



Criminal Justice Act 1988

1988 CHAPTER 33

PART I

EXTRADITION

Preliminary

1 Scope of Part I

- (1) Where extradition procedures under this Part of this Act are available as between the United Kingdom and a foreign state, a person in the United Kingdom who—
- is accused in that state of the commission of an extradition crime; or
 - is alleged to be unlawfully at large after conviction of an extradition crime by a court in that state,
- may be arrested and returned to that state in accordance with those procedures.
- (2) In this Part of this Act—
- “extradition procedures” means the procedures set out in sections 3 to 10 and 12 to 17 below; and
- “extradition arrangements” means arrangements made with a foreign state under which extradition procedures will be available as between the United Kingdom and that state.
- (3) Extradition arrangements may be—
- arrangements of a general nature made with one or more states and relating to the operation of this Part of this Act (in this Part of this Act referred to as “general extradition arrangements”); or
 - arrangements relating to the operation of this Part of this Act in particular cases (in this Part of this Act referred to as “special extradition arrangements”) made with a state with which there are no general extradition arrangements.
- (4) In this Part of this Act “foreign state” means any state other than—
- the United Kingdom;

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- (b) a country mentioned in Schedule 3 to the British Nationality Act 1981 (countries whose citizens are Commonwealth citizens);
- (c) a colony of the United Kingdom; or
- (d) the Republic of Ireland,

but a state which is a party to the European Convention on Extradition done at Paris on 13th December 1957 may be treated as a foreign state for the purposes of this Part of this Act.

- (5) In this Part of this Act “extradition crime” means—
- (a) conduct in the territory of a foreign state which, if it occurred in the United Kingdom, would constitute an offence punishable with imprisonment for a term of 12 months, or any greater punishment, and which, however described in the law of the foreign state, is so punishable under that law; or
 - (b) any conduct which by virtue of subsection (8)(b) below is treated as conduct in the territory of a foreign state and which satisfies the conditions in paragraph (a) above; or
 - (c) an extra-territorial offence against the law of a foreign state which is punishable under that law with imprisonment for a term of 12 months, or any greater punishment, and which satisfies—
 - (i) the condition specified in subsection (6) below; or
 - (ii) all the conditions specified in subsection (7) below.
- (6) The condition mentioned in subsection (5)(c)(i) above is that in corresponding circumstances equivalent conduct would constitute an extra-territorial offence against the law of the United Kingdom punishable with imprisonment for a term of 12 months, or any greater punishment.
- (7) The conditions mentioned in subsection (5)(c)(ii) above are—
- (a) that the foreign state bases its jurisdiction on the nationality of the offender;
 - (b) that the conduct constituting the offence occurred outside the United Kingdom; and
 - (c) that, if it occurred in the United Kingdom, it would constitute an offence under the law of the United Kingdom punishable with imprisonment for a term of 12 months, or any greater punishment.
- (8) For the purposes of this Part of this Act—
- (a) the law of a foreign state includes the law of any part of that state and the law of the United Kingdom includes the law of any part of the United Kingdom; and
 - (b) conduct in a colony or dependency of a foreign state, or a vessel, aircraft or hovercraft of a foreign state, shall be treated as if it were conduct in the territory of that state.
- (9) The amendments of the Extradition Act 1870, the Backing of Warrants (Republic of Ireland) Act 1965 and the Fugitive Offenders Act 1967 contained respectively in Parts I, II and III of Schedule 1 to this Act (which introduce into those Acts provisions corresponding to certain provisions of this Part of this Act) shall have effect.

2 Orders in Council as to arrangements for extradition

- (1) Where general extradition arrangements have been made, Her Majesty may, by Order in Council reciting or embodying their terms, direct that extradition procedures shall be available as between the United Kingdom and the foreign state, or any foreign state,

with whom they have been made, subject to the limitations, restrictions, exceptions and qualifications, if any, contained in the Order.

- (2) An Order in Council under this section shall not be made unless the general extradition arrangements to which it relates—
 - (a) provide for their determination after the expiration of a notice given by a party to them and not exceeding one year or for their denunciation by means of such a notice; and
 - (b) are in conformity with the provisions of this Part of this Act, and in particular with the restrictions on return contained in this Part of this Act.
- (3) An Order in Council under this section shall be conclusive evidence that the arrangements therein referred to comply with this Part of this Act and that this Part of this Act applies in the case of the foreign state, or any foreign state, mentioned in the Order.
- (4) An Order in Council under this section shall be laid before Parliament after being made.
- (5) An Order in Council under this section which does not provide that a person may only be returned to the foreign state requesting his return if the court before which he is brought under section 6 below is satisfied that the evidence would be sufficient to warrant his trial if the extradition crime had taken place within the jurisdiction of the court shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) On the commencement of this Part of this Act the power conferred by section 2 of the Extradition Act 1870 to direct that that Act shall apply in the case of a foreign state shall cease to be exercisable, but nothing in this Part of this Act affects any Order in Council made under that section or the operation of any enactment in relation to a foreign state in whose case an Order in Council under that section is in force.

3 General restrictions on return

- (1) A person shall not be returned to a foreign state under this Part of this Act, or committed to or kept in custody for the purposes of such return, if it appears to an appropriate authority—
 - (a) that the offence of which that person is accused or was convicted is an offence of a political character;
 - (b) that it is an offence under military law which is not also an offence under the general criminal law;
 - (c) that the request for his return (though purporting to be made on account of an extradition crime) is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions; or
 - (d) that he might, if returned, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions.
- (2) A person who is alleged to be unlawfully at large after conviction of an extradition crime by a court in a foreign state shall not be returned to that state, or committed to or kept in custody for the purposes of such return, if it appears to an appropriate authority—
 - (a) that the conviction was obtained in his absence; and

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- (b) that it would not be in the interests of justice to return him to the foreign state on the ground of that conviction.
- (3) A person accused of an offence shall not be returned to a foreign state, or committed to or kept in custody for the purposes of such return, if it appears to an appropriate authority that if charged with that offence in the United Kingdom he would be entitled to be discharged under any rule of law relating to previous acquittal or conviction.
- (4) A person shall not be returned to a foreign state, or committed to or kept in custody for the purposes of such return, unless provision is made by the law of that state, or by an arrangement made with that state, for securing that he will not, unless he has first had an opportunity to leave that state, be dealt with in that state for or in respect of any offence committed before his return to it other than—
 - (a) the offence in respect of which his return is ordered;
 - (b) an offence, other than an offence excluded by subsection (5) below, which is disclosed by the particulars furnished under section 4(2)(b) below; or
 - (c) subject to subsection (6) below, any other offence being an extradition crime in respect of which the Secretary of State may consent to his being dealt with.
- (5) The offences excluded from paragraph (b) of subsection (4) above are offences in relation to which an order for the return of the person concerned could not lawfully be made in accordance with the provisions of this Part of this Act.
- (6) The Secretary of State may not give consent under paragraph (c) of that subsection in respect of an offence in relation to which it appears to him that an order for the return of the person concerned could not lawfully be made, or would not in fact be made, in accordance with the provisions of this Part of this Act.
- (7) In this Part of this Act “appropriate authority” means—
 - (a) the Secretary of State;
 - (b) the court of committal;
 - (c) the High Court or High Court of Justiciary on an application for habeas corpus or for review of the order of committal.

Procedure

4 Extradition request and authority to proceed

- (1) Subject to the provisions of this Part of this Act relating to provisional warrants, a person shall not be dealt with under this Part of this Act except in pursuance of an order of the Secretary of State (in this Part of this Act referred to as an “authority to proceed”) issued in pursuance of a request (in this Part of this Act referred to as an “extradition request”) for the surrender of a person under this Part of this Act made by some person recognised by the Secretary of State as a diplomatic representative of a foreign state.
- (2) There shall be furnished with any such request—
 - (a) particulars of the person whose return is requested;
 - (b) particulars of the offence of which he is accused or was convicted (including information sufficient to justify the issue of a warrant for his arrest under this Part of this Act);

- (c) in the case of a person accused of an offence, a warrant for his arrest issued in the foreign state; and
 - (d) in the case of a person unlawfully at large after conviction of an offence, a certificate of the conviction and sentence,
- and copies of them shall be served on the person whose return is requested before he is brought before a court under section 6 below.
- (3) Rules under section 144 of the Magistrates' Courts Act 1980 may make provision as to the procedure for service under subsection (2) above in England and Wales.
 - (4) The High Court of Justiciary may, by Act of Adjournal, make rules as to the procedure for service under subsection (2) above in Scotland.
 - (5) On receipt of any such request the Secretary of State may issue an authority to proceed unless it appears to him that an order for the return of the person concerned could not lawfully be made, or would not in fact be made, in accordance with the provisions of this Part of this Act.
 - (6) An authority to proceed shall specify the offence or offences under the law of the United Kingdom which it appears to the Secretary of State would be constituted by equivalent conduct in the United Kingdom.
 - (7) In this Part of this Act “warrant”, in the case of any foreign state, includes any judicial document authorising the arrest of a person accused or convicted of a crime.

5 Arrest for purposes of committal

- (1) For the purposes of this Part of this Act a warrant for the arrest of a person accused in a foreign state of an extradition crime, or alleged to be unlawfully at large after conviction in a foreign state of an extradition crime, may be issued—
 - (a) on the receipt of an authority to proceed, by—
 - (i) the chief metropolitan stipendiary magistrate or metropolitan stipendiary magistrate designated for the purposes of this Part of this Act by the Lord Chancellor; or
 - (ii) the sheriff of Lothian and Borders;
 - (b) without such an authority—
 - (i) by a metropolitan stipendiary magistrate;
 - (ii) by a justice of the peace in any part of the United Kingdom; and
 - (iii) in Scotland, by a sheriff,upon information that the said person is or is believed to be in or on his way to the United Kingdom;and any warrant issued by virtue of paragraph (b) above is in this Part of this Act referred to as a “provisional warrant”.
- (2) A person empowered to issue warrants of arrest under this section may issue such a warrant if he is supplied with such information as would in his opinion authorise the issue of a warrant for the arrest of a person accused of conduct which would constitute an offence punishable under the law of the United Kingdom with imprisonment for a period of not less than 12 months or, as the case may be, of a person alleged to be unlawfully at large after conviction of such an offence within his jurisdiction.
- (3) Where a provisional warrant is issued under this section, the authority by whom it is issued shall forthwith give notice to the Secretary of State, and transmit to him the

information, or certified copies of the information, upon which it was issued; and the Secretary of State may in any case, and shall, if he decides not to issue an authority to proceed in respect of the person to whom the warrant relates, by order cancel the warrant and, if that person has been arrested under it, discharge him from custody.

- (4) A warrant of arrest issued under this section may, without being backed, be executed in any part of the United Kingdom and may be so executed by any person to whom it is directed or by any constable.

6 Proceedings for committal

- (1) A person arrested in pursuance of a warrant under section 5 above shall (unless previously discharged under subsection (3) of that section) be brought as soon as practicable before a court (in this Part of this Act referred to as “the court of committal”) consisting of the chief metropolitan stipendiary magistrate or a metropolitan stipendiary magistrate designated as mentioned in section 5(1)(a) above or the sheriff of Lothian and Borders, as may be directed by the warrant.
- (2) For the purposes of proceedings under this section the court of committal shall have the like jurisdiction and powers, as nearly as may be, including power to remand in custody or on bail, as a magistrates' court acting as examining justices.
- (3) For the purposes of proceedings under this section a court of committal in Scotland shall have the like powers, including power to adjourn the case and meanwhile to remand the person arrested under the warrant either in custody or on bail, and the proceedings shall be conducted as nearly as may be in the like manner, as if the proceedings were summary proceedings in respect of an offence alleged to have been committed by that person; and the provisions of the Legal Aid (Scotland) Act 1986 relating to such proceedings or any appellate proceedings following thereon shall apply accordingly to that person.
- (4) Where an Order in Council such as is mentioned in subsection (8) below is in force in relation to the foreign state, there is no need to furnish the court of committal with evidence sufficient to warrant the trial of the arrested person if the extradition crime had taken place within the jurisdiction of the court.
- (5) Where the person arrested is in custody by virtue of a provisional warrant and no authority to proceed has been received in respect of him, the court of committal may fix a period (of which the court shall give notice to the Secretary of State) after which he will be discharged from custody unless such an authority has been received.
- (6) In exercising the power conferred by subsection (5) above in a case when the extradition request is made under general extradition arrangements the court shall have regard to any period specified for the purpose in the Order in Council relating to the arrangements.
- (7) Where—
- (a) the extradition request is made under general extradition arrangements but no period is so specified; or
 - (b) the application is made under special extradition arrangements,
- the court of committal may fix a reasonable period.
- (8) Where an authority to proceed has been issued in respect of the person arrested and the court of committal is satisfied, after hearing any representations made in support of the

extradition request or on behalf of that person, that the offence or any of the offences to which the authority relates is an extradition crime, and is further satisfied—

- (a) where that person is accused of the offence, unless an Order in Council giving effect to general extradition arrangements otherwise provides, that the evidence would be sufficient to warrant his trial if the extradition crime had taken place within the jurisdiction of the court;
- (b) where that person is alleged to be unlawfully at large after conviction of the offence, that he has been so convicted and appears to be so at large,

the court, unless his committal is prohibited by any other provision of this Part of this Act, shall commit him—

- (i) to await the Secretary of State's decision as to his return to the foreign state that made the extradition request; and
- (ii) if the Secretary of State decides that he shall be returned to that state, to await his return.

(9) If the court commits a person under subsection (8) above, it shall issue a certificate of the offence against the law of the United Kingdom which would be constituted by his conduct.

(10) A person may be committed in the exercise of the power conferred by subsection (8) above either to custody or on bail.

(11) If the court commits a person to custody in the exercise of that power, it may subsequently grant him bail if it considers it appropriate to do so.

(12) If—

- (a) the court is not satisfied as mentioned in subsection (8) above in relation to the person arrested; or
 - (b) his committal is prohibited by a provision of this Part of this Act,
- it shall discharge him.

7 Statement of case by court

(1) If the court of committal refuses to make an order of committal in relation to a person under section 6 above in respect of the offence or, as the case may be, any of the offences, to which the authority to proceed relates, the state seeking the surrender of that person to it may question the proceeding on the ground that it is wrong in law by applying to the court to state a case for the opinion of the High Court or, in Scotland, the High Court of Justiciary on the question of law involved.

(2) If the state seeking his surrender immediately informs the court of committal that it intends to make such an application, the court shall make an order providing for his detention, or directing that he shall not be released except on bail.

(3) Rules of Court may specify—

- (a) a period within which a state must make such an application unless the Court grants a longer period; and
- (b) a period within which the court of committal must comply with such an application.

(4) Where the court of committal fails to comply with an application under subsection (1) above within the period specified in Rules of Court, the High Court or, in Scotland,

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the High Court of Justiciary may, on the application of the state that applied for the case to be stated, make an order requiring the court to state a case.

- (5) The High Court or High Court of Justiciary shall have power—
 - (a) to remit the case to the court of committal to decide it according to the opinion of the High Court or High Court of Justiciary on the question of law; or
 - (b) to dismiss the appeal.
- (6) Where the court dismisses an appeal relating to an offence, it shall by order declare that that offence is not an offence in respect of which the Secretary of State has power to make an order under section 9 below in respect of the person whose return was requested.
- (7) An order made by a metropolitan magistrate under subsection (2) above shall cease to have effect if—
 - (a) the court dismisses the appeal in respect of the offence or all the offences to which it relates; and
 - (b) the state seeking surrender does not immediately—
 - (i) apply for leave to appeal to the House of Lords; or
 - (ii) inform the court that it intends to apply for leave.
- (8) An order made by the sheriff of Lothian and Borders under subsection (2) above shall cease to have effect if the court dismisses the appeal in respect of the offence or all the offences to which it relates.
- (9) In relation to a decision of a court on an appeal under this section, section 1 of the Administration of Justice Act 1960 (right of appeal to House of Lords) shall have effect as if so much of subsection (2) as restricts the grant of leave to appeal were omitted.
- (10) The House of Lords may exercise any powers of the High Court under subsection (5) above and subsection (6) above shall apply to them as it applies to that Court.
- (11) Subject to subsections (7) and (8) above, an order under subsection (2) above shall have effect so long as the case is pending.
- (12) For the purposes of this section a case is pending (unless proceedings are discontinued) until (disregarding any power of a court to grant leave to take any step out of time) there is no step that the foreign state can take.
- (13) In the application to Scotland of this section, subsections (9) and (10) shall be omitted and, in relation to an appeal under this section in Scotland, the court may make an order providing for the detention of the person to whom it relates or it may grant bail; and section 446(2) of the Criminal Procedure (Scotland) Act 1975 shall apply for the purpose of such an appeal as it applies for the purpose of an appeal such as is mentioned in section 444 of that Act.

8 Application for habeas corpus etc

- (1) Where a person is committed under section 6 above, the court shall inform him in ordinary language of his right to make an application for habeas corpus, and shall forthwith give notice of the committal to the Secretary of State.
- (2) A person committed under section 6 above shall not be returned under this Part of this Act—

- (a) in any case, until the expiration of the period of 15 days beginning with the day on which the order for his committal is made;
 - (b) if an application for habeas corpus is made in his case, so long as proceedings on that application are pending.
- (3) Without prejudice to any jurisdiction of the High Court apart from this section, the court shall order the applicant's discharge if it appears to the Court, in relation to the offence, or each of the offences, in respect of which the applicant's return is sought, that—
- (a) by reason of the trivial nature of the offence of which he is accused or was convicted; or
 - (b) by reason of the passage of time since he is alleged to have committed it or to have become unlawfully at large, as the case may be; or
 - (c) because the accusation against him is not made in good faith in the interests of justice,
- it would, having regard to all the circumstances, be unjust or oppressive to return him.
- (4) On any such application the court may receive additional evidence relevant to the exercise of their jurisdiction under section 3 above or subsection (3) above.
- (5) Proceedings on an application for habeas corpus shall be treated for the purposes of this section as pending (unless they are discontinued) until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal.
- (6) In the application of this section to Scotland—
- (a) references to an application for habeas corpus shall be construed as references to an application for review of the order of committal; and
 - (b) the reference to the High Court shall be construed as a reference to the High Court of Justiciary.

9 Order for return to requesting state

- (1) Where a person is committed under section 6 above and is not discharged by order of the High Court or the High Court of Justiciary, the Secretary of State may by warrant order him to be returned to the state by which the extradition request was made unless his return is prohibited, or prohibited for the time being, by this Part of this Act, or the Secretary of State decides under this section to make no such order in his case.
- (2) The Secretary of State shall give the person to whom an order under subsection (1) above would relate notice in writing that he is contemplating making such an order.
- (3) The person to whom such an order would relate shall have a right to make representations, at any time before the expiration of the period of 15 days commencing with the date on which the notice is given, as to why he should not be returned to the foreign state, and unless he waives that right, no such order shall be made in relation to him before the end of that period.
- (4) A notice under subsection (2) above shall explain in ordinary language the right conferred by subsection (3) above.
- (5) It shall be the duty of the Secretary of State to consider any representations made in the exercise of that right.

