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SRI LANKA**

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SUPPLEMENT

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**CODE OF CRIMINAL PROCEDURE
(AMENDMENT)**

A

BILL

to amend the Code of Criminal Procedure Act, No. 15 of 1979

Ordered to be published by the Minister of Justice

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STATEMENT OF LEGAL EFFECT

Clause 2: This clause amends the Code of Criminal Procedure Act, No. 15 of 1979 (hereinafter referred to as the “principal enactment”), by inserting new section 144A in that Act and the legal effect of the amendment is to make provisions to empower the Magistrate to dispense the personal attendance of a suspect or accused in court under the circumstances specified in that section.

Clause 3: This clause amends section 241 of the principal enactment and is consequential to the amendment made by clause 4.

Clause 4: This clause amends the principal enactment, by inserting new section 241A in that enactment and the legal effect of the amendment is to make provisions to empower the Judge of the High Court to dispense the personal attendance of an accused in court under the circumstances specified in that section.

L. D.- O 5/2018

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows: -

5 2. The following new section is hereby inserted immediately after section 144 of the Code of Criminal Procedure Act, No. 15 of 1979 (hereinafter referred to as the “principal enactment”) and shall have effect as section 144A of that Act:-

Insertion of
new section
144A in Act,
No. 15 of
1979

20 (2) The personal attendance of the suspect or accused may be so dispensed with, on an application made by the relevant person, as specified in subsection (3), if the Magistrate is satisfied that the personal attendance of such suspect or accused in court may be dispensed with, on any one or more of the grounds specified in subsection (4).

25 (3) An application under subsection (2), in
respect of a suspect or accused, shall be
made by –

- (a) the Attorney General;
 - (b) the suspect or accused himself, or his Attorney-at-Law, as the case may be;
 - 5 (c) the officer in charge of the relevant police station; or
 - (d) the Superintendent of the prison wherein the suspect or accused is detained.
- 10 (4) The Magistrate may dispense with the personal attendance of the suspect or accused under subsection (1), on the following grounds:-
- 15 (a) where there is a threat or an apprehension of serious harm to, the life of the suspect or accused;
 - (b) where public reaction to the offence alleged to have been committed by the suspect or accused is likely to
 - 20 give rise to a breach of the peace;
 - (c) where there is a likelihood of the suspect or accused escaping from detention or being involuntarily removed from detention;
 - 25 (d) where there is a likelihood of the suspect or accused obstructing the proceedings of court;

5 (e) where the suspect or accused has been subjected to a state of quarantine under any written law in order to prevent the spread of an infectious or contagious disease dangerous to life;

10 (f) where the personal attendance of a suspect or an accused who has been admitted to compulsory rehabilitation in terms of the provisions of any written law causes interruption to the rehabilitation process of such suspect or accused and the purpose of the attendance of
15 the suspect or accused is to extend the period of detention; or

20 (g) where the personal attendance of the suspect or accused is likely to pose a threat to the public safety and health due to a pandemic or other similar situation prevailing for the time being:

25 Provided however, where the Magistrate is of the opinion that a ground specified in subsection (4) has ceased to exist, he may direct the personal attendance of the suspect or accused in court and enforce his attendance in manner hereinbefore provided.

30 (5) Where a Magistrate dispenses with the personal attendance of a suspect or an accused in court, under subsection (1), the reasons for the same shall be recorded in writing and such suspect or accused shall–

(a) have the right to be represented in court by an Attorney-at-Law; and

5 (b) be permitted to make his representation and to observe the proceedings instituted by, on behalf of, or relating to such suspect or accused through contemporaneous or near contemporaneous audio-visual linkage.

10 (6) (a) The Registrar of the Magistrate's Court shall make necessary arrangements in the Court to facilitate the suspect or accused to make his representation and to observe the proceedings in accordance with the provisions
15 of subsection (5).

(b) The Superintendent of the prison wherein such suspect or accused is detained or the officer-in-charge of the place of detention wherein such person is detained, shall in
20 consultation with the Registrar of the Magistrate's Court provide necessary facilities to such suspect or accused being detained, to make his representation and to observe the proceedings of the Court as referred to in
25 paragraph (a).

