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TRIAL BY JUDGE ALONE (MISCELLANEOUS PROVISIONS) ACT, 2024

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SCHEDULE **10**

No. 37 of 2024

TRIAL BY JUDGE ALONE (MISCELLANEOUS PROVISIONS) ACT, 2024

AN ACT TO GRANT A RIGHT OF ELECTION TO PERSONS CHARGED WITH INDICTABLE OFFENCES IN THE SUPREME COURT TO BE TRIED BY JUDGE ALONE AND FOR THE CONSEQUENTIAL AMENDMENT OF MISCELLANEOUS PROVISIONS OF LAW AND FOR CONNECTED PURPOSES.

[Date of Assent - 19th June, 2024]

Enacted by the Parliament of The Bahamas

1. Short title and commencement.

(1) This Act may be cited as Trial by Judge Alone (Miscellaneous Provisions) Act, 2024.

(2) This Act shall come into force on a date as the Minister may appoint by notice published in the *Gazette*.

2. Interpretation.

In this Act, unless the context otherwise requires —

"judge" means a Justice of the Supreme Court;

"court" means the Supreme Court.

3. Application of Act.

(1) This Act applies to an indictment under the Criminal Procedure Code Act (*Ch. 91*).

(2) This Act does not apply to any trial on indictment begun under the Criminal Procedure Code Act (*Ch. 91*) prior to the commencement of this Act.

4. Mode of trial in the Supreme Court.

(1) An accused person committed for trial to the Supreme Court on information, or an accused person charged before a magistrate's court with an indictable offence against whom a voluntary bill of indictment is filed in the Supreme Court shall, subject to the provisions of this Act, be tried by jury unless he elects to be tried by judge alone.

(2) Upon the accused person's appearance before the court on his arraignment on a voluntary bill of indictment, and unless he indicates an intention to plead guilty, a judge shall inform the accused person that he may waive his right to trial by jury and elect to be tried by judge alone.

(3) Where the accused person does not make an election at his arraignment, he may subsequently file his election with the Registrar of the Supreme Court and serve a copy on the prosecution within sixty days of the adjournment of that hearing, or before such later date as the judge may order.

(4) Where the accused person elects to be tried by judge alone, the judge shall make an order that the accused person be tried by judge alone if he is satisfied that the accused person —

(a) has sought and received legal advice in relation to trial by judge alone; and

(b) has filed with the Registrar of the Supreme Court a Certificate of Confirmation in Form A in the Schedule.

(5) Where an accused person does not wish to consult a counsel and attorney for advice in relation to his election to be tried by judge alone, the judge shall make the order for trial by judge alone if satisfied that the accused person —

(a) is competent to elect trial by judge alone and has waived his right to consult a counsel and attorney for advice;

(b) understands the effect of electing trial by judge alone;

(c) has clearly and unequivocally elected to be tried by judge alone; and

(d) has filed with the Registrar of the Supreme Court a Certificate of Waiver in Form B in the Schedule.

(6) The judge shall not make an order for trial by judge alone unless he is satisfied that —

(a) in the case of a joint trial, all other accused persons have elected to be tried by judge alone and each accused person has filed a Certificate in Form A or Form B in the Schedule; and

(b) the accused person has elected to be tried by judge alone in respect of all the charges to be tried together on an indictment.

(7) Where the court makes an order under subsection (4) or (5), the accused person may, not later than sixty days before the commencement of his trial, apply to the court to change his election from trial by judge alone to trial by jury.

(8) An accused person who does not elect to be tried by judge alone may, not later than sixty days before the commencement of his trial, apply to the court to be tried by judge alone.

(9) Where the arraignment of an accused person on a voluntary bill of indictment in the Supreme Court took place before the commencement of this Act —

(a) the Registrar of the Supreme Court shall cause to be served on the accused person a notice informing him that he may, at least sixty days before the date fixed for his trial, apply to the court for trial by judge alone; and

(b) the accused person may, in accordance with paragraph (a), apply to the court for trial by judge alone.