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- (6) Unless the person to whom it relates waives the right conferred on him by subsection (7) below, he shall not be returned to the foreign state until the expiration of the period of 7 days commencing with the date on which the warrant is issued or such longer period as—
- (a) in England and Wales, rules of court under section 84 of the Supreme Court Act 1981, or
 - (b) in Scotland, the High Court of Justiciary by Act of Adjournal
- may provide.
- (7) At any time within that period he may apply for leave to seek judicial review of the Secretary of State's decision to make the order.
- (8) If he applies for judicial review, he may not be returned so long as the proceedings for judicial review are pending.
- (9) Proceedings for judicial review shall be treated for the purposes of this section as pending (unless they are discontinued) until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal.
- (10) A warrant under this section—
- (a) shall state in ordinary language that the Secretary of State has considered any representations made in the exercise of the right conferred by subsection (3) above; and
 - (b) shall explain in ordinary language the rights conferred by this section on a person whose return to a foreign state has been ordered under this section, and a copy shall be given to the person to whom it relates as soon as the order for his return is made.
- (11) Without prejudice to his general discretion as to the making of an order for the return of a person to a foreign state under this Part of this Act—
- (a) the Secretary of State shall not make an order in the case of any person if it appears to the Secretary of State that—
 - (i) by reason of the trivial nature of the offence of which he is accused or was convicted; or
 - (ii) by reason of the passage of time since he is alleged to have committed it or to have become unlawfully at large, as the case may be; or
 - (iii) because the accusation against him is not made in good faith in the interests of justice,it would, having regard to all the circumstances, be unjust or oppressive to return him; and
 - (b) the Secretary of State may decide not to make an order for the return of a person accused or convicted of an extradition crime constituted by conduct not punishable with death in Great Britain if that person could be or has been sentenced to death for that offence in the state by which the request for his return is made.
- (12) An order for the return of a person to a foreign state under this Part of this Act shall not be made in the case of a person who is serving a sentence of imprisonment or detention, or is charged with an offence, in the United Kingdom—
- (a) in the case of a person serving such a sentence, until the sentence has been served;

- (b) in the case of a person charged with an offence, until the charge is disposed of or withdrawn or unless an order is made for it to lie on the file and, if it results in his serving a term of imprisonment or detention, until the sentence has been served.
- (13) In the application of this section to Scotland, the reference in subsection (12) above to an order being made for the charge to lie on the file shall be construed as a reference to the diet being deserted pro loco et tempore.
- (14) The Secretary of State may decide to make no order under this section for the return of a person committed in consequence of an extradition request if another extradition request has been made in respect of him and it appears to the Secretary of State, having regard to all the circumstances of the case and in particular—
- (a) the relative seriousness of the offences in question;
 - (b) the date on which each such request was made; and
 - (c) the nationality or citizenship of the person concerned and his ordinary residence,
- that preference should be given to that other request.

10 Simplified procedure

- (1) A person may give notice that he waives the rights conferred on him by section 8 above.
- (2) A notice under this section shall be given in England and Wales in the manner prescribed by rules under section 144 of the Magistrates' Courts Act 1980, and, without prejudice to the generality of subsection (1) of that section, the power to make such rules shall include power to make provision for a magistrate to order the committal for return of a person with his consent at any time after his arrest.
- (3) A notice under this section shall be given in Scotland in the manner prescribed by the High Court of Justiciary by Act of Adjournal and the sheriff may order the committal for return of a person with his consent at any time after his arrest.
- (4) Where an order is made under this section, this Part of this Act shall cease to apply to the person in respect of whom it is made, except that, if within one month after the order is made, he is not surrendered to the foreign state to which he is to be returned, the High Court or, in Scotland, the High Court of Justiciary, upon application by or on behalf of that person, may, unless reasonable cause is shown for the delay, order him to be discharged.

11 Special extradition arrangements

- (1) Where special extradition arrangements have been made in respect of a person, extradition procedures shall be available in the case of that person, as between the United Kingdom and the foreign state with whom the arrangements have been made, subject to the limitations, restrictions, exceptions and qualifications, if any, contained in the arrangements.
- (2) If the Secretary of State issues a certificate of special extradition arrangements, it shall be conclusive evidence of all matters stated in it.
- (3) In subsection (2) above “certificate of special extradition arrangements” means a certificate—

- (a) that special extradition arrangements have been made in respect of a person as between the United Kingdom and a foreign state specified in the certificate; and
- (b) that extradition procedures are available in the case of that person as between the United Kingdom and the foreign state to the extent specified in the certificate.

12 Discharge in case of delay

- (1) If a person committed under section 6 above is still in the United Kingdom after the expiration of the relevant period, he may apply to the High Court or the High Court of Justiciary for his discharge.
- (2) Unless he has instituted proceedings for judicial review of the Secretary of State's decision to order his return, the relevant period is—
 - (a) the period of two months beginning with the first day on which, having regard to section 8(2) above, he could have been returned;
 - (b) where a warrant for his return has been issued under section 9 above, the period of one month beginning with the day on which that warrant was issued.
- (3) If he has instituted such proceedings, the relevant period is the period expiring one month after they end.
- (4) Proceedings for judicial review end for the purposes of this section—
 - (a) if they are discontinued, on the date of discontinuance; and
 - (b) if they are determined, on the date on which (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal.
- (5) If upon an application under this section the court is satisfied that reasonable notice of the proposed application has been given to the Secretary of State, the court may, unless sufficient cause is shown to the contrary, by order direct the applicant to be discharged and if a warrant for his return has been issued under section 9 above, quash that warrant.

13 Authentication of foreign documents

- (1) For the purposes of this Part of this Act foreign documents may be authenticated by the oath of a witness, but shall in any case be deemed duly authenticated—
 - (a) if they purport to be signed or certified by a judge, magistrate or officer of the foreign state where they were issued; and
 - (b) if they purport to be certified by the Minister of Justice, or some other Minister of State, of the foreign state.
- (2) Judicial notice shall be taken of such certification as is mentioned in subsection (1)(b) above, and documents authenticated by such certification shall be received in evidence without further proof.

14 Custody

- (1) Any person remanded or committed to custody under this Part of this Act shall be committed to the like institution as a person charged with an offence before the court of committal.

- (2) If any person who is in custody by virtue of a warrant under this Part of this Act escapes out of custody, he may be retaken in any part of the United Kingdom in like manner as a person escaping from custody under a warrant for his arrest issued in that part in respect of an offence committed in that part.
- (3) Where a person, being in custody in any part of the United Kingdom whether under this Part of this Act or otherwise, is required to be removed in custody under this Part of this Act to another part of the United Kingdom and is so removed by sea or by air, he shall be deemed to continue in legal custody until he reaches the place to which he is required to be removed.
- (4) A warrant for the return of any person to a foreign state shall be sufficient authority for all persons to whom it is directed and all constables to receive that person, keep him in custody and convey him into the jurisdiction of that foreign state.

15 Form of warrants and orders

- (1) Any warrant or order to be issued or made by the Secretary of State under this Part of this Act shall be given under the hand of the Secretary of State, a Minister of State or an Under-Secretary of State.
- (2) The Secretary of State may by regulations made by statutory instrument prescribe the form of any document (except a notice required under section 10(2) above) required for the purposes of this Part of this Act.

Treatment of persons returned from foreign states

16 Restrictions upon proceedings for other offences

- (1) Where any person is returned to the United Kingdom by a foreign state in pursuance of general or special extradition arrangements, he shall not, unless he has first been restored or had an opportunity of leaving the United Kingdom, be triable or tried for any offence committed prior to the surrender in any part of the United Kingdom, other than—
 - (a) an offence in respect of which he was returned; or
 - (b) any offence disclosed by the particulars furnished to the foreign state on which his return is grounded; or
 - (c) any other offence in respect of which the foreign state may consent to his being tried.
- (2) Where any person returned to the United Kingdom in pursuance of general or special extradition arrangements has been convicted before his return of an offence for which his return was not granted, any punishment for that offence shall by operation of this section be remitted; but his conviction for it shall be treated as a conviction for all other purposes.

17 Restoration of persons not tried or acquitted

- (1) This section applies to any person accused of an offence under the law of the United Kingdom who is returned to the United Kingdom in pursuance of general or special extradition arrangements.

- (2) If in the case of a person to whom this section applies either—
- (a) proceedings against him for the offence for which he was returned are not begun within the period of six months beginning with the day of his arrival in the United Kingdom on being returned; or
 - (b) on his trial for that offence, he is acquitted or discharged under any of the following provisions—
 - (i) section 7(1) of the Powers of Criminal Courts Act 1973;
 - (ii) section 182 or 383 of the Criminal Procedure (Scotland) Act 1975;
 - (iii) section 5(1) of the Probation Act (Northern Ireland) 1950,
 the Secretary of State may, if he thinks fit, on the request of that person, arrange for him to be sent back free of charge and with as little delay as possible to the foreign state from which he was returned.

Repatriation cases

18 Persons serving sentences outside country of conviction

- (1) This section applies where—
- (a) a request is made—
 - (i) by some person recognised as a diplomatic representative of a foreign state in the case of which the Extradition Act 1870 applies or as between which and the United Kingdom extradition procedures under this Part of this Act are available; or
 - (ii) by or on behalf of the Government of a Commonwealth country which is a designated Commonwealth country, as defined in subsection (1) of section 2 of the Fugitive Offenders Act 1967, or the Governor of a United Kingdom dependency, as defined in subsection (2) of that section,
 for the arrest and return of a person in the United Kingdom who is alleged to be unlawfully at large from a prison in which he was serving a sentence in pursuance of international arrangements for the repatriation of prisoners sentenced in one country (“the country of conviction”) to serve their sentences in another (“the country of imprisonment”); and
 - (b) there are furnished with the request—
 - (i) particulars of the person whose return or surrender is requested;
 - (ii) particulars of the offence of which he was convicted (including information sufficient to justify the issue of a warrant for his arrest under the relevant legislation);
 - (iii) a certificate of the conviction and sentence; and
 - (iv) a certificate of the international arrangements for repatriation under which he was held.
- (2) Where this section applies, the relevant legislation shall have effect—
- (a) if the request is from the country of conviction, as if the person to whom the request relates were alleged to be unlawfully at large from a prison in that country; and
 - (b) if it is from the country of imprisonment, as if he were alleged to have been convicted of a corresponding offence under the law of that country committed there,

and the question whether the person to whom the request relates is to be returned shall be determined, subject to subsection (3) below, in accordance with that legislation.

- (3) A person shall not be returned under subsection (2)(b) above unless—
- (a) the offence was committed in the country of conviction; or
 - (b) the offence was not committed there but was committed in circumstances in which he might be returned on a request made by the country of conviction.
- (4) In this section “the relevant legislation” means—
- (a) if the request is made by some person recognised as a diplomatic representative of a foreign state in the case of which the Extradition Act 1870 applies, the Extradition Acts 1870 to 1935 as they apply in the case of that state;
 - (b) if it is made by some person recognised as a diplomatic representative of a foreign state as between whom and the United Kingdom extradition procedures under this Part of this Act are available, the following provisions of this Act, as they apply in the case of that state—
 - (i) section 1(1) to (8); and
 - (ii) sections 2 to 17; and
 - (c) if it is made by or on behalf of the Government of a designated Commonwealth country or the Governor of a United Kingdom dependency, the Fugitive Offenders Act 1967 as it applies in the case of that country or dependency.

Channel Islands, Isle of Man and colonies

19 Application to Channel Islands and Isle of Man

- (1) Subject to the provisions of this section, sections 1 to 18 above shall extend to the Channel Islands and the Isle of Man, and shall have effect as if each of them were part of the United Kingdom.
- (2) Her Majesty may by Order in Council direct that any of the provisions mentioned in subsection (1) above shall, in its application to any of the said islands, have effect subject to such exceptions, adaptations or modifications as may be specified in the Order.

20 Application of general extradition arrangements to colonies

- (1) Upon the making of an Order in Council under section 2 above, the provisions of this Act specified in subsection (2) below shall, unless the Order otherwise provides, extend to every colony, as regards the extradition arrangements to which the Order refers, but subject—
- (a) to the modifications set out in subsections (3) to (6) below; (b) to any further modifications as to procedure prescribed by the law of the colony; and
 - (c) to the limitations, restrictions, exceptions and qualifications, if any, contained in the Order.
- (2) The provisions of this Act mentioned in subsection (1) above are—
- (a) section 1(1) to (8);
 - (b) sections 3 to 10;
 - (c) sections 12 to 18; and

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- (d) this section.
- (3) A reference to the colony shall be substituted for any reference to the United Kingdom or Great Britain.
- (4) An extradition request may be made to the Governor and the Governor may exercise the powers of the Secretary of State.
- (5) A reference to a consular representative recognised by the Governor shall be substituted for the reference in section 4(1) above to a diplomatic representative recognised by the Secretary of State.
- (6) Any reference to a magistrate, judge or court shall be construed as a reference to such judicial authority as the law of the colony may provide.
- (7) Her Majesty may by Order in Council direct that in any colony specified in the Order—
 - (a) the Extradition Act 1870 shall have effect with the amendments made by this Act; and
 - (b) the Fugitive Offenders Act 1967 shall have effect with the amendments and repeals so made.

21 Special extradition arrangements—colonies

- (1) Her Majesty may by Order in Council direct that this section shall extend to any colony specified in the Order in the case of foreign states with whom there are no general extradition arrangements, subject to the limitations, restrictions, exceptions and qualifications, if any, contained in the Order.
- (2) Where arrangements have been made in respect of a person under which extradition procedures under this Part of this Act will be available as between a colony to which this section applies and a foreign state, such extradition procedures shall be available in the case of that person, as between the colony and the state with whom the arrangements have been made, subject—
 - (a) to the modifications of the provisions of this Act specified in subsection (2) of section 20 above set out in subsections (3) to (6) of that section;
 - (b) to any further modifications as to procedure prescribed by the law of the colony; and
 - (c) to the limitations, restrictions, exceptions and qualifications, if any, contained in the arrangements.
- (3) The provisions of this Act mentioned in section 20(2)(a) to (c) above shall extend to the colony so far as is necessary for the purposes of the arrangements.
- (4) If the governor or the Secretary of State issues a certificate—
 - (a) that such arrangements have been made; and
 - (b) that extradition procedures are available in the case of the person named in the certificate as between the colony and the foreign state to the extent specified in the certificate,it shall be conclusive evidence of all matters stated in it.

Suppression of terrorism

22 Suppression of terrorism

- (1) Schedule 1 to the Suppression of Terrorism Act 1978 shall be amended as follows.
- (2) The following sub-paragraph shall be inserted before paragraph 8(a)—
“*(za)* section 4 (soliciting etc. to commit murder);”.
- (3) The following shall be inserted after paragraph 9—
“9A The offence of torture under section 134 of the Criminal Justice Act 1988.”.
- (4) The following shall be inserted after paragraph 13—

“Nuclear material

13A An offence under any provision of the Nuclear Material (Offences) Act 1983.”.

- (5) The following shall be added at the end—

“Conspiracy

21 An offence of conspiring to commit any offence mentioned in a preceding paragraph of this Schedule.”.

PART II

DOCUMENTARY EVIDENCE IN CRIMINAL PROCEEDINGS

23 First-hand hearsay

- (1) Subject—
 - (a) to subsection (4) below;
 - (b) to paragraph 1A of Schedule 2 to the Criminal Appeal Act 1968 (evidence given orally at original trial to be given orally at retrial); and
 - (c) to section 69 of the Police and Criminal Evidence Act 1984 (evidence from computer records),a statement made by a person in a document shall be admissible in criminal proceedings as evidence of any fact of which direct oral evidence by him would be admissible if—
 - (i) the requirements of one of the paragraphs of subsection (2) below are satisfied;
or
 - (ii) the requirements of subsection (3) below are satisfied.
- (2) The requirements mentioned in subsection (1)(i) above are—
 - (a) that the person who made the statement is dead or by reason of his bodily or mental condition unfit to attend as a witness;
 - (b) that—

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- (i) the person who made the statement is outside the United Kingdom;
and
 - (ii) it is not reasonably practicable to secure his attendance; or
 - (c) that all reasonable steps have been taken to find the person who made the statement, but that he cannot be found.
- (3) The requirements mentioned in subsection (1)(ii) above are—
- (a) that the statement was made to a police officer or some other person charged with the duty of investigating offences or charging offenders; and
 - (b) that the person who made it does not give oral evidence through fear or because he is kept out of the way.
- (4) Subsection (1) above does not render admissible a confession made by an accused person that would not be admissible under section 76 of the Police and Criminal Evidence Act 1984.

24 Business etc. documents

- (1) Subject—
- (a) to subsections (3) and (4) below;
 - (b) to paragraph 1A of Schedule 2 to the Criminal Appeal Act 1968; and
 - (c) to section 69 of the Police and Criminal Evidence Act 1984,
- a statement in a document shall be admissible in criminal proceedings as evidence of any fact of which direct oral evidence would be admissible, if the following conditions are satisfied—
- (i) the document was created or received by a person in the course of a trade, business, profession or other occupation, or as the holder of a paid or unpaid office; and
 - (ii) the information contained in the document was supplied by a person (whether or not the maker of the statement) who had, or may reasonably be supposed to have had, personal knowledge of the matters dealt with.
- (2) Subsection (1) above applies whether the information contained in the document was supplied directly or indirectly but, if it was supplied indirectly, only if each person through whom it was supplied received it—
- (a) in the course of a trade, business, profession or other occupation; or
 - (b) as the holder of a paid or unpaid office.
- (3) Subsection (1) above does not render admissible a confession made by an accused person that would not be admissible under section 76 of the Police and Criminal Evidence Act 1984.
- (4) A statement prepared otherwise than in accordance with section 29 below or an order under paragraph 6 of Schedule 13 to this Act or under section 30 or 31 below for the purposes—
- (a) of pending or contemplated criminal proceedings; or
 - (b) of a criminal investigation,
- shall not be admissible by virtue of subsection (1) above unless—
- (i) the requirements of one of the paragraphs of subsection (2) of section 23 above are satisfied; or
 - (ii) the requirements of subsection (3) of that section are satisfied; or

- (iii) the person who made the statement cannot reasonably be expected (having regard to the time which has elapsed since he made the statement and to all the circumstances) to have any recollection of the matters dealt with in the statement.

25 Principles to be followed by court

- (1) If, having regard to all the circumstances—
 - (a) the Crown Court—
 - (i) on a trial on indictment;
 - (ii) on an appeal from a magistrates' court; or
 - (iii) on the hearing of an application under section 6 of the Criminal Justice Act 1987 (applications for dismissal of charges of fraud transferred from magistrates' court to Crown Court); or
 - (b) the criminal division of the Court of Appeal; or
 - (c) a magistrates' court on a trial of an information,is of the opinion that in the interests of justice a statement which is admissible by virtue of section 23 or 24 above nevertheless ought not to be admitted, it may direct that the statement shall not be admitted.
- (2) Without prejudice to the generality of subsection (1) above, it shall be the duty of the court to have regard—
 - (a) to the nature and source of the document containing the statement and to whether or not, having regard to its nature and source and to any other circumstances that appear to the court to be relevant, it is likely that the document is authentic;
 - (b) to the extent to which the statement appears to supply evidence which would otherwise not be readily available;
 - (c) to the relevance of the evidence that it appears to supply to any issue which is likely to have to be determined in the proceedings; and
 - (d) to any risk, having regard in particular to whether it is likely to be possible to controvert the statement if the person making it does not attend to give oral evidence in the proceedings, that its admission or exclusion will result in unfairness to the accused or, if there is more than one, to any of them.

26 Statements in documents that appear to have been prepared for purposes of criminal proceedings or investigations

Where a statement which is admissible in criminal proceedings by virtue of section 23 or 24 above appears to the court to have been prepared, otherwise than in accordance with section 29 below or an order under paragraph 6 of Schedule 13 to this Act or under section 30 or 31 below, for the purposes—

- (a) of pending or contemplated criminal proceedings; or
- (b) of a criminal investigation,

the statement shall not be given in evidence in any criminal proceedings without the leave of the court, and the court shall not give leave unless it is of the opinion that the statement ought to be admitted in the interests of justice; and in considering whether its admission would be in the interests of justice, it shall be the duty of the court to have regard—

- (i) to the contents of the statement;

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- (ii) to any risk, having regard in particular to whether it is likely to be possible to controvert the statement if the person making it does not attend to give oral evidence in the proceedings, that its admission or exclusion will result in unfairness to the accused or, if there is more than one, to any of them; and
- (iii) to any other circumstances that appear to the court to be relevant.

27 Proof of statements contained in documents

Where a statement contained in a document is admissible as evidence in criminal proceedings, it may be proved—

- (a) by the production of that document; or
- (b) (whether or not that document is still in existence) by the production of a copy of that document, or of the material part of it,

authenticated in such manner as the court may approve; and it is immaterial for the purposes of this subsection how many removes there are between a copy and the original.

