



SUPREME COURT OF GIBRALTAR

INFORMATION PACK

APPLICATIONS FOR LAY ASSESSOR UNDER THE SUPREME COURT ACT

February 2023

Information for applicants on the role of Lay Assessors in the Supreme Court

Part IIIA of the Supreme Court Act makes provision for the conduct of criminal trials with Lay Assessors sitting in place of a jury in cases involving certain types of financial offences. A copy of Part IIIA is provided in this information pack together with Schedule 4 of the Act, which outlines the types of financial offences where an application may be made for the trial to be conducted with Lay Assessors.

Sec. 27E provides that a Lay Assessor must be:

- aged not less than 18 and not more than 72;
- have the necessary qualifications for a Lay Assessor;
- be approved by the Judicial Service Commission as a person of relevant experience, qualifications and background to serve as a Lay Assessor in a trial of a complex financial offence; and
- be able to devote adequate time to the hearing of such an offence.

The list below illustrates, but is not exhaustive, the type of experience, qualification and background that might be suitable for a person wishing to apply to have his/her name placed on a panel of potential Lay Assessors.

Experience

- Management of a substantial company or a substantial company's assets or of a company with substantial assets;
- Audit and/or investigation of company operations or accounts;
- Advisory role on financial management, accounting or company practice;
- Particular experience in a specialised area of expertise.

Qualifications

- Accountancy and audit qualifications, such as Degrees, Diplomas or Certificates from recognised bodies such as accounting bodies;
- Qualifications of practice from recognised professional bodies;
- Membership of recognised professional bodies at a senior level, e.g. Fellow;
- Law qualifications, with particular experience in commercial law.

Background

- Company Directors;
- Financial Advisors;
- Accountants;
- Management roles within the banking sector;
- Investigative or audit roles, involving property, finance or other assets.

Queries relating to the role of Lay Assessor should be addressed to the Registrar by email (secretaries@gcs.gov.gi) or telephone 200 78808.

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 72 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.

Provided that a person shall not be disqualified from inclusion on the lay assessors list if the reason for his disqualification from being a juror is his age or his being a justice of the peace.

(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 (other than by virtue of his age or his being a justice of the peace) 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.

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 Crimes Act 2011-

- 416 – Fraud by false representation
- 417 – Fraud by failing to disclose information
- 418 – Fraud by abuse of position
- 422(1) - Obtaining services dishonestly
- 425(1) - False accounting
- 426(1) - False statements by company directors, etc
- 427(1) - Suppression, etc., of documents

2. An offence under Part II of the Proceeds of Crime Act 2015.

3. An offence under sections 410, 411, and 412 of the Financial Services Act 2019.

4. The following offences under the Companies Act 2014-

- 398 – Offences by officers of companies in liquidation
- 399 - Falsification of books
- 400 - Fraud by officers of companies which have gone into liquidation
- 401 – Liability where proper accounts not kept

5. An offence under the Terrorism Act 2018 in relation to funding.