(10) Where an accused person makes an application in accordance with —

(a) subsection (7), the court shall make an order granting the application;

(b) subsection (8), the court may make an order granting the application; or

(c) subsection (9), the court may, subject to subsections (4), (5) and (6), make an order that the accused person be tried by judge alone.

5. Jurisdiction of the judge alone.

In a trial by judge alone, the judge shall have the power, authority, and jurisdiction which he would have had in a trial by jury, and the power to determine any question and to make any finding which would have been required to be determined or made by a jury.

6. References to jury in written laws.

(1) Except where the context otherwise requires, a reference in this Act or any other written law to a jury, the verdict of a jury, or the finding of a jury, shall be read, in relation to trial by judge alone, as a reference to the judge, the verdict of the judge, or the finding of the judge, as the case may be.

(2) For the purposes of trial by judge alone, the provisions of this Act or any other written law, in so far as they are predicated on trial by jury, shall be read and construed with such modifications, adaptations, qualifications, and exceptions as may be necessary to bring them into conformity with trial by a judge sitting alone without a jury.

7. Judge to give reasons for decision.

(1) When the cases on both sides are closed in a trial by judge alone, the judge shall deliver his verdict and, in the case of a conviction, he shall give a written judgment stating the reasons for his verdict, at the time of conviction.

(2) The written judgment by a judge in any such case shall include the principles of law applied by the judge and the findings of fact on which the judge relied.

(3) If any law requires a warning to be given to a jury in any case, a judge sitting alone shall take the requirement for a warning into account.

(4) Subject to subsection (5), where an accused person is acquitted in a trial by judge alone, the judge may give reasons for his verdict.

(5) Where the prosecution requests reasons for an acquittal, the judge shall give reasons within seven days of that request.

(6) Where a judge fails to deliver his judgment or give reasons for an acquittal within the period specified in subsection (5), he shall convene the court and inform the parties of the time he requires to complete the task.

8. Amendment of the Court of Appeal Act *(Ch. 52).*

The Court of Appeal Act is amended as follows —

(a) by the insertion in section 2 of the following definition in its proper alphabetical place—

"judge" means a Justice of the Supreme Court;"

(b) by the deletion of section 12(1A)(b) and the substitution of the following —

"(b) withdraw the case,";

(c) by the insertion in section 13A of the words "or judge as the case may be" after the word "jury" wherever it appears in the section.

9. Amendment of the Supreme Court Act *(Ch. 53).*

The Supreme Court Act is amended by the insertion in section 54(1)(a) of the words "or judge as the case may be" after the word "jury".

10. Amendment of the Magistrates Act (Ch. 54).

Section 2 of the Magistrates Act is amended by the insertion in the definition of "offence" of the words ", a judge," following the word "jury".

11. Amendment of the Evidence Act (Ch. 65).

The Evidence Act is amended in section 34(2), by the insertion of the words "(if there is one)", after the word "jury".

12. Amendment of the Penal Code (Ch. 84).

The Penal Code is amended as follows —

(a) in section 2, by inserting the following definition in the correct alphabetical place —

" judge" means a Justice of the Supreme Court;

(b) in section 298(2) —

(i) by the insertion after the word "jury" where it first appears, of the words "or the judge, as the case may be," ;

(ii) by the insertion after the word "jury" where it appears the second time, the words "or the judge";

(c) in section 298 (3), by the insertion of the words "or the judge" after the word "jury";

(d) in section 304 —

(i) by the insertion of the words "or the judge" after the word "jury" where it first appears;

(ii) by the insertion of the words "or the judge" after the word "jury" where it appears the second time;

(iii) by the insertion of the words "or the judge" after the word "jury" where it appears the third time;

(e) in section 312, by the insertion of the words, "or the judge" after the word "jury".