28 Documentary evidence— supplementary

- (1) Nothing in this Part of this Act shall prejudice—
 - (a) the admissibility of a statement not made by a person while giving oral evidence in court which is admissible otherwise than by virtue of this Part of this Act; or
 - (b) any power of a court to exclude at its discretion a statement admissible by virtue of this Part of this Act.
- (2) Schedule 2 to this Act shall have effect for the purpose of supplementing this Part of this Act.

PART III

OTHER PROVISIONS ABOUT EVIDENCE IN CRIMINAL PROCEEDINGS

29 Issue of letters of request

- (1) Where on an application made in accordance with the following provisions of this section it appears to a justice of the peace or judge that criminal proceedings—
 - (a) have been instituted; or
 - (b) are likely to be instituted if evidence is obtained for the purpose,
 he may order that a letter of request shall be issued to a court or tribunal or appropriate authority specified in the order and exercising jurisdiction in a place outside the United Kingdom, requesting it to assist in obtaining for the purposes of the proceedings evidence specified in the letter.
- (2) In subsection (1) above “appropriate authority” means any central authority designated by a state to receive requests for assistance in legal matters.
- (3) An application for an order under this section may be made by a prosecuting authority.

- (4) If proceedings have already been instituted, a person charged with an offence in the proceedings may make such an application.
- (5) Without prejudice to the generality of any enactment conferring power to make them—
 - (a) Crown Court Rules;
 - (b) Criminal Appeal Rules; and
 - (c) rules under section 144 of the Magistrates' Courts Act 1980,may make such provision as appears to the authority making any of them to be necessary or expedient for the purposes of this section and in particular for the appointment of a person before whom evidence may be taken in pursuance of a letter of request.
- (6) In exercising the discretion conferred by section 25 above in relation to a statement contained in evidence taken in pursuance of a letter of request, the court shall have regard—
 - (a) to whether it was possible to challenge the statement by questioning the person who made it; and
 - (b) to whether the local law allowed the parties to the criminal proceedings to be legally represented when the evidence was being taken.

30 Expert reports

- (1) An expert report shall be admissible as evidence in criminal proceedings, whether or not the person making it attends to give oral evidence in those proceedings.
- (2) If it is proposed that the person making the report shall not give oral evidence, the report shall only be admissible with the leave of the court.
- (3) For the purpose of determining whether to give leave the court shall have regard—
 - (a) to the contents of the report;
 - (b) to the reasons why it is proposed that the person making the report shall not give oral evidence;
 - (c) to any risk, having regard in particular to whether it is likely to be possible to controvert statements in the report if the person making it does not attend to give oral evidence in the proceedings, that its admission or exclusion will result in unfairness to the accused or, if there is more than one, to any of them; and
 - (d) to any other circumstances that appear to the court to be relevant.
- (4) An expert report, when admitted, shall be evidence of any fact or opinion of which the person making it could have given oral evidence.
- (5) In this section “expert report” means a written report by a person dealing wholly or mainly with matters on which he is (or would if living be) qualified to give expert evidence.

31 Form of evidence and glossaries

For the purpose of helping members of juries to understand complicated issues of fact or technical terms Crown Court Rules may make provision—

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- (a) as to the furnishing of evidence in any form, notwithstanding the existence of admissible material from which the evidence to be given in that form would be derived; and
 - (b) as to the furnishing of glossaries for such purposes as may be specified;
- in any case where the court gives leave for, or requires, evidence or a glossary to be so furnished.

32 Evidence through television links

- (1) A person other than the accused may give evidence through a live television link on a trial on indictment or an appeal to the criminal division of the Court of Appeal or the hearing of a reference under section 17 of the Criminal Appeal Act 1968 if—
- (a) the witness is outside the United Kingdom; or
 - (b) the witness is under the age of 14 and the offence charged is one to which subsection (2) below applies,
- but evidence may not be so given without the leave of the court.
- (2) This subsection applies—
- (a) to an offence which involves an assault on, or injury or a threat of injury to, a person;
 - (b) to an offence under section 1 of the Children and Young Persons Act 1933 (cruelty to persons under 16);
 - (c) to an offence under the Sexual Offences Act 1956, the Indecency with Children Act 1960, the Sexual Offences Act 1967, section 54 of the Criminal Law Act 1977 or the Protection of Children Act 1978; and
 - (d) to an offence which consists of attempting or conspiring to commit, or of aiding, abetting, counselling, procuring or inciting the commission of, an offence falling within paragraph (a), (b) or (c) above.
- (3) A statement made on oath by a witness outside the United Kingdom and given in evidence through a link by virtue of this section shall be treated for the purposes of section 1 of the Perjury Act 1911 as having been made in the proceedings in which it is given in evidence.
- (4) Without prejudice to the generality of any enactment conferring power to make rules to which this subsection applies, such rules may make such provision as appears to the authority making them to be necessary or expedient for the purposes of this section.
- (5) The rules to which subsection (4) above applies are—
- (a) Crown Court Rules; and
 - (b) Criminal Appeal Rules.

33 Evidence of persons under 14 in committal proceedings

The following section shall be substituted for section 103 of the Magistrates' Courts Act 1980—

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“103 Evidence of persons under 14 in committal proceedings for assault, sexual offences etc

- (1) In any proceedings before a magistrates' court inquiring into an offence to which this section applies as examining justices—
- (a) a child shall not be called as a witness for the prosecution; but
 - (b) any statement made by or taken from a child shall be admissible in evidence of any matter of which his oral testimony would be admissible,
- except in a case where the application of this subsection is excluded under subsection (3) below.
- (2) This section applies—
- (a) to an offence which involves an assault, or injury or a threat of injury to, a person;
 - (b) to an offence under section 1 of the Children and Young Persons Act 1933 (cruelty to persons under 16);
 - (c) to an offence under the Sexual Offences Act 1956, the Indecency with Children Act 1960, the Sexual Offences Act 1967, section 54 of the Criminal Law Act 1977 or the Protection of Children Act 1978; and
 - (d) to an offence which consists of attempting or conspiring to commit, or of aiding, abetting, counselling, procuring or inciting the commission of, an offence falling within paragraph (a), (b) or (c) above.
- (3) The application of subsection (1) above is excluded—
- (a) where at or before the time when the statement is tendered in evidence the defence objects to its admission; or
 - (b) where the prosecution requires the attendance of the child for the purpose of establishing the identity of any person; or
 - (c) where the court is satisfied that it has not been possible to obtain from the child a statement that may be given in evidence under this section; or
 - (d) where the inquiry into the offence takes place after the court has discontinued to try it summarily and the child has given evidence in the summary trial.
- (4) Section 28 above shall not apply to any statement admitted in pursuance of subsection (1) above.
- (5) In this section “child” means a person under the age of 14.”.

34 Abolition of requirement of corroboration for unsworn evidence of children

- (1) The proviso to subsection (1) of section 38 of the Children and Young Persons Act 1933 (under which, where the unsworn evidence of a child of tender years admitted by virtue of that section is given on behalf of the prosecution, the accused is not liable to be convicted unless that evidence is corroborated by some other material evidence in support thereof implicating him) shall cease to have effect.
- (2) Any requirement whereby at a trial on indictment it is obligatory for the court to give the jury a warning about convicting the accused on the uncorroborated evidence of a

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child is abrogated in relation to cases where such a warning is required by reason only that the evidence is the evidence of a child.

- (3) Unsworn evidence admitted by virtue of section 38 of the Children and Young Persons Act 1933 may corroborate evidence (sworn or unsworn) given by any other person.

PART IV

REVIEWS OF SENTENCING

35 Scope of Part IV

- (1) A case to which this Part of this Act applies may be referred to the Court of Appeal under section 36 below.
- (2) Subject to Rules of Court, the jurisdiction of the Court of Appeal under section 36 below shall be exercised by the criminal division of the Court, and references to the Court of Appeal in this Part of this Act shall be construed as references to that division.
- (3) This Part of this Act applies to any case in which sentence is passed on a person—
- (a) for an offence triable only on indictment; or
 - (b) for an offence of a description specified in an order under this section.
- (4) The Secretary of State may by order made by statutory instrument provide that this Part of this Act shall apply to any case in which sentence is passed on a person for an offence triable either way of a description specified in the order.
- (5) A statutory instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) In this Part of this Act “sentence” has the same meaning as in the Criminal Appeal Act 1968, except that it does not include an interim hospital order under Part III of the Mental Health Act 1983, and “sentencing” shall be construed accordingly.
- (7) In its application to Northern Ireland, this section shall have effect subject to the modifications set out in subsections (8) to (11).
- (8) Subsection (2) shall be omitted.
- (9) In this section—
- “offence triable only on indictment” means an offence punishable only on conviction on indictment;
 - “offence triable either way” means an offence punishable on conviction on indictment or on summary conviction.
- (10) For subsection (5) there shall be substituted—
- “(5) An order under subsection (4) above shall be a statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (and not a statutory instrument), and any such statutory rule shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument, and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.”.

- (11) The references in subsection (6) to the Criminal Appeal Act 1968 and Part III of the Mental Health Act 1983 shall be respectively construed as references to Part I of the Criminal Appeal (Northern Ireland) Act 1980 and Part III of the Mental Health (Northern Ireland) Order 1986.

36 Reviews of sentencing

- (1) If it appears to the Attorney General—
- (a) that the sentencing of a person in a proceeding in the Crown Court has been unduly lenient; and
 - (b) that the case is one to which this Part of this Act applies,
- he may, with the leave of the Court of Appeal, refer the case to them for them to review the sentencing of that person; and on such a reference the Court of Appeal may—
- (i) quash any sentence passed on him in the proceeding; and
 - (ii) in place of it pass such sentence as they think appropriate for the case and as the court below had power to pass when dealing with him.
- (2) Without prejudice to the generality of subsection (1) above, the condition specified in paragraph (a) of that subsection may be satisfied if it appears to the Attorney General that the judge erred in law as to his powers of sentencing.
- (3) For the purposes of this Part of this Act any two or more sentences are to be treated as passed in the same proceeding if they would be so treated for the purposes of section 10 of the Criminal Appeal Act 1968.
- (4) No judge shall sit as a member of the Court of Appeal on the hearing of, or shall determine any application in proceedings incidental or preliminary to, a reference under this section of a sentence passed by himself.
- (5) Where the Court of Appeal have concluded their review of a case referred to them under this section the Attorney General or the person to whose sentencing the reference relates may refer a point of law involved in any sentence passed on that person in the proceeding to the House of Lords for their opinion, and the House shall consider the point and give their opinion on it accordingly, and either remit the case to the Court of Appeal to be dealt with or deal with it themselves; and section 35(1) of the Criminal Appeal Act 1968 (composition of House for appeals) shall apply also in relation to any proceedings of the House under this section.
- (6) A reference under subsection (5) above shall be made only with the leave of the Court of Appeal or the House of Lords; and leave shall not be granted unless it is certified by the Court of Appeal that the point of law is of general public importance and it appears to the Court of Appeal or the House of Lords (as the case may be) that the point is one which ought to be considered by that House.
- (7) For the purpose of dealing with a case under this section the House of Lords may exercise any powers of the Court of Appeal.
- (8) The supplementary provisions contained in Schedule 3 to this Act shall have effect.
- (9) In the application of this section to Northern Ireland—
- (a) any reference to the Attorney General shall be construed as a reference to the Attorney General for Northern Ireland;

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- (b) the references to sections 10 and 35(1) of the Criminal Appeal Act 1968 shall be construed as references to sections 10(2) and 33(1) of the Criminal Appeal (Northern Ireland) Act 1980, respectively.

PART V

JURISDICTION, IMPRISONMENT, FINES, ETC.

Jurisdiction

37 Certain either way offences relating to motor vehicles to be summary offences

- (1) In section 12 of the Theft Act 1968 (taking motor vehicle or other conveyance without authority etc.)—
- (a) in subsection (2), for the words “on conviction on indictment be liable to imprisonment for a term not exceeding three years.” there shall be substituted the words “be liable on summary conviction to a fine not exceeding level 5 on the standard scale, to imprisonment for a term not exceeding six months, or to both.”; and
 - (b) at the end of subsection (4) there shall be added the words “and if he is found guilty of it, he shall be liable as he would have been liable under subsection (2) above on summary conviction.”.
- (2) In Schedule 4 to the Road Traffic Act 1972 (prosecution and punishment of offences) as it applies in England and Wales, the following shall be substituted for columns 3 and 4 of the entry relating to offences under section 99(b) (driving while disqualified)—

“Summarily	6 months or level 5 on the standard scale or both.”.
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38 Criminal damage etc. as summary offences

- (1) In subsection (1) of section 22 of the Magistrates' Courts Act 1980 (under which, where an offence of or related to criminal damage is charged and it appears to a magistrates' court clear that the value involved does not exceed the relevant sum, the court is required to proceed as if the offence charged were triable only summarily) in the second paragraph (which states the relevant sum) for “£400” there shall be substituted “£2,000”.
- (2) Subsection (1) above does not apply to an offence charged in respect of an act done before this section comes into force.
- (3) The following subsection shall be inserted after subsection (10) of that section—
- “(11) Where—
- (a) the accused is charged on the same occasion with two or more scheduled offences and it appears to the court that they constitute or form part of a series of two or more offences of the same or a similar character; or
 - (b) the offence charged consists in incitement to commit two or more scheduled offences,

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this section shall have effect as if any reference in it to the value involved were a reference to the aggregate of the values involved.”.

- (4) Subsection (3) above does not apply where any of the offences are charged in respect of acts done before this section comes into force.

39 Common assault and battery to be summary offences

Common assault and battery shall be summary offences and a person guilty of either of them shall be liable to a fine not exceeding level 5 on the standard scale, to imprisonment for a term not exceeding six months, or to both.

40 Power to join in indictment count for common assault etc

- (1) A count charging a person with a summary offence to which this section applies may be included in an indictment if the charge—
- (a) is founded on the same facts or evidence as a count charging an indictable offence; or
 - (b) is part of a series of offences of the same or similar character as an indictable offence which is also charged,
- but only if (in either case) the facts or evidence relating to the offence were disclosed in an examination or deposition taken before a justice in the presence of the person charged.
- (2) Where a count charging an offence to which this section applies is included in an indictment, the offence shall be tried in the same manner as if it were an indictable offence; but the Crown Court may only deal with the offender in respect of it in a manner in which a magistrates' court could have dealt with him.
- (3) The offences to which this section applies are—
- (a) common assault;
 - (b) an offence under section 12(1) of the Theft Act 1968 (taking motor vehicle or other conveyance without authority etc.);
 - (c) an offence under section 99(b) of the Road Traffic Act 1972 (driving a motor vehicle while disqualified);
 - (d) an offence mentioned in the first column of Schedule 2 to the Magistrates' Courts Act 1980 (criminal damage etc.) which would otherwise be triable only summarily by virtue of section 22(2) of that Act; and
 - (e) any summary offence specified under subsection (4) below.
- (4) The Secretary of State may by order made by statutory instrument specify for the purposes of this section any summary offence which is punishable with imprisonment or involves obligatory or discretionary disqualification from driving.
- (5) A statutory instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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41 Power of Crown Court to deal with summary offence where person committed for either way offence

- (1) Where a magistrates' court commits a person to the Crown Court for trial on indictment for an offence triable either way or a number of such offences, it may also commit him for trial for any summary offence with which he is charged and which—
- (a) is punishable with imprisonment or involves obligatory or discretionary disqualification from driving; and
 - (b) arises out of circumstances which appear to the court to be the same as or connected with those giving rise to the offence, or one of the offences, triable either way,

whether or not evidence relating to that summary offence appears on the depositions or written statements in the case; and the trial of the information charging the summary offence shall then be treated as if the magistrates' court had adjourned it under section 10 of the Magistrates' Courts Act 1980 and had not fixed the time and place for its resumption.

- (2) Where a magistrates' court commits a person to the Crown Court for trial on indictment for a number of offences triable either way and exercises the power conferred by subsection (1) above in respect of a summary offence, the magistrates' court shall give the Crown Court and the person who is committed for trial a notice stating which of the offences triable either way appears to the court to arise out of circumstances which are the same as or connected with those giving rise to the summary offence.
- (3) A magistrates' court's decision to exercise the power conferred by subsection (1) above shall not be subject to appeal or liable to be questioned in any court.
- (4) The committal of a person under this section in respect of an offence to which section 40 above applies shall not preclude the exercise in relation to the offence of the power conferred by that section; but where he is tried on indictment for such an offence, the functions of the Crown Court under this section in relation to the offence shall cease.
- (5) If he is convicted on the indictment, the Crown Court shall consider whether the conditions specified in subsection (1) above were satisfied.
- (6) If it considers that they were satisfied, it shall state to him the substance of the summary offence and ask him whether he pleads guilty or not guilty.
- (7) If he pleads guilty, the Crown Court shall convict him, but may deal with him in respect of that offence only in a manner in which a magistrates' court could have dealt with him.
- (8) If he does not plead guilty, the powers of the Crown Court shall cease in respect of the offence except as provided by subsection (9) below.
- (9) If the prosecution inform the Court that they would not desire to submit evidence on the charge relating to the summary offence, the Court shall dismiss it.
- (10) The Crown Court shall inform the clerk of the magistrates' court of the outcome of any proceedings under this section.
- (11) Where the Court of Appeal allows an appeal against conviction of an offence triable either way which arose out of circumstances which were the same as or connected with those giving rise to a summary offence of which the appellant was convicted under this section—

- (a) it shall set aside his conviction of the summary offence and give the clerk of the magistrates' court notice that it has done so; and
- (b) it may direct that no further proceedings in relation to the offence are to be undertaken;

and the proceedings before the Crown Court in relation to the offence shall thereafter be disregarded for all purposes.

- (12) A notice under subsection (11) above shall include particulars of any direction given under paragraph (b) of that subsection in relation to the offence.
- (13) The references to the clerk of the magistrates' court in this section are to be construed in accordance with section 141 of the Magistrates' Courts Act 1980.

42 Amendments relating to committal for sentence

- (1) Section 56 of the Criminal Justice Act 1967 shall be amended as follows.
- (2) In subsection (1), for the words “offence triable either way” there shall be substituted the words “indictable offence”.
- (3) In subsection (2), for the words from “and sections 8(6)” to the end there shall be substituted the words “, section 8(6) of the Powers of Criminal Courts Act 1973 (probationer convicted of subsequent offence) and section 24(2) of that Act and paragraph 2(2)(a) of Schedule 9 to the Criminal Law Act 1977 (committal to be dealt with in respect of a wholly or partly suspended sentence)”.

Power of Court of Appeal to order retrial

43 Power of Court of Appeal to order retrial

- (1) The Criminal Appeal Act 1968 shall be amended as follows.
- (2) In section 7(1), the words “and do so only by reason of evidence received or available to be received by them under section 23 of this Act” shall cease to have effect.
- (3) At the end of subsection (1) of section 8 there shall be added the words “but after the end of two months from the date of the order for his retrial he may not be arraigned on an indictment preferred in pursuance of such a direction unless the Court of Appeal give leave.”
- (4) The following subsections shall be inserted after that subsection—
 - “(1A) Where a person has been ordered to be retried but may not be arraigned without leave, he may apply to the Court of Appeal to set aside the order for retrial and to direct the court of trial to enter a judgment and verdict of acquittal of the offence for which he was ordered to be retried.
 - (1B) On an application under subsection (1) or (1A) above the Court of Appeal shall have power—
 - (a) to grant leave to arraign; or
 - (b) to direct the entry of a judgment and verdict of acquittal, but shall not give leave to arraign unless they are satisfied—
 - (i) that the prosecution has acted with all due expedition; and

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(ii) that there is a good and sufficient cause for a retrial in spite of the lapse of time since the order under section 7 of this Act was made.”

- (5) Nothing in this section applies where notice of appeal or of application for leave to appeal was given before the commencement of this section.

Imprisonment

44 Firearms offences

- (1) Part 1 of Schedule 6 to the Firearms Act 1968 (prosecution and punishment of offences) shall be amended as follows.
- (2) For the third and fourth columns of the entries relating to an offence under section 2(1) (possessing, etc. shotgun without shotgun certificate) there shall be substituted—

“(a) Summary.	6 months or the statutory maximum or both.
(b) On indictment.	3 years or a fine; or both.”.