(c) For the purpose of this subsection "place of detention" means any detention facility within the meaning of any written law and shall include any Quarantine Centre within
30 the meaning of the Quarantine and Prevention

5 of Diseases Ordinance (Chapter 222) and any Treatment and Rehabilitation Centre within the meaning of the Drug Dependent Persons (Treatment and Rehabilitation) Act, No. 54 of 2007.

10 (7) Where the place of detention of such suspect or accused is within the judicial division of the Magistrate who dispensed with the personal attendance of such suspect or accused in court, such Magistrate shall visit such place of detention not later than forty-eight hours of calling the case, and shall look into the well-being of the suspect or accused so detained.

15 (8) Where the place of detention of the suspect or accused is situated outside the judicial division of the Magistrate who dispensed with the personal attendance of such suspect or accused in court, it shall be the duty of such Magistrate to forthwith communicate, in the prescribed Form, with the Magistrate having jurisdiction over the relevant judicial division and request him to visit the place of detention of the suspect or accused, for the purpose referred to in subsection (7).

30 (9) Where the Magistrate within whose judicial division the place of detention of the suspect or accused is situated, is unable to visit the place of detention, it shall be the duty of such Magistrate to forthwith communicate, in the prescribed Form, with any other Magistrate and request him to visit the place of detention of the suspect or accused for the purpose referred to in subsection (7).

5 (10) Any Magistrate who has been
communicated with under subsection (8) or (9)
shall visit the place of detention of the suspect
or accused not later than forty- eight hours of
the receipt of the Form calling on him to visit
such place, and report back in writing within
one week of such visit to the Magistrate who
dispensed with the personal attendance of the
suspect or accused, of such visit in the Form
10 prescribed in that behalf.

15 (11) It shall be the duty of the
Superintendent of a prison to produce any such
suspect or accused so detained, before the
Magistrate who visits the prison in terms of the
provisions of subsection (7), (8) or (9) and to
provide such Magistrate with the facilities
required by him.

20 (12) Where a Magistrate visits a prison to
look into the well-being of a suspect or accused
in terms of the provisions of subsection (7), (8)
or (9), an Attorney-at-Law who represents such
suspect or accused shall be permitted to be
present at the time of such visit.”.

25 **3.** Section 241 of the principal enactment is hereby
amended as follows:–

Amendment
of section
241 of the
principal
enactment

- (1) in paragraph (b) of subsection (1) thereof, by the
substitution for the words “to serve indictment on
him.” of the words “ to serve indictment on
him; or”;
- 30 (2) by the addition immediately after paragraph (b) of
subsection (1) of the following new paragraph:–

“(c) that the personal attendance of such person in court shall be dispensed with having regard to the provisions of section 241A.”.

5 4. The following new section is hereby inserted immediately after section 241 of the principal enactment and shall have effect as section 241A of that enactment:-

Insertion of
new section
241A in the
principal
enactment

10 “Personal attendance of the accused may be dispensed with, under special circumstances 241A. (1) The Judge of the High Court presiding at the sessions of the High Court of the relevant judicial zone may having regard to the provisions of subsection (4), dispense with the personal attendance in court of an accused in respect of whom the trial, is pending, or has been commenced, with or without a jury before such Court.

15 (2) The personal attendance of the accused may be so dispensed with, on an application made by the relevant person, as specified in subsection (3), if the Judge is satisfied that the personal attendance of such accused in court
20 may be dispensed with, on any one or more of the grounds specified in subsection (4).

(3) An application under subsection (2), in respect of an accused, shall be made by –

- 25 (a) the Attorney General;
- (b) the accused himself, or his Attorney-at-Law, as the case may be; or
- (c) the Superintendent of the prison wherein the accused is detained.

