

TURKS AND CAICOS ISLANDS
EMERGENCY POWERS (COVID-19)(COURT
PROCEEDINGS) REGULATIONS 2020

(Legal Notice 32 of 2020)

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REGULATION

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MADE by the Governor under section 4(1) of the Emergency Powers Ordinance and article 6(1) of the Emergency Powers (Overseas Territories) Order 2017 (*S.I. 2017 No. 181*), having consulted the Cabinet.

Citation, commencement and expiry

1. (1) These Regulations may be cited as the Emergency Powers (COVID-19)(Court Proceedings) Regulations 2020 and shall come into operation on 20th April 2020.

(2) These Regulations shall expire on 31st December 2020 or on such date as the Governor appoints by Notice published in the *Gazette*, whichever is sooner.

Interpretation

2. In these Regulations—

“court” means the Magistrate’s Court, the Supreme Court or the Court of Appeal;

“Covid-19 means the novel Coronavirus (2019-n CoV);

“video and audio link” means facilities (including closed circuit television), having recording capability, that enable audio and visual communication between persons at different places and includes video media such as Microsoft Teams, Zoom, Skype or other such media with recording capability approved by the court.

Purposes of Regulations

3. These Regulations put measures in place during the Covid-19 pandemic to ensure that the administration of justice, including enforcement of orders, and access to justice is carried out so as not to endanger public health.

Remote sitting

4. (1) During the period in which these Regulations are in force, the Chief Justice may make Rules and issue such order or

direction as deemed necessary notwithstanding anything contained in section 16 of the Supreme Court Ordinance to ensure—

- (a) full criminal trials are conducted by video and audio link;
- (b) the adjournment of all trials;
- (c) all civil trials are conducted by video and audio link;
- (d) all pre-trial procedures such as sufficiency hearings and plea and direction and readiness hearings are conducted remotely;
- (e) accused persons as well as persons ordered to be produced in habeas corpus proceedings appear remotely by video and audio link;
- (f) all witnesses including expert witnesses testify/give evidence remotely in the remote manner set up by the court;
- (g) all processes, including proposed exhibits are scanned by parties/counsel and filed along with pleadings by email.

(2) A Judge's duty to observe *audi alteram partem* rule of natural justice is not to be compromised because of the remote sittings.

(3) A Judge's duty to determine matters in a judicial manner in accordance with settled principles of adjudication and in accordance with the Rules of Court and all pertinent Practice Directions is continued.

(4) Rules of evidence shall be adhered to, except where by the agreement of the court, counsel/parties, these will be impracticable, the Judge or Magistrate will then have recourse to judicial discretion in how to proceed.

(5) Court sittings shall be done remotely in the manner provided by Rules or Orders from the Chief Justice.

(6) The courtroom shall include any place, whether in or outside of the Islands, the Judge or Magistrate elects to sit to conduct the business of the court:

Provided always that the video and audio link facility at the said location must be accessible remotely to the court recorder, interpreter in the appropriate cases, parties, counsel and witnesses.

Adjournment of jury trials

5. All trials already commenced by jury are adjourned *sine die*, until the further direction of the Chief Justice.

Swearing of affidavits

6. (1) For the purpose of accessing legal aid by indigent inmates, the Superintendent of Prisons, his deputy, or any person nominated by the Superintendent of Prisons shall henceforth be designated Justice(s) of the Peace to enable them to swear Statements of Means of inmates and any other matters requiring swearing by a Justice of the Peace.

(2) Justices of the Peace may use video and audio link to swear affidavits and all such processes.

Giving recognizances

7. Sureties shall be allowed to give recognizances remotely in the manner set out in Rules or Orders from the Chief Justice.

Payment of fines

8. The Treasury shall enable online payment of fines and shall certify such payment for the release of convicted persons.

Rules of Court, direction, etc.

9. The Chief Justice may, for the purposes of these Regulations, make Rules of Court under section 16 of the Supreme Court Ordinance or give direction for regulating the practice, procedure and matters relating to the conduct of civil and criminal business in the court, the execution of the process of the court, and the practice and procedure to be observed by officers of the Court.

MADE this 17th day of April 2020.

NIGEL DAKIN
GOVERNOR

EXPLANATORY NOTE

(This Note is not part of the Regulations)

These Regulations provide measures to enable remote court trials and for ancillary matters to expand availability of video and audio link in court proceedings.

Counsel, parties and all persons accessing court services should bear with the court as they navigate technological challenges which will no doubt improve with time.

The measures will enable a wider range of proceedings to be carried out by video, so that courts can continue to function and remain open to the public, without the need for participants to attend in person. This will give judges more options for avoiding adjournments and keeping business moving through the courts to help reduce delays in the administration of justice and alleviate the impact on families, victims, witnesses and defendants.