- (3) “Life imprisonment” shall be substituted for “14 years” in the fourth column of the entries relating to offences under—
- (a) section 17(2) (possessing firearm or imitation firearm at time of committing or being arrested for certain offences); and
 - (b) section 18(1) (carrying firearm or imitation firearm with criminal intent).
- (4) Nothing in this section shall affect the punishment for an offence committed before this section comes into force.

45 Increase in maximum term of imprisonment for cruelty to children and young persons

- (1) In section 1(1)(a) of the Children and Young Persons Act 1933 (under which the maximum term of imprisonment for cruelty to persons under 16 is two years) and in section 12(1)(a) of the Children and Young Persons (Scotland) Act 1937 (which makes corresponding provision for Scotland), for “two” there shall be substituted “ten”.
- (2) Nothing in subsection (1) above shall affect the punishment for an offence committed before this section comes into force.

46 Maximum term of imprisonment on summary conviction under Prevention of Crime Act 1953 and maximum fine under Restriction of Offensive Weapons Act 1959

- (1) In section 1(1)(a) of the Prevention of Crime Act 1953 “six months” shall be substituted for “three months”.
- (2) The maximum fine that may be imposed for an offence under section 1 of the Restriction of Offensive Weapons Act 1959 shall be a fine not exceeding level 5 on the standard scale.
- (3) This section shall not have effect in relation to anything done before it comes into force.

47 Corruption

- (1) The following paragraph shall be substituted for paragraph (a) of section 2 of the Public Bodies Corrupt Practices Act 1889 (penalty for corruption in office)—
 - “(a) be liable—
 - (i) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both; and
 - (ii) on conviction on indictment, to imprisonment for a term not exceeding 7 years or to a fine, or to both; and”.
- (2) In subsection (1) of section 1 of the Prevention of Corruption Act 1906 (punishment of corrupt transactions with agents) for the words from “shall be liable” to the end of the subsection there shall be substituted the words “shall be liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both; and
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years or to a fine, or to both.”.
- (3) Nothing in this section shall affect the punishment for an offence committed before this section comes into force.

48 Increase in penalty for insider dealing

- (1) In section 8(1)(a) of the Company Securities (Insider Dealing) Act 1985 (under which the maximum term of imprisonment for insider dealing offences is 2 years) for “2” there shall be substituted “7”.
- (2) Nothing in subsection (1) above shall affect the punishment for an offence committed before this section comes into force.

49 Repeal of s.134 of Magistrates' Courts Act 1980

Section 134 of the Magistrates' Courts Act 1980 (under which a magistrates' court having power to impose imprisonment on any person may instead of doing so order him to be detained for any period not exceeding 4 days in a place certified by the Secretary of State to be suitable for the purpose) shall cease to have effect.

50 Suspended and partly suspended sentences on certain civilians in courts-martial and Standing Civilian Courts

- (1) The Secretary of State may by order made by statutory instrument make such provision as appears to him to be appropriate—
 - (a) to give courts-martial and Standing Civilian Courts power to pass suspended and partly suspended sentences of imprisonment on civilians to whom this section applies; and
 - (b) to give courts power to deal with offenders in respect of suspended and partly suspended sentences passed by courts-martial and Standing Civilian Courts.
- (2) This section applies to the following civilians—
 - (a) persons to whom Part II of the Army Act 1955 applies by virtue of section 209 of that Act;

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- (b) persons to whom Part II of the Air Force Act 1955 applies by virtue of section 209 of that Act; and
 - (c) persons to whom Parts I and II of the Naval Discipline Act 1957 apply by virtue of section 118 of that Act.
- (3) An order under this section—
- (a) may amend—
 - (i) the Army Act 1955;
 - (ii) the Air Force Act 1955;
 - (iii) the Naval Discipline Act 1957; and
 - (iv) the Armed Forces Act 1976;
 - (b) may apply, with or without modifications, any enactment contained in—
 - (i) the Powers of Criminal Courts Act 1973;
 - (ii) the Criminal Law Act 1977; or
 - (iii) any other Act not mentioned in paragraph (a) above; and
 - (c) may make such incidental or consequential provision as the Secretary of State considers necessary or expedient.
- (4) Without prejudice to the generality of this section, an order under this section may make—
- (a) provision prohibiting a court which passes a suspended sentence on a person from making an order under paragraph 4 of Schedule 5A to the Army Act 1955 or the Air Force Act 1955 or paragraph 4 of Schedule 4A to the Naval Discipline Act 1957 (community supervision orders) in respect of another offence; and
 - (b) provision restricting the powers conferred by sections 110 and 113 of the Army Act 1955 and the Air Force Act 1955 (confirmation and review) and sections 70 and 71 of the Naval Discipline Act 1957 (review).
- (5) A statutory instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Maximum fines under subordinate legislation

51 Statutory maximum as penalty on summary conviction for offences triable either way in subordinate legislation

- (1) For any offence triable either way under a subordinate instrument made before the commencement of this section, the maximum fine which may be imposed on summary conviction shall by virtue of this subsection be the statutory maximum unless the offence is one for which by virtue of the instrument a larger maximum fine may be imposed on summary conviction.
- (2) Where apart from this section the maximum fine would be one amount in the case of a first conviction and a different amount in the case of a second or subsequent conviction, subsection (1) above shall apply irrespective of whether the conviction is a first, second or subsequent one.
- (3) Subsection (1) above shall not affect so much of any instrument as (in whatever words) makes a person liable on summary conviction to a fine not exceeding a specified

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amount for each period of a specified length during which a continuing offence is continued after conviction or the occurrence of any other specified event.

- (4) Where there is under any enactment (however framed or worded) contained in an Act passed before the commencement of this section a power by subordinate instrument to impose penal provisions, being a power which allows the creation of offences triable either way, the maximum fine which may in the exercise of that power be authorised on summary conviction in respect of an offence triable either way shall by virtue of this subsection be the statutory maximum unless some larger maximum fine can be authorised on summary conviction of such an offence by virtue of an enactment contained in an Act passed before the commencement of this section.
- (5) Where there is under any enactment (however framed or worded) contained in an Act passed before the commencement of this section a power by subordinate instrument to create offences triable either way, the maximum fine for an offence triable either way so created may be expressed as a fine not exceeding the statutory maximum.
- (6) Subsection (5) above has effect in relation to exercises of powers before as well as after the commencement of this section.
- (7) Nothing in this section shall affect the punishment for an offence committed before the commencement of this section.
- (8) In this section and sections 52, 53, 55, 57 and 59 below “fine” includes a pecuniary penalty but does not include a pecuniary forfeiture or pecuniary compensation.

**52 Penalties on conviction for summary offences under subordinate legislation—
conversion of references to amounts to references to levels on scale**

- (1) Where under a relevant subordinate instrument the maximum fine on conviction of a summary offence specified in the instrument is an amount shown in the second column of the standard scale, the reference in the instrument to the amount of the maximum fine shall be construed as a reference to the level in the first column of the standard scale corresponding to that amount.
- (2) In subsection (1) above “relevant subordinate instrument” means any instrument made by virtue of an enactment or instrument after 30th April 1984 and before the commencement of this section.
- (3) Subsection (1) above shall not affect so much of any instrument as (in whatever words) makes a person liable on summary conviction to a fine not exceeding a specified amount for each period of a specified length during which a continuing offence is continued after conviction or the occurrence of any other specified event.
- (4) Where there is—
 - (a) under any enactment (however framed or worded) contained in an Act passed before the commencement of this section;
 - (b) under any instrument (however framed or worded) made by virtue of such an enactment,

a power to provide by subordinate instrument that a person, as regards any summary offence (whether or not created by the instrument) shall be liable on conviction to a fine, a person may be so made liable to a fine not exceeding a specified level on the standard scale.

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- (5) Subsection (4) above has effect in relation to exercises of powers before as well as after the commencement of this section.

53 Powers to specify maximum fines for summary offences under subordinate instruments— conversion of references to amounts to references to levels on scale—England and Wales

- (1) Where an instrument which was made under an enactment on or after 11th April 1983 but before this section came into force confers on any authority other than a harbour authority a power by subordinate instrument to make a person liable to a fine on conviction of a summary offence of an amount shown in the second column of the standard scale, as that scale had effect when the instrument was made, a reference to the level in the first column of the standard scale which then corresponded to that amount shall be substituted for the reference in the instrument conferring the power to the amount of the fine.
- (2) If an order under section 143 of the Magistrates' Courts Act 1980 alters the sums specified in section 37(2) of the Criminal Justice Act 1982, the second reference to the standard scale in subsection (1) above is to be construed as a reference to that scale as it has effect by virtue of the order.
- (3) This section shall not affect so much of any instrument as (in whatever words) makes a person liable on summary conviction to a maximum fine not exceeding a specified amount for each period of a specified length during which a continuing offence is continued.

54 Fines on summary conviction for offences under subordinate instruments— conversion to references to levels on scale—Scotland

In the Criminal Procedure (Scotland) Act 1975, after section 289GC (which is inserted by section 56 of this Act) there shall be inserted the following section—

“289GD Fines on summary conviction for offences under subordinate instruments— conversion to references to levels on scale

- (1) Where an instrument which was made under an enactment on or after 11th April 1983 but before the commencement of section 54 of the Criminal Justice Act 1988 confers on any authority other than a harbour authority a power by subordinate instrument to make a person liable on summary conviction to a fine of an amount shown in the second column of the standard scale, as that scale had effect when the instrument was made, a reference to the level in the first column of the standard scale which then corresponded to that amount shall be substituted for the reference in the instrument conferring the power to the amount of the fine.
- (2) This section shall not affect so much of any instrument as (in whatever words) makes a person liable on summary conviction to a maximum fine not exceeding a specified amount for each period of a specified length during which a continuing offence is continued”.

55 Fines under secondary subordinate instruments— England and Wales

- (1) This section applies to any instrument (however framed or worded) which—
- (a) was made before 11th April 1983 (the date of the commencement of sections 35 to 50 of the Criminal Justice Act 1982); and
 - (b) confers on any authority other than a harbour authority a power by subordinate instrument to make a person, as regards any summary offence (whether or not created by the latter instrument), liable on conviction to a maximum fine of a specified amount not exceeding £1,000,
- but does not affect so much of any such instrument as (in whatever words) confers a power by subordinate instrument to make a person liable on conviction to a fine for each period of a specified length during which a continuing offence is continued.
- (2) The maximum fine to which a subordinate instrument made by virtue of an instrument to which this section applies may provide that a person shall be liable on conviction of a summary offence is—
- (a) if the specified amount is less than £25, level 1 on the standard scale;
 - (b) if it is £25 or more but less than £50, level 2;
 - (c) if it is £50 or more but less than £200, level 3;
 - (d) if it is £200 or more but less than £400, level 4; and
 - (e) if it is £400 or more, level 5.
- (3) Subject to subsection (5) below, where an instrument to which this section applies confers a power by subordinate instrument to make a person, as regards a summary offence, liable on conviction to a fine in respect of a specified quantity or a specified number of things, that fine shall be treated for the purposes of this section as being the maximum fine to which a person may be made liable by virtue of the instrument.
- (4) Where an instrument to which this section applies confers a power to provide for different maximum fines in relation to different circumstances or persons of different descriptions, the amounts specified as those maximum fines are to be treated separately for the purposes of this section.
- (5) Where an instrument to which this section applies confers a power by subordinate instrument to make a person, as regards a summary offence, liable on conviction to a fine in respect of a specified quantity or a specified number of things but also confers a power by subordinate instrument to make a person, as regards such an offence, liable on conviction to an alternative fine, this section shall have effect in relation—
- (a) to the alternative fine; and
 - (b) to any amount that the instrument specifies as the maximum fine for which a subordinate instrument made in the exercise of the power conferred by it may provide,
- as well as in relation to the fine mentioned in subsection (3) above.
- (6) Section 36 of the Criminal Justice Act 1982 (abolition of enhanced penalties under subordinate instruments) shall have effect as if the references in it to an Act included references to an instrument and the reference in subsection (2) to the coming into force of the section were a reference, in relation to an instrument conferring a power such as is mentioned in subsection (1), to the coming into force of this section.

56 Fines under secondary subordinate instruments: Scotland

- (1) In the Criminal Procedure (Scotland) Act 1975, after section 289GB (which was inserted by the Criminal Justice (Scotland) Act 1987) there shall be inserted the following section—

“289GC Fines under secondary subordinate instruments— Scotland

- (1) This section applies to any instrument (however framed or worded) which—
- (a) was made before 11th April 1983 (the date of commencement of Part IV of the Criminal Justice Act 1982);
 - (b) confers on any authority other than a harbour authority a power by subordinate instrument to make a person, as regards any summary offence (whether or not created by the latter instrument), liable on conviction to a maximum fine of a specified amount not exceeding £1,000,
- but does not affect so much of any such instrument as (in whatever words) confers a power by subordinate instrument to make a person liable on conviction to a fine for each period of a specified length during which a continuing offence is continued.
- (2) The maximum fine to which a subordinate instrument made by virtue of an instrument to which this section applies may provide that a person shall be liable on conviction of a summary offence is—
- (a) if the specified amount is less than £25, level 1 on the standard scale;
 - (b) if it is £25 or more but less than £50, level 2;
 - (c) if it is £50 or more but less than £200, level 3;
 - (d) if it is £200 or more but less than £400, level 4; and
 - (e) if it is £400 or more, level 5.
- (3) Subject to subsection (5) below, where an instrument to which this section applies confers a power by subordinate instrument to make a person, as regards a summary offence, liable on conviction to a fine in respect of a specified quantity or a specified number of things, that fine shall be treated for the purposes of this section as being the maximum fine to which a person may be made liable by virtue of the instrument.
- (4) Where an instrument to which this section applies confers a power to provide for different maximum fines in relation to different circumstances or persons of different descriptions, the amount specified as those maximum fines are to be treated separately for the purposes of this section.
- (5) Where an instrument to which this section applies confers a power by subordinate instrument to make a person, as regards a summary offence, liable on conviction to a fine in respect of a specified quantity or a specified number of things but also confers a power by subordinate instrument to make a person, as regards such an offence, liable on conviction to an alternative fine, this section shall have effect in relation—
- (a) to the alternative fine; and
 - (b) to any amount that the instrument specifies as the maximum fine for which a subordinate instrument made in the exercise of the power conferred by it may provide,

as well as in relation to the fine mentioned in subsection (3) above.”

- (2) Section 289E of the Criminal Procedure (Scotland) Act 1975 (penalties for first and subsequent convictions of summary offences to be the same) shall have effect as if the references in it to an Act included references to an instrument and the reference in subsection (5) to the commencement of the section were a reference, in relation to an instrument conferring a power such as is mentioned in subsection (1), to the coming into force of this section.

57 Powers of harbour authorities to provide for maximum fines up to level 4 on standard scale

- (1) Where a harbour authority is empowered to provide—
- (a) in an instrument made by virtue of an enactment; or
 - (b) in an instrument made by virtue of an instrument made under an enactment,
- that a person, as regards any summary offence (whether or not created by the instrument), shall be liable on conviction to a fine not exceeding an amount less than level 4 on the standard scale, the power shall extend by virtue of this section to making him liable to a fine not exceeding level 4.
- (2) Where any enactment or instrument (“the enabling legislation”) (however expressed) provides that a person who contravenes any provision of an instrument (“a regulatory instrument”) made by a harbour authority—
- (a) by virtue of the enabling legislation; or
 - (b) by virtue of an instrument made under the enabling legislation,
- shall be guilty of a summary offence and liable on conviction to a fine not exceeding an amount less than level 4 on the standard scale, the power conferred by the enabling legislation shall by virtue of this section enable the harbour authority to provide in a regulatory instrument that a person, as regards any summary offence created by the regulatory instrument, shall be liable on summary conviction to a fine not exceeding level 4.

58 Byelaws relating to the burning of crop residues

- (1) In section 43 of the Criminal Justice Act 1982 (maximum fines under byelaws relating to the burning of straw or stubble)—
- (a) after the word “stubble” there shall be inserted the words “or any other crop residue”; and
 - (b) the words from “and, in the case of a continuing offence,” to “thereof” and from “(but” to the end of the section shall cease to have effect.
- (2) Any byelaw relating to the burning of crop residues other than straw or stubble made by a local authority under section 235 of the Local Government Act 1972 which is in force at the coming into force of this section shall have effect as if it specified level 5 on the standard scale as the maximum fine which may be imposed on summary conviction of an offence under it.
- (3) Nothing in this section shall affect the punishment for an offence committed before this section comes into force.

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Exceptionally high maximum fines

59 Power to alter exceptionally high maximum fines

- (1) The Secretary of State may by order amend an enactment or subordinate instrument specifying a sum to which this subsection applies so as to substitute for that sum such other sum as appears to him—
 - (a) to be justified by a change in the value of money appearing to him to have taken place since the last occasion on which the sum in question was fixed; or
 - (b) to be appropriate to take account of an order altering the standard scale which has been made or is proposed to be made.
- (2) Subsection (1) above applies to any sum which—
 - (a) is specified as the maximum fine which may be imposed on conviction of a summary offence; and
 - (b) is higher than level 5 on the standard scale.
- (3) The Secretary of State may by order amend an enactment or subordinate instrument specifying a sum to which this subsection applies so as to substitute for that sum such other sum as appears to him—
 - (a) to be justified by a change in the value of money appearing to him to have taken place since the last occasion on which the sum in question was fixed; or
 - (b) to be appropriate to take account of an order made or proposed to be made altering the statutory maximum.
- (4) Subsection (3) above applies to any sum which—
 - (a) is specified as the maximum fine which may be imposed on summary conviction of an offence triable either way; and
 - (b) is higher than the statutory maximum.
- (5) An order under this section—
 - (a) shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament; and
 - (b) shall not affect the punishment for an offence committed before it comes into force.
- (6) In this section—

“enactment” includes an enactment contained in an Act passed after this Act; and

“subordinate instrument” includes an instrument made after the passing of this Act.

Default in payment of fines etc.

60 Periods of imprisonment for default

- (1) In the Tables in section 31(3A) of the Powers of Criminal Courts Act 1973 and paragraph 1 of Schedule 4 to the Magistrates' Courts Act 1980, for the entries relating to amounts not exceeding £10,000 there shall be substituted—

“An amount not exceeding £50

5 days

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An amount exceeding £50 but not exceeding £100	7 days
An amount exceeding £100 but not exceeding £400	14 days
An amount exceeding £400 but not exceeding £1,000	30 days
An amount exceeding £1,000 but not exceeding £2,000	45 days
An amount exceeding £2,000 but not exceeding £5,000	3 months
An amount exceeding £5,000 but not exceeding £10,000	6 months”.

(2) In the Table in section 31(3A) of the Powers of Criminal Courts Act 1973, for the entry relating to an amount exceeding £10,000 there shall be substituted—

“An amount exceeding £10,000 but not exceeding £20,000	12 months
An amount exceeding £20,000 but not exceeding £50,000	18 months
An amount exceeding £50,000 but not exceeding £100,000	2 years
An amount exceeding £100,000 but not exceeding £250,000	3 years
An amount exceeding £250,000 but not exceeding £1 million	5 years
An amount exceeding £1 million	10 years”.

61 Default – procedure

(1) The Magistrates' Courts Act 1980 shall be amended as follows.

(2) The following subsections shall be added after section 77(2)—

“(3) A magistrates' court shall have power at any time to do either or both of the following—

(a) to direct that the issue of the warrant of commitment shall be postponed until a time different from that to which it was previously postponed;

(b) to vary any of the conditions on which its issue is postponed, but only if it thinks it just to do so having regard to a change of circumstances since the relevant time.