(4) The Judge may dispense with the personal attendance of the accused under subsection (1), on the following grounds:—

- 5 (a) where there is a threat or an apprehension of serious harm to, the life of the accused;
- 10 (b) where public reaction to the offence alleged to have been committed by the accused is likely to give rise to a breach of the peace;
- 15 (c) where there is a likelihood of the accused escaping from detention or being involuntarily removed from detention;
- 20 (d) where there is a likelihood of the accused obstructing the proceedings of court;
- 25 (e) where the accused has been subjected to a state of quarantine under any written law in order to prevent the spread of an infectious or contagious disease dangerous to life; or
- (f) where the personal attendance of the accused is likely to pose a threat to the public safety and health due to a pandemic or other similar situation prevailing for the time being:

30 Provided however, where the Judge is of the opinion that a ground specified in subsection (4) has ceased to exist, he may direct the

personal attendance of the accused in court and enforce his attendance in manner hereinbefore provided.

5 (5) Where a Judge of the High Court dispenses with the personal attendance of an accused in Court, under subsection (1), the reasons for the same shall be recorded in writing and such accused shall be –

10 (a) represented in court by an Attorney-at-Law; and

15 (b) permitted to make his representation and to observe the proceedings instituted by, on behalf of, or relating to such accused through contemporaneous or near contemporaneous audio-visual linkage.

20 (6) (a) The Registrar of the High Court shall make necessary arrangements in the Court to facilitate the accused to make his representation and to observe the proceedings in accordance with the provisions of subsection (5).

25 (b) The Superintendent of the prison wherein such accused is detained or the officer-in-charge of the place of detention wherein such person is detained, shall in consultation with the Registrar of the High Court provide necessary facilities to such accused being detained, to make his representation and to observe the proceedings of the Court as referred to in paragraph (a).

30

5 (c) For the purpose of this subsection
 “place of detention” means any detention
 facility within the meaning of any written law
 and shall include any Quarantine Centre within
 the meaning of the Quarantine and Prevention
 of Diseases Ordinance (Chapter 222) and any
 Treatment and Rehabilitation Centre within
 the meaning of the Drug Dependent Persons
 (Treatment and Rehabilitation) Act, No. 54 of
10 2007.

15 (7) Where the place of detention of such
 accused is within the judicial zone of the Judge
 who dispensed with the personal attendance
 of such accused in court, such Judge shall visit
 such place of detention not later than forty-
 eight hours of calling the case, and shall look
 into the well-being of the accused so detained.

20 (8) Where the place of detention of the
 accused is situated outside the judicial zone of
 the Judge who dispensed with the personal
 attendance of such accused in court, it shall be
 the duty of such Judge to forthwith
 communicate, in the prescribed Form, to the
 High Court Judge having jurisdiction over the
25 relevant judicial zone and request him to visit
 the place of detention of the accused, for the
 purpose referred to in subsection (7).

30 (9) Where the Judge within whose judicial
 zone the place of detention of the accused is
 situated, is unable to visit the place of
 detention, it shall be the duty of such Judge to
 forthwith communicate, in the prescribed
 Form, to any other High Court Judge and
 request him to visit the place of detention of
35 the accused for the purpose referred to in
 subsection (7).

5 (10) Any High Court Judge who has been
communicated with under subsection (8) or (9)
shall visit the place of detention of the accused
not later than forty-eight hours of the receipt
of the Form calling on him to visit such place,
and report back in writing within one week of
such visit to the Judge who dispensed with the
personal attendance of the accused, of such
visit in the Form prescribed in that behalf.

10 (11) It shall be the duty of the
Superintendent of a prison to produce any such
accused so detained, before the Judge who visits
the prison in terms of the provisions of
subsection (7), (8) or (9) and to provide such
15 Judge with the facilities required by him.

(12) Where a Judge visits a prison to look
into the well-being of an accused in terms of
the provisions of subsection (7), (8) or (9), an
Attorney-at-Law who represents such accused
20 shall be permitted to be present at the time of
such visit.”.

5. In the event of any inconsistency between the Sinhala and the Tamil texts of this Act, the Sinhala text shall prevail.

Sinhala text
to prevail in
case of
inconsistency

