidence filed by the prosecutor must disclose sufficient evidence to establish a prima facie case that an indictable offence was committed and that the accused committed it.
21. **Clause 14** of the Bill also seeks to insert after the existing subsection (4), the following three (3) new subsection as follows:-

 **Subsection 5** provides that any exhibit referred to in a witness statement at a sufficiency hearing would be deemed to have been produced before the Master and marked if an electronic copy is given and the Master must mark the device containing the electronic copy of the exhibit, for identification purposes from its specific witness statement.

 **Subsection 6** would allow for the court to permit a photograph or digital recording of an exhibit to be tendered as evidence of the exhibit in Court.

 **Subsection 7** establishes that the court must maintain a list of all exhibits relied on by both prosecution and defence and which must be signed by the Master upon conclusion of the sufficiency hearing.

Admissibility of prosecution witness statements

22. **Clause 15** of the Bill seeks to amend Section 21 subsection (2) to reduce the age of children who would be permitted to give unsworn statements from fourteen (14) years to ten (10) years.
23. Subsection (8) would also be amended to allow the transcripts of High Court proceedings to be admissible evidence at a sufficiency hearing.

Discharge of accused

24. **Clause 16** of the Bill seeks to amend Section 24 to allow for an accused to be discharged where a Master finds that there is insufficient evidence to establish a prima facie case for any indictable offence.
25. Moreover, the DPP can also make an ex parte application to a Judge for a warrant to arrest an accused who had previously been discharged, to be immediately followed by an inter-partes hearing of the application for the accused to be put on trial. The Judge can Order that the accused be put on trial if he is of the opinion that there was sufficient evidence to establish a prima facie case for any indictable offence.

Order to put accused on trial

26. **Clause 17** of the Bill seeks to amend Section 25 to establish the requirement for a Master to find that there is sufficient evidence to establish a prima facie case of an indictable offence first, before the accused is ordered to be put on trial.

Fresh Evidence

27. **Clause 18** of the Bill seeks to amend Section 26B⁵ to allow for additional relevant evidence to be given as fresh evidence at a trial, instead of additional evidence of a material nature.

⁵ <http://www.ttparliament.org/legislations/a2019-03g.pdf>

DPP to refer case to be dealt with summarily

28. **Clause 19** of the Bill seeks to amend Section 26C⁶ to allow for the High Court to exercise certain powers where the DPP refers the case of an accused for summary trial, which has been set for trial in the High Court.

Admissibility of witness statements at Trial

29. **Clause 20** of the Bill seeks to amend Section 29 to allow electronic copies of exhibits and documentary evidence of any witness to be deemed sufficient evidence to be produced at sufficiency hearings and at trial. However, the court also retains the power to Order that the original document or an authentic copy be tendered into evidence, in the interest of justice.




Binding over witnesses to attend trial Schedule

30. **Clause 21** of the Bill seeks to amend Section 30(5) to allow for a Master to bind over a witness to attend the trial, conditionally upon notice and not otherwise, where the evidence of the witness is not in dispute, as opposed to being merely of a formal nature.

Discharge on the grounds of delay

31. **Clause 22** of the Bill seeks to insert new Section 34 after the existing Section 33 to allow the Chief Justice to amend any form in Schedule 1, 1A, 3, 4, 5 or 7 of the Act by Practice Direction.

Annual Report

32. **Clause 23** of the Bill proposes to amend Schedule 1 by deleting the existing Form 2, Form 3 and Form 4 and replacing it as follows:-
-  Form 2 – Return of Photographer
 -  Form 3 Return of Witness to taking of Photographs
 -  Form 4 – Complaint without or upon Oath / Charge for an Indictable Offence

Schedule 8 – Consequential Amendments

33. **Clause 24** of the Bill seeks to amend the second column after Paragraph B of Schedule 8 to provide for the consequential amendment of the Evidence Act⁷ by repealing Section 14B of that Act.