(4) In this section “the relevant time” means—

(a) where neither of the powers conferred by subsection (3) above has been exercised previously, the date when the issue of the warrant was postponed under subsection (2) above; and

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- (b) in any other case, the date of the exercise or latest exercise of either or both of the powers.
- (5) Without prejudice to the generality of subsection (3) above, if on an application by a person in respect of whom issue of a warrant has been postponed it appears to a justice of the peace acting for the petty sessions area in which the warrant has been or would have been issued that since the relevant time there has been a change of circumstances which would make it just for the court to exercise one or other or both of the powers conferred by that subsection, he shall refer the application to the court.
- (6) Where such an application is referred to the court, it shall be the duty of the clerk of the court—
- (a) to fix a time and place for the application to be heard; and
 - (b) to give the applicant notice of the time and place which he fixes.
- (7) Where such a notice has been given but the applicant does not appear at the time and place specified in the notice, the court may proceed with the consideration of the application in his absence.
- (8) If a warrant of commitment in respect of the sum adjudged to be paid has been issued before the hearing of the application, the court shall have power to order that the warrant shall cease to have effect and, if the applicant has been arrested in pursuance of it, to order that he shall be released, but it shall only make an order under this subsection if it is satisfied that the change of circumstances on which the applicant relies was not put before the court when it was determining whether to issue the warrant.”.
- (3) The following subsection shall be inserted after subsection (4) of section 82 (restriction on power to impose imprisonment for default)—
- “(4A) The methods of enforcing payment mentioned in subsection (4)(b)(ii) above are—
- (a) a warrant of distress under section 76 above;
 - (b) an application to the High Court or county court for enforcement under section 87 below;
 - (c) an order under section 88 below;
 - (d) an attachment of earnings order; and
 - (e) if the offender is under the age of 21, an order under section 17 of the Criminal Justice Act 1982 (attendance centre orders).”.

(4) The following subsections shall be inserted after subsection (5) of that section—

“(5A) A magistrates' court may not issue a warrant of commitment under subsection (5) above at a hearing at which the offender is not present unless the clerk of the court has first served on the offender a notice in writing stating that the court intends to hold a hearing to consider whether to issue such a warrant and giving the reason why the court so intends.

(5B) Where after the occasion of an offender's conviction by a magistrates' court the court holds a hearing for the purpose of considering whether to issue a warrant of commitment for default in paying a sum adjudged to be paid by the conviction, it shall consider such information about the offender's means as is available to it unless it has previously—

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- (a) inquired into the offender's means; and
 - (b) postponed the issue of the warrant of commitment under section 77(2) above.
 - (5C) A notice under subsection (5A) above—
 - (a) shall state the time and place appointed for the hearing; and
 - (b) shall inform the offender that, if he considers that there are grounds why the warrant should not be issued, he may make representations to the court in person or in writing,
but the court may exercise its powers in relation to the issue of a warrant whether or not he makes representations.
 - (5D) Except as mentioned in subsection (5E) below, the time stated in a notice under subsection (5A) above shall not be earlier than 21 days after the issue of the notice.
 - (5E) Where a magistrates' court exercises in relation to an offender the power conferred by section 77(2) above and at the same hearing issues a notice under subsection (5A) above in relation to him, the time stated in the notice may be a time on any day following the end of the period for which the issue of the warrant of commitment has been postponed.
 - (5F) A notice under subsection (5A) above to be served on any person shall be deemed to be served on that person if it is sent by registered post or the recorded delivery service addressed to him at his last known address, notwithstanding that the notice is returned as undelivered or is for any other reason not received by that person.”
- (5) The following section shall be substituted for section 85—

“85 Power to remit fine

- (1) Where a fine has been imposed on conviction of an offender by a magistrates' court, the court may at any time remit the whole or any part of the fine, but only if it thinks it just to do so having regard to a change of circumstances which has occurred—
 - (a) where the court is considering whether to issue a warrant of commitment after the issue of such a warrant in respect of the fine has been postponed under subsection (2) of section 74 above, since the relevant time as defined in subsection (4) of that section; and
 - (b) in any other case, since the date of the conviction.
- (2) Where the court remits the whole or part of the fine after a term of imprisonment has been fixed, it shall also reduce the term by an amount which bears the same proportion to the whole term as the amount remitted bears to the whole or, as the case may be, shall remit the whole term.
- (3) In calculating the reduction in a term of imprisonment required by subsection (2) above any fraction of a day shall be left out of account.
- (4) Notwithstanding the definition of “fine” in section 150(1) below, references in this section to a fine do not include any other sum adjudged to be paid on conviction, whether as a pecuniary penalty, forfeiture, compensation or otherwise.”

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- (6) In section 121(2) (magistrates' court to consist of at least 2 justices when holding an inquiry into the means of an offender for the purposes of section 82) after the word “above” there shall be inserted the words “or determine under that section at a hearing at which the offender is not present whether to issue a warrant of commitment”.

62 Fines on companies

- (1) The following section shall be inserted after section 87 of the Magistrates' Courts Act 1980—

“87A Fines imposed on companies

- (1) Where—

- (a) a magistrates' court has, or is treated by any enactment as having, adjudged a company by a conviction to pay a sum; and
- (b) the court has issued a warrant of distress under section 76(1) above for the purpose of levying the sum; and
- (c) it appears on the return to the warrant that the money and goods of the company are insufficient to satisfy the sum with the costs and charges of levying the same,

the clerk of the court may make an application in relation to the company under section 9 or 124 of the Insolvency Act 1986 (administration or winding up).

- (2) Any expenses incurred under subsection (1) above by the clerk of a magistrates' court shall be treated for the purposes of Part VI of the Justices of the Peace Act 1979 as expenses of the magistrates' courts committee.”.

- (2) The words “or by the clerk of a magistrates' court in the exercise of the power conferred by section 87A of the Magistrates' Courts Act 1980 (enforcement of fines imposed on companies)” shall be inserted—

- (a) before the words “or by all” in section 9(1) of the Insolvency Act 1986;
- (b) after the word “contributories” in section 124(1) of that Act.

Fines and other pecuniary penalties—miscellaneous

63 Fixed penalty notices

In section 28 of the Transport Act 1982 (fixed penalty notices given at a police station)

- (a) in subsection (1), the words “or an authorised person” shall be inserted after the words “a constable”, in the second place where they occur;
- (b) in subsection (2)—
 - (i) the words “or an authorised person” shall be inserted after the words “a constable”; and
 - (ii) the words “or authorised person” shall be inserted after the word “constable”, in the second, third and fourth places where it occurs; and
- (c) the following subsection shall be inserted after subsection (4)—

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“(5) In this section “authorised person” means a person authorised for the purposes of this section by or on behalf of the chief officer of police for the area in which the police station is situated.”.

64 Increase of maximum fine under s.32 of the Game Act 1831

- (1) In section 32 of the Game Act 1831 (persons found armed using violence etc.) for “level 1” there shall be substituted “level 4”.
- (2) Nothing in this section shall affect the punishment for an offence committed before this section comes into force.

65 Powers of civilian fine enforcement officers

- (1) The following paragraph shall be inserted after the first paragraph of subsection (2) of section 125 (warrants) of the Magistrates' Courts Act 1980—

“A warrant of arrest, warrant of commitment or warrant of distress which is issued by a justice of the peace for the enforcement of a fine may also be executed by a person who—

- (a) is employed by an authority of a prescribed class;
 - (b) is authorised in the prescribed manner to execute such warrants; and
 - (c) is acting within the area for which the authority that employs him performs its functions.”.
- (2) In section 136(2)(a) of that Act (by virtue of which a warrant for the detention of a fine defaulter overnight in a police station may be executed by any police constable) after the word “constable” there shall be inserted the words “or any person who—
 - (a) is employed by an authority of a prescribed class;
 - (b) is authorised in the prescribed manner to execute such warrants; and
 - (c) is acting within the area for which the authority that employs him performs its functions.”.

66 Fisheries offences on River Tweed

- (1) Section 38 of the Fisheries Act 1981 (which applied certain enactments to so much of the River Tweed as is situated outwith Scotland as if it were situated in Scotland) shall be deemed not to have been excluded from the operation of section 38(1) of the Criminal Justice Act 1982 (general increase of fines for summary offences) by paragraph (c) of that subsection (exclusion of offences where fine or maximum fine altered since 29th July 1977).
- (2) Nothing in this section shall affect the punishment for an offence committed before this section comes into force.

67 Fines imposed and recognizances forfeited by coroners

- (1) A fine imposed by a coroner, including a fine so imposed before this section comes into force, shall be treated for the purpose of its collection, enforcement and remission as having been imposed by the magistrates' court for the area in which the coroner's

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court was held, and the coroner shall as soon as practicable after imposing the fine give particulars of the fine to the clerk of that court.

- (2) A coroner shall proceed in the like manner under subsection (1) above in relation to a recognizance forfeited at an inquest held before him, including a recognizance so forfeited before this section comes into force, as if he had imposed a fine upon the person forfeiting that recognizance, and subsection (1) above shall apply accordingly.

68 Causing death by reckless driving— increased minimum disqualification period

- (1) In section 93 of the Road Traffic Act 1972 the following subsection shall be inserted after subsection (3)—

“(3A) Where a person is convicted of an offence under section 1, subsection (1) above shall apply in relation to him with the substitution of two years for twelve months.”.

- (2) Nothing in this section shall have effect in relation to an offence committed before this section comes into force.

Forfeiture

69 Forfeiture general

- (1) The following subsections shall be substituted for section 43(1) of the Powers of Criminal Courts Act 1973—

“(1) Subject to the following provisions of this section, where a person is convicted of an offence and—

- (a) the court by or before which he is convicted is satisfied that any property which has been lawfully seized from him or which was in his possession or under his control at the time when he was apprehended for the offence or when a summons in respect of it was issued—
- (i) has been used for the purpose of committing, or facilitating the commission of, any offence; or
- (ii) was intended by him to be used for that purpose; or
- (b) the offence, or an offence which the court has taken into consideration in determining his sentence, consists of unlawful possession of property which—
- (i) has been lawfully seized from him; or
- (ii) was in his possession or under his control at the time when he was apprehended for the offence of which he has been convicted or when a summons in respect of that offence was issued,

the court may make an order under this section in respect of that property, and may do so whether or not it also deals with the offender in respect of the offence in any other way and without regard to any restrictions on forfeiture in an enactment contained in an Act passed before the Criminal Justice Act 1988.

- (1A) In considering whether to make such an order in respect of any property a court shall have regard—

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- (a) to the value of the property; and
 - (b) to the likely financial and other effects on the offender of the making of the order (taken together with any other order that the court contemplates making).”
- (2) At the end of section 12(4) of that Act (which authorises a court, on making a probation order in respect of an offender or discharging an offender absolutely or conditionally, to order him to pay costs or compensation) there shall be added the words “or to make an order under section 43 below”.

70 Forfeiture for drug offences

In section 27(1) of the Misuse of Drugs Act 1971 (forfeiture on conviction of an offence under that Act) after the words “under this Act” there shall be inserted the words “or a drug trafficking offence, as defined in section 38(1) of the Drug Trafficking Offences Act 1986”.

PART VI

CONFISCATION OF THE PROCEEDS OF AN OFFENCE

71 Confiscation orders

- (1) The Crown Court and a magistrates' court shall each have power, in addition to dealing with an offender in any other way, to make an order under this section requiring him to pay such sum as the court thinks fit.
- (2) The Crown Court may make such an order against an offender where—
- (a) he is found guilty of any offence to which this Part of this Act applies; and
 - (b) it is satisfied—
 - (i) that he has benefited from that offence or from that offence taken together with some other offence of which he is convicted in the same proceedings, or which the court takes into consideration in determining his sentence, and which is not a drug trafficking offence; and
 - (ii) that his benefit is at least the minimum amount.
- (3) A magistrates' court may make such an order against an offender where—
- (a) he is convicted of an offence listed in Schedule 4 to this Act; and
 - (b) it is satisfied—
 - (i) that he has benefited from that offence or from that offence taken together with some other offence listed in that Schedule of which he is convicted in the same proceedings, or which the court takes into consideration in determining his sentence; and
 - (ii) that his benefit is at least the minimum amount.
- (4) For the purposes of this Part of this Act a person benefits from an offence if he obtains property as a result of or in connection with its commission and his benefit is the value of the property so obtained.

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- (5) Where a person derives a pecuniary advantage as a result of or in connection with the commission of an offence, he is to be treated for the purposes of this Part of this Act as if he had obtained as a result of or in connection with the commission of the offence a sum of money equal to the value of the pecuniary advantage.
- (6) The sum which an order made by a court under this section requires an offender to pay must be at least the minimum amount, but must not exceed—
- (a) the benefit in respect of which it is made; or
 - (b) the amount appearing to the court to be the amount that might be realised at the time the order is made,
- whichever is the less.
- (7) For the purposes of this Part of this Act the minimum amount is £10,000 or such other amount as the Secretary of State may specify by order made by statutory instrument.
- (8) A statutory instrument containing an order made by the Secretary of State under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) In this Part of this Act—
- (a) an order made by a court under this section is referred to as a “confiscation order”;
 - (b) “drug trafficking offence” has the same meaning as in the Drug Trafficking Offences Act 1986;
 - (c) references to an offence to which this Part of this Act applies are references to any offence which—
 - (i) is listed in Schedule 4 to this Act; or
 - (ii) if not so listed, is an indictable offence, other than a drug trafficking offence; and
 - (d) a person against whom proceedings have been instituted for an offence to which this Part of this Act applies is referred to (whether or not he has been convicted) as “the defendant”.

72 Making of confiscation orders

- (1) A court shall not make a confiscation order unless the prosecutor has given written notice to the court to the effect that it appears to him that, were the court to consider that it ought to make such an order, it would be able to make an order requiring the offender to pay at least the minimum amount.
- (2) If the prosecutor gives the court such a notice, the court shall determine whether it ought to make a confiscation order.
- (3) When considering whether to make a confiscation order the court may take into account any information that has been placed before it showing that a victim of an offence to which the proceedings relate has instituted, or intends to institute, civil proceedings against the defendant in respect of loss, injury or damage sustained in connection with the offence.
- (4) If the court determines that it ought to make such an order, the court shall, before sentencing or otherwise dealing with the offender in respect of the offence or, as the case may be, any of the offences concerned, determine the amount to be recovered

in his case by virtue of this section and make a confiscation order for that amount specifying the offence or offences.

(5) Where a court makes a confiscation order against a defendant in any proceedings, it shall be its duty, in respect of any offence of which he is convicted in those proceedings, to take account of the order before—

- (a) imposing any fine on him;
- (b) making any order involving any payment by him, other than an order under section 35 of the Powers of Criminal Courts Act 1973 (compensation orders); or
- (c) making any order under—
 - (i) section 27 of the Misuse of Drugs Act 1971 (forfeiture orders); or
 - (ii) section 43 of the Powers of Criminal Courts Act 1973 (deprivation orders),

but subject to that shall leave the order out of account in determining the appropriate sentence or other manner of dealing with him.

(6) No enactment restricting the power of a court dealing with an offender in a particular way from dealing with him also in any other way shall by reason only of the making of a confiscation order restrict the court from dealing with an offender in any way it considers appropriate in respect of an offence to which this Part of this Act applies.

(7) Where—

- (a) a court makes both a confiscation order and an order for the payment of compensation under section 35 of the Powers of Criminal Courts Act 1973 against the same person in the same proceedings; and
- (b) it appears to the court that he will not have sufficient means to satisfy both the orders in full,

it shall direct that so much of the compensation as will not in its opinion be recoverable because of the insufficiency of his means shall be paid out of any sums recovered under the confiscation order.

73 Statements, etc. relevant to making confiscation orders

(1) Where—

- (a) a defendant has been convicted of an offence to which this Part of this Act applies and the prosecutor tenders to the court a statement as to any matters relevant—
 - (i) to determining whether the defendant has benefited from the offence or from any other offence to which this Part of this Act applies of which he is convicted in the same proceedings or which is taken into consideration in determining his sentence; or
 - (ii) to an assessment of the value of the defendant's benefit from the offence or any other offence to which this Part of this Act applies of which he is so convicted or which is so taken into consideration; and
 - (b) the defendant accepts to any extent any allegation in the statement;
- the court may, for the purposes of so determining or making such an assessment, treat his acceptance as conclusive of the matters to which it relates.

(2) Where—

- (a) a statement is tendered under subsection (1)(a) above, and

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- (b) the court is satisfied that a copy of that statement has been served on the defendant,
- the court may require the defendant to indicate to what extent he accepts each allegation in the statement and, so far as he does not accept any such allegation, to indicate any matters he proposes to rely on.
- (3) If the defendant fails in any respect to comply with a requirement under subsection (2) above, he may be treated for the purposes of this section as accepting every allegation in the statement apart from—
- (a) any allegation in respect of which he has complied with the requirement; and
 - (b) any allegation that he has benefited from an offence or that any property was obtained by him as a result of or in connection with the commission of an offence.
- (4) Where—
- (a) there is tendered to the court by the defendant a statement as to any matters relevant to determining the amount that might be realised at the time the confiscation order is made; and
 - (b) the prosecutor accepts to any extent any allegation in the statement;
- the court may, for the purposes of that determination, treat the acceptance by the prosecutor as conclusive of the matters to which it relates.
- (5) An allegation may be accepted or a matter indicated for the purposes of this section either—
- (a) orally before the court; or
 - (b) in writing in accordance with rules of court.
- (6) If the court is satisfied as to any matter relevant for determining the amount that might be realised at the time the confiscation order is made (whether by an acceptance under this section or otherwise), the court may issue a certificate giving the court's opinion as to the matters concerned and shall do so if satisfied that the amount that might be realised at the time the confiscation order is made is less than the amount the court assesses to be the value of the defendant's benefit from the offence or, if more than one, all the offences in respect of which the order may be made.

74 Definition of principal terms used

- (1) In this Part of this Act, “realisable property” means, subject to subsection (2) below—
- (a) any property held by the defendant; and
 - (b) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Part of this Act.
- (2) Property is not realisable property if—
- (a) an order under section 43 of the Powers of Criminal Courts Act 1973 (deprivation orders);
 - (b) an order under section 27 of the Misuse of Drugs Act 1971 (forfeiture orders); or
 - (c) an order under section 223 or 436 of the Criminal Procedure (Scotland) Act 1975 (forfeiture of property),
- is in force in respect of the property.

- (3) For the purposes of this Part of this Act the amount that might be realised at the time a confiscation order is made is—
- (a) the total of the values at that time of all the realisable property held by the defendant, less
 - (b) where there are obligations having priority at that time, the total amounts payable in pursuance of such obligations,
- together with the total of the values at that time of all gifts caught by this Part of this Act.
- (4) Subject to the following provisions of this section, for the purposes of this Part of this Act the value of property (other than cash) in relation to any person holding the property—
- (a) where any other person holds an interest in the property, is—
 - (i) the market value of the first-mentioned person’s beneficial interest in the property, less
 - (ii) the amount required to discharge any incumbrance (other than a charging order) on that interest; and
 - (b) in any other case, is its market value.
- (5) References in this Part of this Act to the value at any time (referred to in subsection (6) below as “the material time”) of any property obtained by a person as a result of or in connection with the commission of an offence are references to—
- (a) the value of the property to him when he obtained it adjusted to take account of subsequent changes in the value of money; or
 - (b) where subsection (6) below applies, the value there mentioned,
- whichever is the greater.
- (6) If at the material time he holds—
- (a) the property which he obtained (not being cash); or
 - (b) property which, in whole or in part, directly or indirectly represents in his hands the property which he obtained,
- the value referred to in subsection (5)(b) above is the value to him at the material time of the property mentioned in paragraph (a) above or, as the case may be, of the property mentioned in paragraph (b) above, so far as it so represents the property which he obtained, but disregarding any charging order.
- (7) Subject to subsection (12) below, references in this Part of this Act to the value at any time (referred to in subsection (8) below as “the material time”) of a gift caught by this Part of this Act are references to—
- (a) the value of the gift to the recipient when he received it adjusted to take account of subsequent changes in the value of money; or
 - (b) where subsection (8) below applies, the value there mentioned,
- whichever is the greater.
- (8) Subject to subsection (12) below, if at the material time he holds—
- (a) the property which he received (not being cash); or
 - (b) property which, in whole or in part, directly or indirectly represents in his hands the property which he received;
- the value referred to in subsection (7) above is the value to him at the material time of the property mentioned in paragraph (a) above or, as the case may be, of the property

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mentioned in paragraph (b) above so far as it so represents the property which he received, but disregarding any charging order.

