

- (1) the part of the charge stating the previous conviction must not be read out in court¹, nor must the accused be asked whether he has been previously convicted as alleged in the charge unless and until he has either pleaded guilty to or been convicted of the subsequent offence;
- (2) if he pleads guilty to or is convicted of the subsequent offence, he must then be asked whether he has been previously convicted as alleged in the charge;
- (3) if he answers that he has been so previously convicted, the court may proceed to pass sentence² on him accordingly, but if he denies that he has been so previously convicted or refuses to or does not answer such question, the court must inquire concerning such previous conviction³.

1 As to syariah courts see [400.024] and following.

2 As to sentences see [400.550]-[400.555].

3 Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) s 102(a)-(c); Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) s 102(a)-(c); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003) s 102(a)-(c); Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) s 102(a)-(c).

As to the usual trial procedure see [400.525].

[400.527] Procedure where accused is suspected to be of unsound mind When a judge¹ holding an inquiry or a trial has reason to suspect that the accused person is of unsound mind and consequently incapable of making his defence, he must in the first instance investigate the fact of such unsoundness². It will be unnecessary for the accused to be present at such investigation and the judge may receive as evidence a certificate in writing signed by a Government medical officer stating that the accused is in his opinion of unsound mind or is a proper person to be detained for observation in a mental hospital³, or if he sees fit, such judge may take oral evidence from a Government medical officer on the state of mind of such accused person⁴.

Where the judge is dissatisfied as to the ability of the accused to make his defence, he may postpone the inquiry or trial and must remand such person for a period not exceeding one month to be detained for observation in any mental hospital in Malaysia⁵. Prior to the expiry of the period in the mental hospital where the accused is kept for observation, the Medical Superintendent of the mental hospital must certify under his hand to the court⁶ his opinion as to accused's state of mind; or if he is unable within such period to form any definite conclusion, he must so certify to the court and ask for a further remand which may extend to a period of two months⁷. The Syariah prosecutor⁸ also may at any stage of the proceedings prior to the trial, order that any accused person whom he suspects to be of unsound mind be sent to a mental hospital for observation⁹.

If the Medical Superintendent certifies that the accused person is of sound mind and capable of making his defence, the judge must proceed with the trial¹⁰. However, if the Medical Superintendent certifies that the accused person is of unsound mind and incapable of making his defence, the court must, if satisfied of the fact, find accordingly and thereupon the trial must be postponed¹¹. If the accused person is certified to be of unsound mind and incapable of making his defence, it will not be necessary for him to be present in court during the proceedings and the court may order his discharge or acquittal¹².

- 1 As to Syariah court judges see [400.038]-[400.046].
- 2 Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) s 180(1); Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) s 180(1); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003) s 184(1); Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) s 180(1).
As to the usual trial procedure see [400.525].
- 3 For these purposes, 'mental hospital' mean a mental hospital established or maintained under the Mental Disorders Ordinance 1952 (repealed by the Mental Health Act 2001 (Act 615)); Syariah Criminal Procedure (Federal Territories) Act 1997 s 180(11); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 180(11); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 184(11); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 180(11).
- 4 Syariah Criminal Procedure (Federal Territories) Act 1997 s 180(2); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 180(2); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 184(2); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 180(2).
- 5 Syariah Criminal Procedure (Federal Territories) Act 1997 s 180(3); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 180(3); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 184(3); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 180(3).
- 6 As to syariah courts see [400.024] and following.
- 7 Syariah Criminal Procedure (Federal Territories) Act 1997 s 180(4); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 180(4); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 184(4); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 180(4).
- 8 As to Syariah prosecutors see [400.049].
- 9 See the Syariah Criminal Procedure (Federal Territories) Act 1997 s 180(5); the Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 180(5); the Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 184(5); the Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 180(5).
- 10 Syariah Criminal Procedure (Federal Territories) Act 1997 s 180(7); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 180(7); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 184(7); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 180(7).
- 11 Syariah Criminal Procedure (Federal Territories) Act 1997 s 180(8); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 180(8); Syariah Criminal

Procedure (Negeri Sembilan) Enactment 2003 s 184(8); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 180(8).

The certificate of the Medical Superintendent will be receivable as evidence: Syariah Criminal Procedure (Federal Territories) Act 1997 s 180(9); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 180(9); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 184(9); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 180(9).

- 12 Syariah Criminal Procedure (Federal Territories) Act 1997 s 180(10); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 180(10); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 184(10); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 180(10).