⁶ <http://www.ttparliament.org/legislations/a2019-03g.pdf>

⁷ **Chap 7:02:** http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/7.02.pdf

COMPARATIVE LEGISLATION

Multiple Searches of Premises on One Search Warrant

United Kingdom	Trinidad and Tobago
<i>Police and Criminal Evidence Act, 1984 (PACE)</i>	<i>Administration of Justice (Indictable Proceedings) (Amendment) (No. 3) Bill, 2019</i>
A warrant under PACE, section 8 may authorise entry to and search of premises on more than one occasion if, on the application, the justice of the peace is satisfied that it is necessary to authorise multiple entries in order to achieve the purpose for which the warrant is issued. No premises may be entered or searched on any subsequent occasions without the prior written authority of an officer of the rank of inspector who is not involved in the investigation. All other warrants authorise entry on one occasion only.	A search warrant may authorise the search of premises on more than one occasion if the Master is satisfied that it is necessary to authorise multiple searches in order to achieve the purpose for which the search warrant is issued.

Multiple Premises Searched on one Search Warrant

United Kingdom	Trinidad and Tobago
<i>Police and Criminal Evidence Act, 1984 (PACE)</i>	<i>Administration of Justice (Indictable Proceedings) (Amendment) (No. 3) Bill, 2019</i>
Where a warrant under PACE section 8, or Schedule 1, paragraph 12 authorises entry to and search of all premises occupied or controlled by a specified person, no premises which are not specified in the warrant may be entered and searched without the prior written authority of an officer of the rank of inspector who is not involved in the investigation.	A search warrant may authorise the search of one or more sets of premises specified in the warrant or any premises occupied or controlled by a person specified in the warrant if the Master is satisfied that there are reasonable grounds to suspect that it is necessary for the premises to be searched or if it is not reasonably practicable to specify in the application for the search warrant all the various premises occupied and controlled by the suspect which may need to be searched.

Limited or Unlimited Searches based on Maximum Amount specified in Warrant

United Kingdom	Trinidad and Tobago
<i>Police and Criminal Evidence Act, 1984 (PACE)</i>	<i>Administration of Justice (Indictable Proceedings) (Amendment) (No. 3) Bill, 2019</i>
A search warrant application must be supported in writing, specifying whether an application under PACE section 8 is for a warrant authorising entry and search on more than one occasion, and if so, the officer must state the grounds for this and whether the desired number of entries authorised is unlimited or a specified maximum	Where a search warrant authorises multiple searches, the number of searches authorised may be unlimited or limited to a maximum specified in the search warrant.

Elimination of need to produce Original Exhibit or Statement in Court unless in the interest of justice

United Kingdom	Trinidad and Tobago
<i>Police and Criminal Evidence Act, 1984 (PACE)</i>	<i>Administration of Justice (Indictable Proceedings) (Amendment) (No. 3) Bill, 2019</i>
An officer may arrange to photograph, image or copy, any document or other article they have the power to seize. This is subject to specific restrictions on the examination, imaging or copying of certain property seized under the Criminal Justice and Police Act 2001, Part 2. An officer must have regard to their statutory obligation to retain an original document or other article only when a photograph or copy is not sufficient.	The production of electronic copies of exhibits and documentary evidence referred to by any witness who is called or whose statement is read, shall be sufficient evidence of the same at sufficiency hearings and at trial unless the Court directs that the original or a copy thereof be produced in the interests of justice.

REFERENCES**KEY LEGISLATION****Administration of Justice (Indictable Proceedings) Act, 2011 (Act No. 20 of 2011)**<http://www.ttparliament.org/legislations/a2011-20.pdf>**Administration of Justice (Indictable Proceedings) (Amendment) Act, 2018**<http://www.ttparliament.org/legislations/a2019-03g.pdf>**Administration of Justice (Indictable Proceedings) (Amendment) (No. 2) Act, 2019**<http://www.ttparliament.org/legislations/a2019-11g.pdf>**Administration of Justice (Indictable Proceedings) (Amendment) (No. 3) Bill, 2019**<http://www.ttparliament.org/legislations/b2019h28.pdf>**Evidence Act Chap. 7:02**http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/7.02.pdf

OTHER JURISDICTIONS

UNITED KINGDOM



Police and Criminal Evidence Act, 1984 (PACE)

<http://www.legislation.gov.uk/ukpga/1984/60/contents/enacted?view=plain>

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/306655/2013_PACE_Code_B.pdf



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