- (9) For the purposes of subsection (3) above, an obligation has priority at any time if it is an obligation of the defendant to—
- (a) pay an amount due in respect of a fine, or other order of a court, imposed or made on conviction of an offence, where the fine was imposed or order made before the confiscation order; or
 - (b) pay any sum which would be included among the preferential debts (within the meaning given by section 386 of the Insolvency Act 1986) in the defendant's bankruptcy commencing on the date of the confiscation order or winding up under an order of the court made on that date.
- (10) A gift (including a gift made before the commencement of this Part of this Act) is caught by this Part of this Act if—
- (a) it was made by the defendant at any time after the commission of the offence or, if more than one, the earliest of the offences to which the proceedings for the time being relate; and
 - (b) the court considers it appropriate in all the circumstances to take the gift into account.
- (11) The reference in subsection (10) above to an offence to which the proceedings for the time being relate includes, where the proceedings have resulted in the conviction of the defendant, a reference to any offence which the court takes into consideration when determining his sentence.
- (12) For the purposes of this Part of this Act—
- (a) the circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration provided by the defendant; and
 - (b) in those circumstances, the preceding provisions of this section shall apply as if the defendant had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in paragraph (a) above bears to the value of the consideration provided by the defendant.

Enforcement, etc. of confiscation orders

75 Application of procedure for enforcing fines

- (1) Where the Crown Court orders the defendant to pay an amount under this Part of this Act, sections 31(1) to (3C) and 32(1) and (2) of the Powers of Criminal Courts Act 1973 (powers of Crown Court in relation to fines and enforcement of Crown Court fines) shall have effect as if that amount were a fine imposed on him by the Crown Court.
- (2) Where a magistrates' court orders the defendant to pay an amount under this Part of this Act, that amount shall be treated as a fine for the purposes of section 31(3) of the Magistrates' Courts Act 1980 (general limit on the power of a magistrates' court to impose imprisonment not to apply in the case of imprisonment in default).
- (3) Where—

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- (a) a warrant of commitment is issued for a default in payment of an amount ordered to be paid under this Part of this Act in respect of an offence; and
- (b) at the time the warrant is issued, the defendant is liable to serve a term of custody in respect of the offence;

the term of imprisonment or of detention under section 9 of the Criminal Justice Act 1982 (detention of persons aged 17 to 20 for default) to be served in default of payment of the amount shall not begin to run until after the term mentioned in paragraph (b) above.

- (4) The reference in subsection (3) above to the term of custody which the defendant is liable to serve in respect of the offence is a reference to the term of imprisonment or detention in a young offender institution which he is liable to serve in respect of the offence; and for the purposes of this subsection—
 - (a) consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term; and
 - (b) there shall be disregarded—
 - (i) any sentence suspended under section 22(1) of the Powers of Criminal Courts Act 1973 which has not taken effect at the time the warrant is issued;
 - (ii) in the case of a sentence of imprisonment passed with an order under section 47(1) of the Criminal Law Act 1977, any part of the sentence which the defendant has not at that time been required to serve in prison; and
 - (iii) any term of imprisonment or detention fixed under section 31(2) of the Powers of Criminal Courts Act 1973 for which a warrant of commitment has not been issued at that time.
- (5) In the application of Part III of the Magistrates' Courts Act 1980 to amounts payable under confiscation orders—
 - (a) such an amount is not a sum adjudged to be paid by a conviction for the purposes of section 81 (enforcement of fines imposed on young offenders) or a fine for the purposes of section 85 (remission of fines); and
 - (b) in section 87 (enforcement by High Court or county court), subsection (3) shall be omitted.
- (6) This section applies in relation to confiscation orders made by the criminal division of the Court of Appeal, or by the House of Lords on appeal from that division, as it applies in relation to confiscation orders made by the Crown Court, and the reference in subsection (1) above to the Crown Court shall be construed accordingly.

76 Cases in which restraint orders and charging orders may be made

- (1) The powers conferred on the High Court by sections 77(1) and 78(1) below are exercisable where—
 - (a) proceedings have been instituted in England and Wales against the defendant for an offence to which this Part of this Act applies;
 - (b) the proceedings have not been concluded; and
 - (c) either a confiscation order has been made or it appears to the court that there are reasonable grounds for thinking that a confiscation order may be made in them.
- (2) Those powers are also exercisable where—

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- (a) the court is satisfied that, whether by the laying of an information or otherwise, a person is to be charged with an offence to which this Part of this Act applies; and
 - (b) it appears to the court that a confiscation order may be made in proceedings for the offence.
- (3) For the purposes of sections 77, 78 and 92 below at any time when those powers are exercisable before proceedings have been instituted—
- (a) references in this Part of this Act to the defendant shall be construed as references to the person referred to in subsection (2)(a) above;
 - (b) references in this Part of this Act to the prosecutor shall be construed as references to the person who the High Court is satisfied is to have the conduct of the proposed proceedings; and
 - (c) references in this Part of this Act to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in subsection (2)(a) above for an offence to which this Part of this Act applies.
- (4) Where the court has made an order under section 77(1) or 78(1) below by virtue of subsection (2) above, the court shall discharge the order if proceedings in respect of the offence are not instituted (whether by the laying of an information or otherwise) within such time as the court considers reasonable.

77 Restraint orders

- (1) The High Court may by order (referred to in this Part of this Act as a “restraint order”) prohibit any person from dealing with any realisable property, subject to such conditions and exceptions as may be specified in the order.
- (2) Without prejudice to the generality of subsection (1) above, a restraint order may make such provision as the court thinks fit for living expenses and legal expenses.
- (3) A restraint order may apply—
- (a) to all realisable property held by a specified person, whether the property is described in the order or not; and
 - (b) to realisable property held by a specified person, being property transferred to him after the making of the order.
- (4) This section shall not have effect in relation to any property for the time being subject to a charge under section 78 below.
- (5) A restraint order—
- (a) may be made only on an application by the prosecutor;
 - (b) may be made on an ex parte application to a judge in chambers; and
 - (c) shall provide for notice to be given to persons affected by the order.
- (6) A restraint order—
- (a) may be discharged or varied in relation to any property; and
 - (b) shall be discharged when proceedings for the offence are concluded.
- (7) An application for the discharge or variation of a restraint order may be made by any person affected by it.

- (8) Where the High Court has made a restraint order, the court may at any time appoint a receiver—
- (a) to take possession of any realisable property, and
 - (b) in accordance with the court's directions, to manage or otherwise deal with any property in respect of which he is appointed,
- subject to such exceptions and conditions as may be specified by the court; and may require any person having possession of property in respect of which a receiver is appointed under this section to give possession of it to the receiver.
- (9) For the purposes of this section, dealing with property held by any person includes (without prejudice to the generality of the expression)—
- (a) where a debt is owed to that person, making a payment to any person in reduction of the amount of the debt; and
 - (b) removing the property from Great Britain.
- (10) Where the High Court has made a restraint order, a constable may for the purpose of preventing any realisable property being removed from Great Britain, seize the property.
- (11) Property seized under subsection (10) above shall be dealt with in accordance with the court's directions.
- (12) The Land Charges Act 1972 and the Land Registration Act 1925 shall apply—
- (a) in relation to restraint orders, as they apply in relation to orders affecting land made by the court for the purpose of enforcing judgments or recognisances; and
 - (b) in relation to applications for restraint orders, as they apply in relation to other pending land actions.
- (13) The prosecutor shall be treated for the purposes of section 57 of the Land Registration Act 1925 (inhibitions) as a person interested in relation to any registered land to which a restraint order or an application for such an order relates.

78 Charging orders in respect of land, securities, etc

- (1) The High Court may make a charging order on realisable property for securing the payment to the Crown—
- (a) where a confiscation order has not been made, of an amount equal to the value from time to time of the property charged; and
 - (b) in any other case, of an amount not exceeding the amount payable under the confiscation order.
- (2) For the purposes of this Part of this Act, a charging order is an order made under this section imposing on any such realisable property as may be specified in the order a charge for securing the payment of money to the Crown.
- (3) A charging order—
- (a) may be made only on an application by the prosecutor;
 - (b) may be made on an ex parte application to a judge in chambers;
 - (c) shall provide for notice to be given to persons affected by the order; and

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- (d) may be made subject to such conditions as the court thinks fit and, without prejudice to the generality of this paragraph, such conditions as it thinks fit as to the time when the charge is to become effective.
- (4) Subject to subsection (6) below, a charge may be imposed by a charging order only on—
- (a) any interest in realisable property, being an interest held beneficially by the defendant or by a person to whom the defendant has directly or indirectly made a gift caught by this Part of this Act—
 - (i) in any asset of a kind mentioned in subsection (5) below; or
 - (ii) under any trust; or
 - (b) any interest in realisable property held by a person as trustee of a trust if the interest is in such an asset or is an interest under another trust and a charge may by virtue of paragraph (a) above be imposed by a charging order on the whole beneficial interest under the first-mentioned trust.
- (5) The assets referred to in subsection (4) above are—
- (a) land in England and Wales; or
 - (b) securities of any of the following kinds—
 - (i) government stock;
 - (ii) stock of any body (other than a building society) incorporated within England and Wales;
 - (iii) stock of any body incorporated outside England and Wales or of any country or territory outside the United Kingdom, being stock registered in a register kept at any place within England and Wales;
 - (iv) units of any unit trust in respect of which a register of the unit holders is kept at any place within England and Wales.
- (6) In any case where a charge is imposed by a charging order on any interest in an asset of a kind mentioned in subsection (5)(b) above, the court may provide for the charge to extend to any interest or dividend payable in respect of the asset.
- (7) The court may make an order discharging or varying the charging order and shall make an order discharging the charging order if the proceedings for the offence are concluded or the amount payment of which is secured by the charge is paid into court.
- (8) An application for the discharge or variation of a charging order may be made by any person affected by it.

79 Charging orders: supplementary provisions

- (1) The Land Charges Act 1972 and the Land Registration Act 1925 shall apply in relation to charging orders as they apply in relation to orders or writs issued or made for the purpose of enforcing judgments.
- (2) Where a charging order has been registered under section 6 of the Land Charges Act 1972, subsection (4) of that section (effect of non-registration of writs and orders registrable under that section) shall not apply to an order appointing a receiver made in pursuance of the charging order.
- (3) Subject to any provision made under section 80 below or by rules of court, a charge imposed by a charging order shall have the like effect and shall be enforceable in the same courts and in the same manner as an equitable charge created by the person

holding the beneficial interest or, as the case may be, the trustees by writing under their hand.

- (4) Where a charging order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 1925, an order under section 78(7) above discharging the charging order may direct that the entry be cancelled.
- (5) The Secretary of State may by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament amend section 78 above by adding to or removing from the kinds of asset for the time being referred to there any asset of a kind which in his opinion ought to be so added or removed.
- (6) In this section and section 78 above, “building society”, “dividend”, “government stock”, “stock” and “unit trust” have the same meanings as in the Charging Orders Act 1979.

80 Realisation of property

- (1) Where—
 - (a) a confiscation order is made;
 - (b) the order is not subject to appeal; and
 - (c) the proceedings in which it was made have not been concluded,the High Court may, on an application by the prosecutor, exercise the powers conferred by subsections (2) to (6) below.
- (2) The court may appoint a receiver in respect of realisable property.
- (3) The court may empower a receiver appointed under subsection (2) above, under section 77 above or in pursuance of a charging order—
 - (a) to enforce any charge imposed under section 78 above on realisable property or on interest or dividends payable in respect of such property; and
 - (b) in relation to any realisable property other than property for the time being subject to a charge under section 78 above, to take possession of the property subject to such conditions or exceptions as may be specified by the court.
- (4) The court may order any person having possession of realisable property to give possession of it to any such receiver.
- (5) The court may empower any such receiver to realise any realisable property in such manner as the court may direct.
- (6) The court may order any person holding an interest in realisable property to make such payment to the receiver in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Part of this Act as the court may direct and the court may, on the payment being made, by order transfer, grant or extinguish any interest in the property.
- (7) Subsections (4) to (6) above do not apply to property for the time being subject to a charge under section 78 above.
- (8) The court shall not in respect of any property exercise the powers conferred by subsection (3)(a), (5) or (6) above unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the court.

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81 Application of proceeds of realisation and other sums

- (1) Subject to subsection (2) below, the following sums in the hands of a receiver appointed under this Part of this Act or in pursuance of a charging order, that is—
- (a) the proceeds of the enforcement of any charge imposed under section 78 above;
 - (b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under section 77 or 80 above; and
 - (c) any other sums, being property held by the defendant;
- shall first be applied in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under section 87(2) below and then shall, after such payments (if any) as the High Court may direct have been made out of those sums, be applied on the defendant's behalf towards the satisfaction of the confiscation order.
- (2) If, after the amount payable under the confiscation order has been fully paid, any such sums remain in the hands of such a receiver, the receiver shall distribute them—
- (a) among such of those who held property which has been realised under this Part of this Act, and
 - (b) in such proportions,
- as the High Court may direct after giving a reasonable opportunity for such persons to make representations to the court.
- (3) The receipt of any sum by a justices' clerk on account of an amount payable under a confiscation order shall reduce the amount so payable, but the justices' clerk shall apply the money received for the purposes specified in this section and in the order so specified.
- (4) The justices' clerk shall first pay any expenses incurred by a person acting as an insolvency practitioner and payable under section 87(2) below but not already paid under subsection (1) above.
- (5) If the money was paid to the justices' clerk by a receiver appointed under this Part of this Act or in pursuance of a charging order, the justices' clerk shall next pay the receiver's remuneration and expenses.
- (6) After making—
- (a) any payment required by subsection (4) above; and
 - (b) in a case to which subsection (5) above applies, any payment required by that subsection,
- the justices' clerk shall reimburse any amount paid under section 88(2) below.
- (7) The justices' clerk shall finally pay any compensation directed to be paid out of any sums recovered under the confiscation order under section 72(7) above.
- (8) Any balance in the hands of the justices' clerk after he has made all payments required by the foregoing provisions of this section shall be treated for the purposes of section 61 of the Justices of the Peace Act 1979 (application of fines, etc.) as if it were a fine imposed by a magistrates' court.
- (9) Where under subsection (3) above a sum falls to be applied in payment both of compensation and of other outgoings—
- (a) the person entitled to the compensation shall be liable to pay to the Secretary of State such an amount as bears to the remuneration or expenses the same proportion as the amount payable in accordance with the direction under

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section 72(7) above bears to the total amount payable under the confiscation order;

- (b) the justices' clerk shall deduct from the amount falling to be applied in payment of the compensation an amount equal to the amount of any liability arising by virtue of paragraph (a) above;
- (c) notwithstanding the deduction under paragraph (b) above, the person entitled to the compensation shall be treated as having received the whole amount which falls to be applied in payment of it; and
- (d) the amount deducted shall be treated for the purposes of section 61 of the Justices of the Peace Act 1979 as if it were a fine imposed by a magistrates' court.

- (10) In this section, “justices' clerk” has the same meaning as in the Justices of the Peace Act 1979.

82 Exercise of powers by High Court or receiver

- (1) This section applies to the powers conferred on the High Court by sections 77 to 81 above or on the Court of Session by sections 90 to 92 below, or on a receiver appointed under this Part of this Act or in pursuance of a charging order.
- (2) Subject to the following provisions of this section, the powers shall be exercised with a view to making available for satisfying the confiscation order or, as the case may be, any confiscation order that may be made in the defendant's case the value for the time being of realisable property held by any person by the realisation of such property.
- (3) In the case of realisable property held by a person to whom the defendant has directly or indirectly made a gift caught by this Part of this Act the powers shall be exercised with a view to realising no more than the value for the time being of the gift.
- (4) The powers shall be exercised with a view to allowing any person other than the defendant or the recipient of any such gift to retain or recover the value of any property held by him.
- (5) An order may be made or other action taken in respect of a debt owed by the Crown.
- (6) In exercising those powers, no account shall be taken of any obligations of the defendant or of the recipient of any such gift which conflict with the obligation to satisfy the confiscation order.

83 Variation of confiscation orders

- (1) If, on an application by the defendant in respect of a confiscation order, the High Court is satisfied that the realisable property is inadequate for the payment of any amount remaining to be recovered under the order the court shall issue a certificate to that effect, giving the court's reasons.
- (2) For the purposes of subsection (1) above—
 - (a) in the case of realisable property held by a person who has been adjudged bankrupt or whose estate has been sequestrated the court shall take into account the extent to which any property held by him may be distributed among creditors; and
 - (b) the court may disregard any inadequacy in the realisable property which appears to the court to be attributable wholly or partly to anything done by

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the defendant for the purpose of preserving any property held by a person to whom the defendant had directly or indirectly made a gift caught by this Part of this Act from any risk of realisation under this Part of this Act.

- (3) Where a certificate has been issued under subsection (1) above, the defendant may apply—
- (a) where the confiscation order was made by the Crown Court, to that court; and
 - (b) where the confiscation order was made by a magistrates' court, to a magistrates' court for the same area,
- for the amount to be recovered under the order to be reduced.
- (4) The Crown Court shall, on an application under subsection (3) above—
- (a) substitute for the amount to be recovered under the order such lesser amount as the court thinks just in all the circumstances of the case; and
 - (b) substitute for the term of imprisonment or of detention fixed under subsection (2) of section 31 of the Powers of Criminal Courts Act 1973 in respect of the amount to be recovered under the order a shorter term determined in accordance with that section in respect of the lesser amount.
- (5) A magistrates' court shall, on an application under subsection (3) above, substitute for the amount to be recovered under the order such lesser amount as the court thinks just in all the circumstances of the case.

84 Bankruptcy of defendant etc

- (1) Where a person who holds realisable property is adjudged bankrupt—
- (a) property for the time being subject to a restraint order made before the order adjudging him bankrupt, and
 - (b) any proceeds of property realised by virtue of section 77(8) or 80(5) or (6) above for the time being in the hands of a receiver appointed under section 77 or 80 above,
- is excluded from the bankrupt's estate for the purposes of Part IX of the Insolvency Act 1986.
- (2) Where a person has been adjudged bankrupt, the powers conferred on the High Court by sections 77 to 81 above or on a receiver so appointed or on the Court of Session by sections 90 to 92 below shall not be exercised in relation to—
- (a) property for the time being comprised in the bankrupt's estate for the purposes of that Part of that Act;
 - (b) property in respect of which his trustee in bankruptcy may (without leave of court) serve a notice under section 307 or 308 of that Act (after-acquired property and tools, clothes, etc. exceeding value of reasonable replacement); and
 - (c) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under section 280(2)(c) of that Act.
- (3) Nothing in that Act shall be taken as restricting, or enabling the restriction of, the exercise of those powers.
- (4) Subsection (2) above does not affect the enforcement of a charging order—
- (a) made before the order adjudging the person bankrupt; or

- (b) on property which was subject to a restraint order when the order adjudging him bankrupt was made.
- (5) Where, in the case of a debtor, an interim receiver stands appointed under section 286 of that Act and any property of the debtor is subject to a restraint order, the powers conferred on the receiver by virtue of that Act do not apply to property for the time being subject to the restraint order.
- (6) Where a person is adjudged bankrupt and has directly or indirectly made a gift caught by this Part of this Act—
- (a) no order shall be made under section 339 or 423 of that Act (avoidance of certain transactions) in respect of the making of the gift at any time when proceedings for an offence to which this Part of this Act applies have been instituted against him and have not been concluded or when property of the person to whom the gift was made is subject to a restraint order or charging order; and
 - (b) any order made under either of those sections after the conclusion of the proceedings shall take into account any realisation under this Part of this Act of property held by the person to whom the gift was made.
- (7) In any case in which a petition in bankruptcy was presented, or a receiving order or adjudication in bankruptcy was made, before 29th December 1986 (the date on which the Insolvency Act 1986 came into force), this section shall have effect with the following modifications—
- (a) for references to the bankrupt’s estate for the purposes of Part IX of that Act there shall be substituted references to the property of the bankrupt for the purposes of the Bankruptcy Act 1914;
 - (b) for references to the Act of 1986 and sections 280(2)(c), 286, 339 and 423 of that Act there shall be respectively substituted references to the Act of 1914 and to sections 26(2), 8, 27 and 42 of that Act;
 - (c) the references in subsection (5) to an interim receiver appointed as there mentioned include, where a receiving order has been made, a reference to the receiver constituted by virtue of section 7 of the Act of 1914; and
 - (d) subsection (2)(b) shall be omitted.