[400.528] Powers of the court during trial The court has the power to postpone or adjourn a trial and remand the accused in custody¹. The court also may, at any stage of a trial, without previously warning the accused, put such questions to him as the court² considers necessary in order to enable the accused to explain any circumstances appearing in the evidence against him³. The court also may, upon finding the charge⁴ is proved, but where it is of the opinion that having regard to the character, antecedents, age, health or mental condition of the person charged, or the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed, make one of the following orders:

- (1) dismissing the charge or complaint⁵ after such admonition or caution to the offender as to the court seems fit;
- (2) ordering the offender to be detained in a welfare house approved by the Majlis⁶ for such period not exceeding six months as the court considers fit; or
- (3) discharging the offender conditionally on his entering into a bond⁷, with sureties, to be of good behaviour for such period, not exceeding three years, as may be specified in the order, and to appear for the conviction to be recorded and for sentence when called upon at any time during such period⁸.

The court may also, in addition to any such order, order the offender to pay such compensation for injury or for loss, not exceeding RM1,000 or to pay such costs of the proceedings as the court thinks reasonable, or to pay both compensation and costs⁹.

The court also can discharge the accused at any stage of the trial if it considers the charge to be groundless¹⁰.

1 See the Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) s 107(1); the Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) s 107(1); the Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003) s 107(1); the Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) s 107(1).

2 As to syariah courts see [400.024] and following.

3 Syariah Criminal Procedure (Federal Territories) Act 1997 s 105(1); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 105(1); Syariah Criminal

Procedure (Negeri Sembilan) Enactment 2003 s 105(1); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 105(1).

- 4 As to charges see [400.513]–[400.517].
- 5 As to complaints see [400.497].
- 6 As to the Majlis see [400.077]–[400.083].
- 7 As to the meaning of 'bond' see [400.506] note 6.
- 8 Syariah Criminal Procedure (Federal Territories) Act 1997 s 97(2); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 97(2); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 97(2); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 97(2).
- 9 Syariah Criminal Procedure (Federal Territories) Act 1997 s 97(3); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 97(3); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 97(3); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 97(3).
- 10 Syariah Criminal Procedure (Federal Territories) Act 1997 s 96(g); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 96(g); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 96(g); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 96(g).

[400.529] Particulars to be recorded During a trial, the judge¹ has to record the particulars of each case² which must be authenticated by the signature of the judge and filed in such manner as the Chief Syariah Judge³ may direct⁴. The record forms an important source of reference if a case is brought on appeal.

- 1 As to Syariah court judges see [400.038]–[400.046].
- 2 See the Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) s 100(1),(2); the Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) s 100(1), (2); the Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003) s 100(1), (2); the Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) s 100(1), (2).
- 3 As to the Chief Syariah Judge see [400.039].
- 4 Syariah Criminal Procedure (Federal Territories) Act 1997 s 100(3); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 100(3); the Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 100(3); the Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 100(3).

[400.530] Right of the accused person to be defended during trial The accused has a right to be defended by a *peguam Syarie*¹. If the accused is not represented by a *peguam Syarie*, the court must inform him of his right to take an oath and its effect, or of his right to give evidence on his own behalf, and if he elects to do so, must call his attention to the principal points of the prosecution's evidence against him so that he may have an opportunity of explaining them².

- 1 Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) s 104; Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) s 104; Sya-

riah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003) s 104; Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) s 104. As to the right to be defended see also [400.507]; and as to *peguam Syarie* see [400.052]-[400.057].

- 2 Syariah Criminal Procedure (Federal Territories) Act 1997 s 106(1); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 106(1); the Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 106(1); the Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 106(1).

[400.531] Mode of taking and recording evidence All evidence taken must be in the presence of the accused¹. It must be taken down in legible handwriting by the presiding judge² and will form part of the record of proceeding³. The evidence taken must be taken in the form of a narrative⁴. The judge may record any remark which is material to the demeanour of witness while they are under examination⁵. The judge may also authorise any other person⁶ to take down notes of evidence and this will form part of the record of the proceedings⁷.

- 1 Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) s 111; Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) s 111; Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003) s 112; Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) s 111.
- 2 As to Syariah court judges see [400.038]-[400.046].
- 3 Syariah Criminal Procedure (Federal Territories) Act 1997 s 113; Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 113; the Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 114; the Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 113.
- 4 Syariah Criminal Procedure (Federal Territories) Act 1997 s 114(1); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 114(1); the Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 115(1); the Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 114(1).
- 5 Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) s 116; Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 116; the Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 117; the Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 116.
- 6 Eg the Assistant Registrar or an officer of the court. As to the officers of the Syariah court see [400.047]-[400.057].
- 7 See the Syariah Criminal Procedure (Federal Territories) Act 1997 s 117; the Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 117; the Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 118; the Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 117.