13. Amendment of the Criminal Procedure Code Act (Ch. 91).

The Criminal Procedure Code Act is amended as follows—

(a) in section 141, by the deletion of subsection (1) and the substitution of the following—

"(1) Every person committed for trial before the Supreme Court shall be tried on information preferred by the Attorney-General, and such trial shall be had by and before a judge and a jury to be summoned, drawn and empanelled according to

the provisions of the Juries Act or any law for the time being in force repealing and replacing that Act, unless the person committed for trial elects to be tried by judge alone pursuant to the Trial By Judge Alone (Miscellaneous Provisions) Act, 2024."

(b) in section 152, by the insertion —

(i) after the word "jury" where it appears the first time, of the words "where he does not elect to be tried by judge alone";

(ii) after the word "jury" where it appears the second time, of the words "or the judge as the case may be";

(c) in section 155—

(i) by the deletion of subsection (2) and the substitution of the following—

"(2) If it appears, before or upon arraignment, that an accused person may be insane, the court may order a jury to be empanelled to try his sanity or the issue of his insanity may be determined by the judge as the case may be, and the jury or the judge shall thereupon, after hearing evidence for that purpose, find whether he is or is not insane and unfit to stand his trial.";

(ii) by the insertion of the following as subsection (3)—

"(3) Where the finding of the jury or the judge, as the case may be, is that the accused person is insane and unfit to stand his trial, the provisions of section 192 of this Code shall apply.";

(d) in section 158 —

(i) by the deletion of subsection (3), and the substitution of the following —

" (3) Upon the trial of an issue to which this section refers, the judge shall determine whether in law the accused was convicted or liable to be convicted of any offence of which he stands charged or may be convicted on the count to which he has pleaded *autrefois* acquit or *autrefois* convict; but any issue of fact arising in relation thereto shall, subject to subsection (4), be for the determination by the jury and the judge may, if he shall think fit, require the jury to return a special verdict in relation thereto."

(ii) by the insertion of the following as subsection (4) —

"(4) Where the accused person has elected to be tried by judge alone, the determination of any issue of fact arising in relation to whether he was convicted or liable in law to be convicted of any offence of which he stands charged or may be convicted on any count to which he pleaded *autrefoi*s acquit or *autrefois* convict, shall be determined by the judge who may return a special verdict in relation thereto.";

(e) in section 162 —

(i) by the deletion of subsection (2) and the substitution of the following —

"(2) Subject to the provisions of subsection (1), when the accused is given in charge of the jury or where the accused elects to be tried by judge alone, the trial shall proceed continuously. Upon any adjournment, the court may in all cases where the accused is being tried by jury, if it thinks fit, direct that during the adjournment the jury shall be kept together, and proper provision made for them for preventing them from holding communication with anyone on the subject of the trial, and the direction shall be given in all cases in which the accused might upon conviction be sentenced to death.";

(ii) in the proviso to subsection (3), by the insertion of the words "before a jury" appearing after the word "trial";

(f) in section 164 —

(i) by the insertion after the word "sworn" of the words "or where the accused elects trial by judge alone" ;

(ii) by the insertion after the word "jury" of the words " or the judge as the case may be";

(iii) by the insertion after the word "say", of the words "to the jury where the accused person is being tried by jury";

(g) in section 165, by the deletion of the section and the substitution of the following —

"**165. Case for the prosecution**.

Where the accused is to be tried by jury and has been given in charge of the jury, and the jury has been sworn, or where the accused has elected to be tried by judge alone, the counsel for the prosecution may open the case against the accused and adduce evidence in support of the charge.";

(h) in section 168(3), by the insertion of the words “or the judge as the case may be,” after the word “jury”;

(i) in section 173(10), by the insertion of the words “or itself take into account as the case may be” after the word “jury”;

(j) in section 177, by the insertion after the word “trial” at the end of the section, of the words “, where the accused is being tried by jury, or if by judge alone, postpone the trial”;

(k) in section 179, by the deletion of the section, and the substitution of the following—

“179. Summing up by the judge.