85 Sequestration in Scotland of defendant etc

- (1) Where the estate of a person who holds realisable property is sequestrated—
- (a) property for the time being subject to a restraint order made before the award of sequestration, and
 - (b) any proceeds of property realised by virtue of section 77(8) or 80(5) or (6) above for the time being in the hands of a receiver appointed under section 77 or 80 above,
- is excluded from the debtor’s estate for the purposes of the Bankruptcy (Scotland) Act 1985.
- (2) Where an award of sequestration has been made, the powers conferred on the High Court by sections 77 to 81 above or on a receiver so appointed or on the Court of Session by sections 90 to 92 below shall not be exercised in relation to—
- (a) property comprised in the whole estate of the debtor within the meaning of section 31(8) of that Act, and

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- (b) any income of the debtor which has been ordered, under subsection (2) of section 32 of that Act, to be paid to the permanent trustee or any estate which, under subsection (6) of that section, vests in the permanent trustee and it shall not be competent to submit a claim in relation to the confiscation order to the permanent trustee in accordance with section 48 of that Act.
- (3) Nothing in that Act shall be taken as restricting, or enabling the restriction of, the exercise of those powers.
- (4) Subsection (2) above does not affect the enforcement of a charging order—
- (a) made before the award of sequestration; or
 - (b) on property which was subject to a restraint order when the award of sequestration was made.
- (5) Where, during the period before sequestration is awarded, an interim trustee stands appointed under the proviso to section 13(1) of that Act and any property in the debtor's estate is subject to a restraint order, the powers conferred on the trustee by virtue of that Act do not apply to property for the time being subject to the restraint order.
- (6) Where the estate of a person is sequestrated and he has directly or indirectly made a gift caught by this Part of this Act—
- (a) no decree shall be granted under section 34 or 36 of that Act (gratuitous alienations and unfair preferences) in respect of the making of the gift at any time when proceedings for an offence to which this Part of this Act applies have been instituted against him and have not been concluded or when property of the person to whom the gift was made is subject to a restraint order or charging order, and
 - (b) any decree made under either of those sections after the conclusion of the proceedings shall take into account any realisation under this Act of property held by the person to whom the gift was made.
- (7) In any case in which, notwithstanding the coming into force of the Bankruptcy (Scotland) Act 1985, the Bankruptcy (Scotland) Act 1913 applies to a sequestration, subsection (2) above shall have effect as if for paragraphs (a) and (b) thereof there were substituted the following paragraphs—
- “(a) property comprised in the whole property of the debtor which vests in the trustee under section 97 of the Bankruptcy (Scotland) Act 1913,
 - (b) any income of the bankrupt which has been ordered under subsection (2) of section 98 of that Act to be paid to the trustee of any estate which, under subsection (1) of that section, vests in the trustee,”;

and subsection (3) above shall have effect as if for the reference therein to the Act of 1985 there were substituted a reference to the Act of 1913.

86 Winding up of company holding realisable property

- (1) Where realisable property is held by a company and an order for the winding up of the company has been made or a resolution has been passed by the company for the voluntary winding up, the functions of the liquidator (or any provisional liquidator) shall not be exercisable in relation to—

- (a) property for the time being subject to a restraint order made before the relevant time, and
 - (b) any proceeds of property realised by virtue of section 77(8) or 80(5) or (6) above for the time being in the hands of a receiver appointed under section 77 or 80 above.
- (2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the High Court by sections 77 to 80 above or on a receiver so appointed or on the Court of Session by sections 90 to 92 below shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable—
- (a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company’s creditors; or
 - (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.
- (3) Nothing in the Insolvency Act 1986 shall be taken as restricting, or enabling the restriction of, the exercise of those powers.
- (4) Subsection (2) above does not affect the enforcement of a charging order made before the relevant time or on property which was subject to a restraint order at the relevant time.
- (5) For the purposes of the application of Parts IV and V of the Insolvency Act 1986 (winding up of registered companies and winding up of unregistered companies) to a company which the Court of Session has jurisdiction to wind up, a person is not a creditor in so far as any sum due to him by the company is due in respect of a confiscation order.
- (6) In this section—
- “company” means any company which may be wound up under the Insolvency Act 1986; and
 - “the relevant time” means—
 - (a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;
 - (b) where such an order has been made and, before the presentation of the petition for the winding up of the company by the court, such a resolution had been passed by the company, the time of the passing of the resolution; and
 - (c) in any other case where such an order has been made, the time of the making of the order.
- (7) In any case in which a winding up of a company commenced or is treated as having commenced before 29th December 1986, this section shall have effect with the substitution for references to the Insolvency Act 1986 of references to the Companies Act 1985.

87 Insolvency officers dealing with property subject to restraint order

- (1) Without prejudice to the generality of any enactment contained in the Insolvency Act 1986 or in any other Act, where—

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- (a) any person acting as an insolvency practitioner seizes or disposes of any property in relation to which his functions are not exercisable because it is for the time being subject to a restraint order; and
- (b) at the time of the seizure or disposal he believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the court or otherwise) to seize or dispose of that property,

he shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by his negligence in so acting; and a person so acting shall have a lien on the property, or the proceeds of its sale, for such of his expenses as were incurred in connection with the liquidation, bankruptcy or other proceedings in relation to which the seizure or disposal purported to take place and for so much of his remuneration as may reasonably be assigned for his acting in connection with those proceedings.

- (2) Any person who, acting as an insolvency practitioner, incurs expenses—
 - (a) in respect of such property as is mentioned in paragraph (a) of subsection (1) above and in so doing does not know and has no reasonable grounds to believe that the property is for the time being subject to a restraint order; or
 - (b) other than in respect of such property as is so mentioned, being expenses which, but for the effect of a restraint order, might have been met by taking possession of and realising the property,
 shall be entitled (whether or not he has seized or disposed of that property so as to have a lien under that subsection) to payment of those expenses under section 81(1) or (4) above.
- (3) In this Part of this Act the expression “acting as an insolvency practitioner” shall be construed in accordance with section 388 (interpretation) of the said Act of 1986 except that for the purposes of such construction the reference in subsection (2)(a) of that section to a permanent or interim trustee in a sequestration shall be taken to include a reference to a trustee in sequestration and subsection (5) of that section (which provides that nothing in the section is to apply to anything done by the official receiver) shall be disregarded; and the expression shall also comprehend the official receiver acting as receiver or manager of the property.

88 Receivers: supplementary provisions

- (1) Where a receiver appointed under this Part of this Act or in pursuance of a charging order takes any action—
 - (a) in relation to property which is not realisable property, being action which he would be entitled to take if it were such property;
 - (b) believing, and having reasonable grounds for believing, that he is entitled to take that action in relation to that property,
 he shall not be liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by his negligence.
- (2) Any amount due in respect of the remuneration and expenses of a receiver so appointed shall, if no sum is available to be applied in payment of it under section 81(5) above, be paid by the prosecutor or, in a case where proceedings for an offence to which this Part of this Act applies are not instituted, by the person on whose application the receiver was appointed.

89 Compensation

- (1) If proceedings are instituted against a person for an offence or offences to which this Part of this Act applies and either—
 - (a) the proceedings do not result in his conviction for any such offence, or
 - (b) where he is convicted of one or more such offences—
 - (i) the conviction or convictions concerned are quashed, or
 - (ii) he is pardoned by Her Majesty in respect of the conviction or convictions concerned,

the High Court may, on an application by a person who held property which was realisable property, order compensation to be paid to the applicant if, having regard to all the circumstances, it considers it appropriate to make such an order.
- (2) The High Court shall not order compensation to be paid in any case unless the court is satisfied—
 - (a) that there has been some serious default on the part of a person concerned in the investigation or prosecution of the offence concerned, being a person mentioned in subsection (5) below; and
 - (b) that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of an order under this Part of this Act.
- (3) The Court shall not order compensation to be paid in any case where it appears to the Court that the proceedings would have been instituted or continued even if the serious default had not occurred.
- (4) The amount of compensation to be paid under this section shall be such as the High Court thinks just in all the circumstances of the case.
- (5) Compensation payable under this section shall be paid—
 - (a) where the person in default was or was acting as a member of a police force, out of the police fund out of which the expenses of that police force are met;
 - (b) where the person in default was a member of the Crown Prosecution Service or acting on behalf of the service, by the Director of Public Prosecutions;
 - (c) where the person in default was a member of the Serious Fraud Office, by the Director of that Office;
 - (d) where the person in default was an officer within the meaning of the Customs and Excise Management Act 1979, by the Commissioners of Customs and Excise; and
 - (e) where the person in default was an officer of the Commissioners of Inland Revenue, by those Commissioners.

Enforcement in Scotland

90 Recognition and enforcement of orders in Scotland

- (1) An order to which this section applies shall, subject to this section and section 91 below, have effect in the law of Scotland but shall be enforced in Scotland only in accordance with this section and that section.
- (2) A receiver's functions under or for the purpose of section 77, 80 or 81 above shall, subject to this section and section 91 below, have effect in the law of Scotland.

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- (3) If an order to which this section applies is registered under this section—
 - (a) the Court of Session shall have, in relation to its enforcement, the same power;
 - (b) proceedings for or with respect to its enforcement may be taken; and
 - (c) proceedings for or with respect to any contravention of such an order (whether before or after such registration) may be taken,as if the order had originally been made in that Court.
- (4) Nothing in this section enables any provision of an order which empowers a receiver to do anything in Scotland under section 80(3)(a) above to have effect in the law of Scotland.
- (5) The orders to which this section applies are orders of the High Court—
 - (a) made under section 77, 78 or 81 above;
 - (b) relating to the exercise by that Court of its powers under those sections; or
 - (c) relating to receivers in the performance of their functions under any of them, but not including an order in proceedings for enforcement of any such order.
- (6) References in this section to an order under section 77 above include references to a discharge under section 76(4) above of such an order.
- (7) In this section and in sections 91 and 93 below, “order” means any order, direction or judgment by whatever name called.
- (8) Nothing in any order of the High Court under section 80(6) above prejudices any enactment or rule of law in respect of the recording of deeds relating to heritable property in Scotland or the registration of interests in such property.

91 Supplementary

- (1) The Court of Session shall, on application made to it in accordance with rules of court for registration of an order to which section 90 above applies, direct that the order shall, in accordance with such rules, be registered in that Court.
- (2) Subsections (1) and (3) of that section and subsection (1) above are subject to any provision made by rules of court—
 - (a) as to the manner in which and conditions subject to which orders to which that section applies are to be enforced in Scotland;
 - (b) for the sisting of proceedings for enforcement of such an order;
 - (c) for the modification or cancellation of the registration of such an order if the order is modified or revoked or ceases to have effect.
- (3) This section and that section are without prejudice to any enactment or rule of law as to the effect of notice or the want of it in relation to orders of the High Court.
- (4) The Court of Session shall have the like power to make an order under section 1 of the Administration of Justice (Scotland) Act 1972 (extended power to order inspection of documents, etc.) in relation to proceedings brought or likely to be brought under this Part of this Act in the High Court as if those proceedings had been brought or were likely to be brought in the Court of Session.
- (5) The Court of Session may, additionally, for the purpose of—
 - (a) assisting the achievement in Scotland of the purposes of orders to which section 90 above applies,

- (b) assisting receivers performing functions thereunder or for the purposes of section 77, 80 or 81 above,
make such orders and do otherwise as seems to it appropriate.

92 Inhibition and arrestment of property in Scotland

- (1) On the application of the prosecutor, the Court of Session may, in respect of—
 - (a) heritable realisable property in Scotland affected by a restraint order registered under section 90 above (whether such property generally or particular such property) grant warrant for inhibition against any person with an interest in that property;
 - (b) moveable realisable property so affected (whether such property generally or particular such property) grant warrant for arrestment if the property would be arrestable were the person entitled to it a debtor;and, subject to the provisions of this section, the warrant—
 - (i) shall have effect as if granted on the dependence of an action for debt at the instance of the prosecutor against the person and may be executed, recalled, loosed or restricted accordingly;
 - (ii) where granted under subsection (1)(a) above, shall have the effect of letters of inhibition and shall forthwith be registered by the prosecutor in the register of inhibitions and adjudications.
- (2) Section 155 of the Titles to Land Consolidation (Scotland) Act 1868 (effective date of inhibition) shall apply in relation to an inhibition for which warrant has been granted under subsection (1)(a) above as that section applies to an inhibition by separate letters or contained in a summons.
- (3) In the application of section 158 of the said Act of 1868 (recall of inhibition) to such inhibition as is mentioned in subsection (2) above, references in that section to a particular Lord Ordinary shall be construed as references to any Lord Ordinary.
- (4) Any power of the Court of Session to recall, loose or restrict inhibitions or arrestments shall, in relation to an inhibition or arrestment proceeding upon a warrant under this section and without prejudice to any other consideration lawfully applying to the exercise of the power, be exercised with a view to achieving the purposes specified in section 80 above.
- (5) That an inhibition or arrestment has been executed under subsection (1) above in respect of property shall not prejudice the exercise of a receiver's powers under or for the purposes of section 77, 80 or 81 above in respect of that property.
- (6) No inhibition or arrestment executed under subsection (1) above shall have effect once, or in so far as, the restraint order affecting the property in respect of which the warrant for such inhibition or arrestment has been granted has ceased to have effect in respect of that property; and the prosecutor shall—
 - (a) apply for the recall, or as the case may be restriction, of the inhibition or arrestment accordingly; and
 - (b) ensure that recall, or restriction, of an inhibition on such application is reflected in the register of inhibitions and adjudications.

93 Proof in Scotland of High Court orders

A document purporting to be a copy of an order under or for the purposes of this Part of this Act by the High Court and to be certified as such by a proper officer of that Court shall, in Scotland, be sufficient evidence of the order.

*Enforcement of external orders***94 Enforcement of Northern Ireland orders**

- (1) Her Majesty may by Order in Council provide that for the purposes of sections 76 to 89 above, this Part of this Act shall have effect as if—
 - (a) references to confiscation orders included a reference to orders made by courts in Northern Ireland which appear to Her Majesty to correspond to confiscation orders;
 - (b) references to proceedings in England and Wales or to the institution or conclusion in England and Wales of proceedings included a reference to proceedings in Northern Ireland or to the institution or conclusion in Northern Ireland of proceedings, as the case may be; and
 - (c) the references to the laying of an information in section 76(2) and (4) above included references to making a complaint under Article 20 of the Magistrates' Courts (Northern Ireland) Order 1981.
- (2) An Order in Council under this section may provide for those sections to have effect in relation to anything done or to be done in Northern Ireland subject to such further modifications as may be specified in the Order.
- (3) An Order in Council under this section may contain such incidental, consequential and transitional provisions as Her Majesty considers expedient.
- (4) An Order in Council under this section shall not be made unless a draft of the Order has been laid before Parliament and approved by resolution of each House of Parliament.

95 Enforcement of Northern Ireland order in Scotland

- (1) Her Majesty may by Order in Council provide that for the purposes of any part of the law of Northern Ireland which appears to Her Majesty to correspond to this Part of this Act sections 90 to 93 above shall have effect as they have effect for the purposes of this Part subject to such modifications as may be specified in the Order.
- (2) An Order in Council under this section may contain such incidental, consequential and transitional provisions as Her Majesty considers expedient.
- (3) An Order in Council under this section shall not be made unless a draft of the Order has been laid before Parliament and approved by resolution of each House of Parliament.

96 Enforcement of other external orders

- (1) Her Majesty may by Order in Council—
 - (a) direct in relation to a country or territory outside the United Kingdom designated by the Order (“a designated country”) that, subject to such modifications as may be specified, this Part of this Act shall apply to external confiscation orders and to proceedings which have been or are to be instituted

- in the designated country and may result in an external confiscation order being made there;
- (b) make—
- (i) such provision in connection with the taking of action in the designated country with a view to satisfying a confiscation order;
 - (ii) such provision as to evidence or proof of any matter for the purposes of this section and section 97 below; and
 - (iii) such incidental, consequential and transitional provision, as appears to Her Majesty to be expedient; and
- (c) without prejudice to the generality of this subsection, direct that in such circumstances as may be specified proceeds which arise out of action taken in the designated country with a view to satisfying a confiscation order shall be treated as reducing the amount payable under the order to such extent as may be specified.
- (2) In this Part of this Act—
- “external confiscation order” means an order made by a court in a designated country for the purpose—
- (a) of recovering—
 - (i) property obtained as a result of or in connection with conduct corresponding to an offence to which this Part of this Act applies; or
 - (ii) the value of property so obtained; or
 - (b) of depriving a person of a pecuniary advantage so obtained; and
- “modifications” includes additions, alterations and omissions.
- (3) An Order in Council under this section may make different provision for different cases or classes of case.
- (4) The power to make an Order in Council under this section includes power to modify this Part of this Act in such a way as to confer power on a person to exercise a discretion.
- (5) An Order in Council under this section shall not be made unless a draft of the order has been laid before Parliament and approved by resolution of each House of Parliament.

97 Registration of external confiscation orders

- (1) On an application made by or on behalf of the government of a designated country, the High Court may register an external confiscation order made there if—
- (a) it is satisfied that at the time of registration the order is in force and not subject to appeal;
 - (b) it is satisfied, where the person against whom the order is made did not appear in the proceedings, that he received notice of the proceedings in sufficient time to enable him to defend them; and
 - (c) it is of the opinion that enforcing the order in England and Wales would not be contrary to the interests of justice.
- (2) In subsection (1) above “appeal” includes—
- (a) any proceedings by way of discharging or setting aside a judgment; and
 - (b) an application for a new trial or a stay of execution.

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- (3) The High Court shall cancel the registration of an external confiscation order if it appears to the court that the order has been satisfied by payment of the amount due under it or by the person against whom it was made serving imprisonment in default of payment or by any other means.

Miscellaneous and supplemental

98 Disclosure of information subject to contractual restriction upon disclosure

- (1) Where a person discloses to a constable—
- (a) a suspicion or belief that any property—
 - (i) has been obtained as a result of or in connection with the commission or an offence to which this Part of this Act applies; or
 - (ii) derives from property so obtained; or
 - (b) any matter on which such a suspicion or belief is based,
- the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract.
- (2) In subsection (1) above “constable” includes a police officer engaged on central service (as defined in section 43(5) of the Police Act 1964).

99 Authorisation of delay in notifying arrest etc

- (1) The Police and Criminal Evidence Act 1984 shall be amended as follows.
- (2) In section 56(5A) (which authorises delay in notifying arrest for a drug trafficking offence)—
- (a) after the word “offence”, in the second place where it occurs, there shall be inserted the words “or an offence to which Part VI of the Criminal Justice Act 1988 applies (offences in respect of which confiscation orders under that Part may be made)”; and
 - (b) the following paragraphs shall be substituted for paragraphs (a) and (b)—
 - “(a) where the offence is a drug trafficking offence, that the detained person has benefited from drug trafficking and that the recovery of the value of that person’s proceeds of drug trafficking will be hindered by telling the named person of the arrest; and
 - (b) where the offence is one to which Part VI of the Criminal Justice Act 1988 applies, that the detained person has benefited from the offence and that the recovery of the value of the property obtained by that person from or in connection with the offence or of the pecuniary advantage derived by him from or in connection with it will be hindered by telling the named person of the arrest.”
- (3) In section 58(8A) (which authorises delay in access to legal advice on arrest for a drug trafficking offence)—
- (a) after the word “offence”, in the second place where it occurs, there shall be inserted the words “or an offence to which Part VI of the Criminal Justice Act 1988 applies”; and

- (b) the following paragraphs shall be substituted for paragraphs (a) and (b)—
- “(a) where the offence is a drug trafficking offence, that the detained person has benefited from drug trafficking and that the recovery of the value of that person’s proceeds of drug trafficking will be hindered by the exercise of the right conferred by subsection (1) above; and
 - (b) where the offence is one to which Part VI of the Criminal Justice Act 1988 applies, that the detained person has benefited from the offence and that the recovery of the value of the property obtained by that person from or in connection with the offence or of the pecuniary advantage derived by him from or in connection with it will be hindered by the exercise of the right conferred by subsection (1) above.”
- (4) Without prejudice to section 20(2) of the Interpretation Act 1978, the Police and Criminal Evidence Act 1984 (Application to Customs and Excise) Order 1985 shall apply to sections 56 and 58 of the Police and Criminal Evidence Act 1984 as those sections have effect by virtue of this section.