[400.532] Rights of the prosecutor The prosecutor has a right to decline to prosecute further at any stage of a trial prior to the delivery of the judgment and the accused person may be discharged of the charge¹ by the court². Such discharge does not amount to an acquittal³ unless the court so directs⁴.

- 1 As to charges see [400.513]-[400.517]. As to discharge see [400.528].
- 2 See the Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) s 103(1); Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) s 103(1); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003) s 103(1); Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) s 103(1). As to syariah courts see [400.024] and following.
- 3 Which means the accused may be charged and tried again for the same offence.
- 4 Syariah Criminal Procedure (Federal Territories) Act 1997 s 103(2); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 103(2); the Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 103(2); the Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 103(2).

[400.533] Power of court to award compensation The court may, upon the accused person being acquitted and if of the opinion that the information given was frivolous or vexatious, award him compensation¹.

- 1 See the Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) s 99; the Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) s 99; the Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003) s 99; the Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) s 99.

(10) SPECIAL PROVISIONS RELATING TO EVIDENCE

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[400.534] Procedure when person able to give material evidence is dangerously ill Whenever it appears to a judge¹ that any person able to give material evidence either for the prosecution or defence in relation to a seizable offence², is so dangerously ill that it is not practicable to take his evidence according to the usual course of law, that judge may take the deposition of such person provided such reasonable notice as the case admits has been given to the Prosecutor and the accused of the intention to take it and of the time and place at which the judge intends to take it³.

If the accused is in custody, a judge may order the officer in charge of the prison to convey him to the place at the time notified and that officer must convey him accordingly⁴.

When it is proved at the trial of the accused for any offence⁵ to which such deposition relates that the deponent is dead or that for any sufficient cause his attendance cannot be procured, the deposition may be read either for or against the accused, notwithstanding his absence when it was taken, if it is certified under the hand of the judge who took it and the contrary is not proved, or if it is shown by extrinsic evidence that the deponent was at the time of his examination dangerously ill and that the deposition was duly taken at the place and time notified and that reasonable notice of the intention to take it was given to the person against whom it is tendered in evidence, so that he or his *peguam Syarie*⁶ might have been present and might have had, if he had chosen to be present, full opportunity of cross-examination⁷.

- 1 As to Syariah court judges see [400.038]-[400.046].
- 2 For the meaning of 'seizable offence' see [400.496] note 9.
- 3 Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) s 192(1); Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) s 192(1); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003) s 196(1); Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) s 192(1).
- 4 Syariah Criminal Procedure (Federal Territories) Act 1997 s 192(1); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 192(2); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 196(2); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 192(2).
- 5 For the meaning of 'offence' see [400.519] note 1.
- 6 As to *peguam Syarie* see [400.052]-[400.057].
- 7 Syariah Criminal Procedure (Federal Territories) Act 1997 s 192(3); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 192(3); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 196(3); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 192(3).

[400.535] When person bound to give evidence intends to leave Malaysia Whenever it is proved to the satisfaction of a judge¹ that any witness bound to give evidence upon the trial of any seizable offence² intends to leave Malaysia and that the ends of justice would be probably defeated if such person were not present at the trial to give evidence, he may, upon the application of the Chief Syariah Prosecutor³ or accused, and upon due provision being made for his maintenance and for compensating him for his detention and loss of time, commit such person to the civil prison until the trial or until he gives satisfactory security that he will give evidence at the trial⁴.

- 1 As to Syariah court judges see [400.038]-[400.046].
- 2 For the meaning of 'seizable offence' see [400.496] note 9.

- 3 As to the appointment of the Chief Syariah Prosecutor see [400.047].
- 4 Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) s 193; Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) s 193; Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003) s 197; Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) s 193.

[400.536] Reports of certain persons Any document purporting to be a report under the hand of any of the specified persons¹, relating to any person, matter or thing examined or analysed by the person, or any document purporting to be a report under the hand of the Registrar of Criminals upon any matter or thing relating to finger impressions submitted to him for report, may be given in evidence in any trial or other proceedings unless such person or Registrar is required to attend as a witness by the court or by the accused, in which case the accused must give notice to the Chief Syariah Prosecutor² or the Syariah prosecutor³ not less than three clear days before the commencement of the trial⁴.

However, in any case in which a Syariah Prosecutor intends to give in evidence any such report, he must deliver a copy of it to the accused not less than ten clear days before the commencement of a trial⁵.