When the case on both sides are closed, the judge shall, as necessary, sum up the law to the jury unless the accused has elected to be tried by judge alone.”;

(l) in section 180 —

(i) by the insertion after the word “jury” of the words “or the judge as the case may be”;

(ii) by the deletion of the words “their verdict” and the substitution of the words “the verdict” ;

(m) in section 181—

(i) by the insertion after the words “court,” of the words “or when returned by the judge as the case may be,”;

(ii) by the insertion after the word “discharged” of the words “where the accused is being tried by jury”;

(n) in section 182, by the deletion of the section, and the substitution of the following—

“182. Verdict of not guilty.

Where the accused is tried by jury, or by judge alone, and is found not guilty, he shall be immediately discharged from custody on that information.”;

(o) in section 191, by the insertion after the word “jury” wherever it appears of the words, “or judge”;

(p) in section 214 (1), by the insertion after the word “jury” wherever it appears of the words “or by judge alone”;

(q) in the proviso to paragraph 12 of the Second Schedule by the insertion after the word “jury”, of the words “,or the judge as the case may be,”.

14. Amendment of the Capital Punishment Procedure Act (Ch. 94).

Section 15 of the Capital Punishment Procedure Act is amended as follows —

(a) in subsection (2), by the insertion of the words "or the judge as the case may be." after the word "jury";

(b) in subsection (4) —

(i) by the insertion of the words "or the judge as the case may be" after the word "jury" where it appears the first time; and

(ii) by the insertion of the words, "or the judge" after the word "jury" where it appears the second time.

15. Amendment of the Child Protection Act (Ch.132).

Section 120(4) of the Child Protection Act is amended by the insertion of the words ", or by a judge of the Supreme Court alone", after the word "jury".

16. Amendment of the Firearms Act (Ch. 213).

The Firearms Act is amended in section 34(5), by the insertion after the word "jury" wherever it appears, of the words " or a judge of the Supreme Court alone".

Schedule

(sections 4(4), 4(5) and 4(6))

Form A

The Commonwealth of The Bahamas

In the Supreme Court

Information No.

The King

v

AB – The Accused

Certificate of Confirmation of Legal Advice on Electing Trial by Judge Alone

I ……..., the Accused, confirm that I have sought and received legal advice from the undersigned counsel and attorney on electing to be tried by judge alone.

The undersigned counsel and attorney has advised me of my rights, of possible defences, of the penalties, consequences, and implications of electing to be tried by judge alone.

I have had sufficient time to confer with the undersigned counsel and attorney concerning this mode of trial and I understand the implications of electing to be tried by judge alone and agree to be so tried without reservation.

No promise, inducement, threat, coercion or force of any kind was employed by anyone to secure my election of this mode of trial.

I voluntarily and of my free will, agree to be tried by judge alone.

Dated this…… day of ……..., 20……..

……..	. ……
Name of Accused	Name of counsel and attorney
(BLOCK CAPITALS)	(BLOCK CAPITALS)
(Signature)	(Signature)
……. …	…….
Accused	Counsel and attorney

Form B

The Commonwealth of The Bahamas

In the Supreme Court

Information No.

The King

v

AB - The Accused

Certificate of Waiver of Legal Advice on Electing Trial by Judge Alone

I …….....the Accused, confirm that I have not sought and received legal advice from a counsel and attorney on electing to be tried by judge alone and I have waived my right to consult a counsel and attorney for legal advice in relation to trial by judge alone.

I elect to be tried by judge alone and agree to it without reservation.

No promise, inducement threat, coercion or force of any kind was employed by anyone to secure my election of this mode of trial.

I voluntarily and of my free will, agree to be tried by judge alone, and I am satisfied with representing myself in this matter of election.

Dated this…… day of ……..., 20……..

……..

Name of Accused

(BLOCK CAPITALS)

(Signature)

……. …

Accused