- 1 The persons mentioned are as follows:
 - (1) officers of the Institute for Medical Research;
 - (2) Government medical officers;
 - (3) chemists in the employment of the Government of Malaysia;
 - (4) any person appointed by the Minister by notification in the Gazette to be a Document Examiner;
 - (5) Inspector of Weights and Measures appointed as such under any written law relating to weights and measures in force in Malaysia; and
 - (6) any person or class of persons to whom the Yang di-Pertuan Agong by notification in the Gazette declares that the provisions of this section will apply: Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) s 194(2); Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) s 194(2); Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) s 194(2).

In Negeri Sembilan, the Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003) s 198(2) confines to persons mentioned in heads (1) to (4) and (6) above.

These people and the Registrar of Criminals are bound to state the truth in reports made under their hands: Syariah Criminal Procedure (Federal Territories) Act 1997 s 194(3); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 194(3); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 198(3); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 194(3).

As to syariah courts see [400.024] and following.

- 2 As to the appointment of the Chief Syariah Prosecutor see [400.047].
- 3 As to Syariah prosecutors see [400.049].

- 4 Syariah Criminal Procedure (Federal Territories) Act 1997 s 194(1); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 194(1); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 198(1); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 194(1).
- 5 Syariah Criminal Procedure (Federal Territories) Act 1997 s 194(1) proviso; Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 194(1) proviso; Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 198(1) proviso; Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 194(1) proviso.

[400.537] How previous conviction or acquittal may be proved In any trial or other proceedings, a previous conviction or acquittal may be proved in addition to any other mode provided by any law for the time being in force:

- (1) by an extract of the sentence or order certified under the hand of the officer having the custody of the records of the court¹ in any State in Malaysia in which such conviction or acquittal was decided; or
- (2) in the case of a conviction, either by a certificate signed by the officer in charge of the prison in Malaysia in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment under which the punishment was suffered,

together with, in each of such cases, evidence as to the identity of the accused person with the person so convicted or acquitted².

Where the officer in charge of any prison states in any certificate signed by him that the finger prints which appear on such certificate are those of the persons to whom the certificate relates, such certificate will be evidence of the fact so stated³. Every court must presume to be genuine every document purporting to be a certificate of conviction and purporting to be signed by the officer in charge of any prison in Malaysia, and must also presume that the officer by whom such document purports to be signed was when he signed it the officer in charge of the prison mentioned in such document⁴.

- 1 As to syariah courts see [400.024] and following.
- 2 Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) s 195(1); Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) s 195(1); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003) s 199(1); Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) s 195(1).
- 3 Syariah Criminal Procedure (Federal Territories) Act 1997 s 195(2); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 195(2); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 199(2); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 195(2).
- 4 Syariah Criminal Procedure (Federal Territories) Act 1997 s 195(3); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 195(3); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 199(3); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 195(3).

[400.538] Record of evidence in absence of accused Where it is proved that an accused person has absented himself so that there is no immediate prospect of arresting him, the court¹ competent to try such person for the offence² complained of may, in his absence, examine the witnesses, if any, produced on behalf of the prosecution and record their depositions³.

Any deposition recorded may, on the arrest of such person, be given in evidence against him at the trial for the offence with which he is charged, if the deponent is dead or incapable of giving evidence or his attendance could be procured without any amount of delay, expense or inconvenience which under the circumstances of the case would be unreasonable⁴.

- 1 As to syariah courts see [400.024] and following.
- 2 For the meaning of 'offence' see [400.519] note 1.
- 3 Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) s 196(1); Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) s 196(1); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003) s 200(1); Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) s 196(1).
- 4 Syariah Criminal Procedure (Federal Territories) Act 1997 s 196(2); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 196(2); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 200(2); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 196(2).

[400.539] Notice to be given of defence of alibi Evidence in support of a defence of alibi in a criminal trial cannot be admitted unless the accused has given notice in writing thereof to the Chief Syariah Prosecutor¹ or the Syariah prosecutor² at least ten days before the commencement of the trial³. The notice must include particulars of the place where the accused claims to have been at the time of the commission of the offence⁴ with which he is charged, together with the names and addresses of any witnesses whom he intends to call for the purpose of establishing his alibi⁵.

- 1 As to the appointment of the Chief Syariah Prosecutor see [400.047].
- 2 As to Syariah prosecutors see [400.049].
- 3 Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) s 197(1); Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) s 197(1); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003) s 201(1); Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) s 197(1).
- 4 For the meaning of 'offence' see [400.519] note 1.
- 5 Syariah Criminal Procedure (Federal Territories) Act 1997 s 197(2); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 197(2); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 201(2); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 197(2).