100 Power to inspect Land Register, etc

- (1) The Chief Land Registrar (in this section referred to as “the registrar”) shall, on an application under subsection (2) or (4) below made in relation to a person specified in the application or to property so specified, provide the applicant with any information kept by the registrar under the Land Registration Act 1925 which relates to the person or property so specified.
- (2) An application may be made by—
- (a) any police officer not below the rank of superintendent;
 - (b) any Crown Prosecutor; or
 - (c) any member of the Serious Fraud Office designated for the purposes of section 1 of the Criminal Justice Act 1987; or
 - (d) any person commissioned by the Commissioners of Customs and Excise not below the rank of senior executive officer; or
 - (e) any person authorised in that behalf by the Commissioners of Inland Revenue not below the rank of senior executive officer;
- and on an application under this subsection an appropriate certificate shall be given to the registrar.
- (3) In subsection (2) above “appropriate certificate” means a certificate—
- (a) that a person specified in the certificate has committed or that there are reasonable grounds for suspecting that a person so specified has committed an offence to which this Part of this Act applies; and
 - (b) that there are reasonable grounds for suspecting that there is information kept by the registrar which is likely to be of substantial value (whether by itself or together with other information) to an investigation into whether the person so specified has benefited from the commission of the offence or in facilitating the recovery of the value of the property obtained by that person from or in connection with the offence.
- (4) An application may be made by a receiver appointed under this Part of this Act and on an application under this subsection there shall be given to the registrar—

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- (a) a document certified by the proper officer of the court to be a true copy of the order appointing the receiver; and
 - (b) a certificate that there are reasonable grounds for suspecting that there is information kept by the registrar which is likely to facilitate the exercise of the powers conferred on the receiver in respect of the person or property specified in the application.
- (5) The reference in subsection (1) above to the provision of information is a reference to its provision in documentary form.
- (6) The references to senior executive officers in subsection (2) above include references to equivalent departmental grades.
- (7) This section shall cease to have effect on the day appointed under section 3(2) of the Land Registration Act 1988 for the coming into force of that Act.

101 Abolition of power to make criminal bankruptcy order

- (1) The power to make a criminal bankruptcy order which section 39 of the Powers of Criminal Courts Act 1973 confers on the Crown Court is abolished.
- (2) Nothing in subsection (1) above—
- (a) shall affect any criminal bankruptcy order made before this section comes into force; or
 - (b) shall prevent the taking of any step following such an order.

102 Part VI— Interpretation

- (1) In this Part of this Act—
- “constable” includes a person commissioned by the Commissioners of Customs and Excise;
 - “interest”, in relation to property, includes right;
 - “property” includes money and all other property, real or personal, heritable or moveable, including things in action and other intangible or incorporeal property.
- (2) The expressions listed in the left-hand column below are respectively defined or (as the case may be) fall to be construed in accordance with the provisions of this Act listed in the right-hand column in relation to those expressions.

<i>Expression</i>	<i>Relevant provision</i>
Benefited from an offence	Section 71(4)
Charging order	Section 78(2)
Confiscation order	Section 71(9)(a)
Dealing with property	Section 77(9)
Defendant	Section 71(9)(d)
Gift caught by this Part of this Act	Section 74(10)
Making a gift	Section 74(12)

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<i>Expression</i>	<i>Relevant provision</i>
Offence to which this Part of this Act applies	Section 71(9)(c)
Realisable property	Section 74(1)
Restraint order	Section 77(1)
Value of gift	Section 74(7) and (8)
Value of property	Section 74(4) to (6)

- (3) This Part of this Act applies to property wherever situated.
- (4) References in this Part of this Act to offences include a reference to offences committed before the commencement of this Part of this Act; but nothing in this Part of this Act confers any power on any court in connection with proceedings against a person for an offence instituted before the commencement of this Part of this Act.
- (5) References in this Part of this Act to property obtained, or to a pecuniary advantage derived, in connection with the commission of an offence include a reference to property obtained or to a pecuniary advantage derived, both in that connection and in some other connection.
- (6) The following provisions shall have effect for the interpretation of this Part of this Act.
- (7) Property is held by any person if he holds any interest in it.
- (8) References to property held by a person include a reference to property vested in his trustee in bankruptcy, permanent or interim trustee within the meaning of the Bankruptcy (Scotland) Act 1985 or liquidator.
- (9) References to an interest held by a person beneficially in property include a reference to an interest which would be held by him beneficially if the property were not so vested.
- (10) Property is transferred by one person to another if the first person transfers or grants to the other any interest in the property.
- (11) Proceedings for an offence are instituted—
- when a justice of the peace issues a summons or warrant under section 1 of the Magistrates' Courts Act 1980 in respect of that offence;
 - when a person is charged with the offence after being taken into custody without a warrant;
 - when a bill of indictment is preferred under section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933 in a case falling within paragraph (b) of subsection (2) of that section;
- and where the application of this subsection would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times.
- (12) Proceedings are concluded—
- when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of a confiscation order being made in the proceedings;

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- (b) on the satisfaction of a confiscation order made in the proceedings (whether by payment of the amount due under the order or by the defendant serving imprisonment in default).
- (13) An order is subject to appeal until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside.

103 Amendments of Drug Trafficking Offences Act 1986 and Criminal Justice (Scotland) Act 1987

- (1) The amendments of the Drug Trafficking Offences Act 1986 specified in Part I of Schedule 5 to this Act (which make certain provisions of that Act correspond to provisions of this Part of this Act) shall have effect.
- (2) The amendments of the Criminal Justice (Scotland) Act 1987 specified in Part II of that Schedule shall also have effect.

PART VII

COMPENSATION BY COURT AND CRIMINAL INJURIES COMPENSATION BOARD

Powers of court

104 Compensation orders

- (1) At the end of subsection (1) of section 35 of the Powers of Criminal Courts Act 1973 there shall be added the words “or to make payments for funeral expenses or bereavement in respect of a death resulting from any such offence, other than a death due to an accident arising out of the presence of a motor vehicle on a road; and a court shall give reasons, on passing sentence, if it does not make such an order in a case where this section empowers it to do so”.
 - (2) The following subsections shall be substituted for subsection (3) of that section—
 - “(3) A compensation order may only be made in respect of injury, loss or damage (other than loss suffered by a person’s dependants in consequence of his death) which was due to an accident arising out of the presence of a motor vehicle on a road, if—
 - (a) it is in respect of damage which is treated by subsection (2) above as resulting from an offence under the Theft Act 1968; or
 - (b) it is in respect of injury, loss or damage as respects which—
 - (i) the offender is uninsured in relation to the use of the vehicle; and
 - (ii) compensation is not payable under any arrangements to which the Secretary of State is a party;
- and, where a compensation order is made in respect of injury, loss or damage due to such an accident, the amount to be paid may include an amount representing the whole or part of any loss of or reduction in preferential rates of insurance attributable to the accident.

- (3A) A vehicle the use of which is exempted from insurance by section 144 of the Road Traffic Act 1972 is not uninsured for the purposes of subsection (3) above.
- (3B) A compensation order in respect of funeral expenses may be made for the benefit of anyone who incurred the expenses.
- (3C) A compensation order in respect of bereavement may only be made for the benefit of a person for whose benefit a claim for damages for bereavement could be made under section 1A of the Fatal Accidents Act 1976.
- (3D) The amount of compensation in respect of bereavement shall not exceed the amount for the time being specified in section 1A(3) of the Fatal Accidents Act 1976.”.

105 Enforcement of compensation orders

The following sections shall be substituted for sections 36 to 38 of the Powers of Criminal Courts Act 1973—

“36 Enforcement and appeals

- (1) A person in whose favour a compensation order is made shall not be entitled to receive the amount due to him until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside.
- (2) Rules under section 144 of the Magistrates' Courts Act 1980 may make provision regarding the way in which the magistrates' court for the time being having functions (by virtue of section 41(1) of the Administration of Justice Act 1970) in relation to the enforcement of a compensation order is to deal with money paid in satisfaction of the order where the entitlement of the person in whose favour it was made is suspended.
- (3) The Court of Appeal may by order annul or vary any compensation order made by the court of trial, although the conviction is not quashed; and the order, if annulled, shall not take effect and, if varied, shall take effect as varied.
- (4) Where the House of Lords restores a conviction, it may make any compensation order which the court of trial could have made.
- (5) Where a compensation order has been made against any person in respect of an offence taken into consideration in determining his sentence—
 - (a) the order shall cease to have effect if he successfully appeals against his conviction of the offence or, if more than one, all the offences, of which he was convicted in the proceedings in which the order was made;
 - (b) he may appeal against the order as if it were part of the sentence imposed in respect of the offence or, if more than one, any of the offences, of which he was so convicted.

37 Review of compensation orders

At any time before the person against whom a compensation order has been made has paid into court the whole of the compensation which the order

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requires him to pay, but at a time when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside, the magistrates' court for the time being having functions in relation to the enforcement of the order may, on the application of the person against whom it was made, discharge the order, or reduce the amount which remains to be paid, if it appears to the court—

- (a) that the injury, loss or damage in respect of which the order was made has been held in civil proceedings to be less than it was taken to be for the purposes of the order; or
- (b) in the case of an order in respect of the loss of any property, that the property has been recovered by the person in whose favour the order was made; or
- (c) that the means of the person against whom the order was made are insufficient to satisfy in full both the order and a confiscation order under Part VI of the Criminal Justice Act 1988 made against him in the same proceedings; or
- (d) that the person against whom the order was made has suffered a substantial reduction in his means which was unexpected at the time when the compensation order was made, and that his means seem unlikely to increase for a considerable period;

but where the order was made by the Crown Court, a magistrates' court shall not exercise any power conferred by this section in a case where it is satisfied as mentioned in paragraph (c) or (d) above unless it has first obtained the consent of the Crown Court.

38 Effect of compensation order on subsequent award of damages in civil proceedings

- (1) This section shall have effect where a compensation order has been made in favour of any person in respect of any injury, loss or damage and a claim by him in civil proceedings for damages in respect of the injury, loss or damage subsequently falls to be determined.
- (2) The damages in the civil proceedings shall be assessed without regard to the order; but the plaintiff may only recover an amount equal to the aggregate of the following—
 - (a) any amount by which they exceed the compensation; and
 - (b) a sum equal to any portion of the compensation which he fails to recover,

and may not enforce the judgment, so far as it relates to a sum such as is mentioned in paragraph (b) above, without the leave of the court.”

106 Discretion of Crown Court to specify extended period of imprisonment in default of payment of compensation

The following subsections shall be substituted for section 41(8) of the Administration of Justice Act 1970—

- “(8) Subject to subsection (8A) below, where in the case specified in paragraph 10 of Schedule 9 to this Act the Crown Court thinks that the period for which the person subject to the order is liable apart from this subsection to be committed

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to prison for default under the order is insufficient, it may specify a longer period for that purpose; and then, in the case of default—

- (a) the specified period shall be substituted as the maximum for which the person may be imprisoned under section 76 of the Magistrates' Courts Act 1980; and
- (b) paragraph 2 of Schedule 4 to that Act shall apply, with any necessary modifications, for the reduction of the specified period where, at the time of the person's imprisonment, he has made part payment under the order.

(8A) The Crown Court may not specify under subsection (8) above a period of imprisonment longer than that which it could order a person to undergo on imposing on him a fine equal in amount to the sum required to be paid by the order.”.

Compensation for victim out of forfeited property

107 Power to make order applying proceeds of sale of property forfeited by offender for benefit of victim

(1) The following section shall be inserted after section 43 of the Powers of Criminal Courts Act 1973—

“43A Application of proceeds of forfeited property

- (1) Where a court makes an order under section 43 above in a case where—
 - (a) the offender has been convicted of an offence which has resulted in a person suffering personal injury, loss or damage; or
 - (b) any such offence is taken into consideration by the court in determining sentence,the court may also make an order that any proceeds which arise from the disposal of the property and which do not exceed a sum specified by the court shall be paid to that person.
- (2) The court may only make an order under this section if it is satisfied that but for the inadequacy of the means of the offender it would have made a compensation order under which the offender would have been required to pay compensation of an amount not less than the specified amount.
- (3) An order under this section has no effect—
 - (a) before the end of the period specified in section 43(4)(a) above; or
 - (b) if a successful application under section 1(1) of the Police (Property) Act 1897 has been made.”.

The Criminal Injuries Compensation Scheme

108 The Criminal Injuries Compensation Board and the administration of the scheme

(1) The Criminal Injuries Compensation Board (“the Board”) shall by that name be a body corporate.

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- (2) The Board shall administer the scheme for the payment of compensation for criminal injuries established by the following provisions of this Part of this Act (in this Act referred to as “the scheme”) and shall be responsible for determining claims for compensation under the scheme and for paying compensation due under it.
- (3) Schedule 6 to this Act shall have effect with respect to the Board and Schedule 7 shall have effect with respect to the scheme.

109 Criminal injuries

- (1) In this Part of this Act “criminal injury” means any personal injury caused by—
- (a) conduct constituting—
 - (i) an offence which is specified in subsection (3) below; or
 - (ii) an offence which is not so specified but which requires proof of intent to cause death or personal injury or recklessness as to whether death or personal injury is caused; or
 - (b) any of the following activities—
 - (i) the apprehension or attempted apprehension of an offender or suspected offender;
 - (ii) the prevention or attempted prevention of the commission of an offence; or
 - (iii) assisting a constable engaged in any of the activities mentioned in sub-paragraph (i) or (ii) above;

and “personal injury” includes any disease, any harm to a person’s physical or mental condition and pregnancy.
- (2) Harm to a person’s mental condition is only a criminal injury if it is attributable—
- (a) to his having been put in fear of immediate physical injury to himself or another; or
 - (b) to his being present when another sustained a criminal injury other than harm to his mental condition.
- (3) The offences mentioned in subsection (1)(a)(i) above are—
- (a) rape;
 - (b) assault;
 - (c) an offence which falls to be charged as arson;
 - (d) wilful fireraising;
 - (e) any offence under section 2 (causing explosion likely to endanger life or property) or 3 (attempt to cause explosion, or making or keeping explosive with intent to endanger life or property) of the Explosive Substances Act 1883;
 - (f) an offence under section 16 (possession of firearm with intent to injure), 17 (use of firearm to resist arrest), 18 (carrying firearm with criminal intent), 19 (carrying firearm in a public place) or 20 (trespassing with firearm) of the Firearms Act 1968;
 - (g) an offence under section 1 (riot), 2 (violent disorder) or 3 (affray) of the Public Order Act 1986;
 - (h) mobbing;
 - (j) kidnapping;
 - (k) false imprisonment;

- (l) abduction;
 - (m) trespass on a railway; and
 - (n) any attempt to commit an offence mentioned in this subsection.
- (4) For the purposes of this Part of this Act, a person's conduct shall be treated as constituting an offence notwithstanding that he may not be convicted of the offence by reason of age, insanity or diplomatic immunity.

110 Qualifying injuries

- (1) Compensation for a criminal injury shall only be payable under this Part of this Act if the injury is a qualifying injury.
- (2) A criminal injury is only a qualifying injury if it is sustained—
- (a) in Great Britain;
 - (b) within the limits of the territorial waters adjacent to the United Kingdom;
 - (c) on board a British ship, a British aircraft or a British hovercraft;
 - (d) on, under or above an installation in a designated area within the meaning of section 1(7) of the Continental Shelf Act 1964 or any waters within 500 metres of such an installation; or
 - (e) on, under or above any waters in respect of which an Order in Council made under section 23 of the Oil and Gas (Enterprise) Act 1982 provides that questions arising from acts or omissions on, under or above such waters are to be determined in accordance with the law of England and Wales or the law of Scotland.
- (3) In subsection (2) above—
- “British aircraft” means a British-controlled aircraft within the meaning of section 92 of the Civil Aviation Act 1982 (application of criminal law to aircraft), or one of Her Majesty's aircraft;
- “British hovercraft” means a British-controlled hovercraft within the meaning of that section (as applied in relation to hovercraft by virtue of provision made under the Hovercraft Act 1968), or one of Her Majesty's hovercraft; and
- “British ship” means—
- (a) any vessel used in navigation which is owned wholly by persons of the following descriptions, namely—
 - (i) British citizens; and
 - (ii) bodies corporate incorporated under the law of some part of, and having their principal place of business in, the United Kingdom;or
 - (b) one of Her Majesty's ships.
- (4) The references to Her Majesty's aircraft, hovercraft and ships in subsection (3) above are references to aircraft, hovercraft or ships which belong to, or are exclusively used in the service of, Her Majesty in right of the government of the United Kingdom.
- (5) Where any injury which is a criminal injury by virtue of section 109(1)(a) above is sustained by a person not under the age of 18 years who, when he sustains the injury, is living in the same household as the person or, if more than one, any of the persons, responsible for causing it, that injury is not a qualifying injury unless—

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- (a) the Board are satisfied in relation to the person responsible for causing the injury or, where more than one person is responsible for causing it, each of the persons responsible who was living in the same household as the person injured when the injury was sustained—
 - (i) that he has been prosecuted in connection with the injury; or
 - (ii) that there is a sufficient reason why he has not been prosecuted; and
 - (b) the Board are satisfied—
 - (i) that the person injured has ceased to live, and does not intend to live again, in the same household as the person responsible for causing the injury or, where more than one person is responsible for causing it, any of the persons responsible who was living in the same household as the person injured when the injury was sustained; or
 - (ii) that the person injured has not so ceased to live but that the reason why he has not so ceased to live is that circumstances prevent him from doing so.
- (6) Where a person accidentally sustains an injury which is a criminal injury only by virtue of section 109(1)(b) above, that injury is not a qualifying injury unless the Board are satisfied that the risk he was taking when he was injured was an exceptional risk which was justified in all the circumstances.
- (7) Where any criminal injury is sustained in circumstances such that compensation in respect of the injury is payable—
- (a) under any policy of insurance maintained in pursuance of Part VI of the Road Traffic Act 1972 (compulsory insurance in relation to the use of a motor vehicle on a road); or
 - (b) under any arrangements for the compensation of victims of uninsured or unidentified drivers to which the Secretary of State is a party;
- that injury is not a qualifying injury.
- (8) Any reference in this section to a person who is responsible for causing an injury includes, where the injury is a criminal injury by virtue of an offence, a reference to any person who is a party to the commission of that offence.

111 Awards of compensation

- (1) An award of compensation may be made—
- (a) to any person who satisfies the Board that he has sustained a qualifying injury;
 - (b) to any person who satisfies the Board that he is a dependant of a person who died after sustaining a qualifying injury (whether or not he died as a result of it);
- and in this subsection “satisfies” means satisfies on a balance of probabilities.
- (2) The heads of compensation are those specified in subsections (3) to (6) below.
- (3) An award may be made under subsection (1)(a) above—
- (a) for the injury; and
 - (b) for any loss of or damage to property of the claimant which occurred in the course of his sustaining the injury,
- but compensation shall only be payable under paragraph (b) above if he relied on the property as a physical aid and for damage only if the damage impaired the utility of the property as a physical aid and shall only be for the cost of replacing it with other

property of equal utility as a physical aid or carrying out repairs to restore its utility as a physical aid.

- (4) If a person dies as a result of a qualifying injury—
- (a) an award of compensation for funeral expenses may be made to any person other than a public authority but shall not exceed a reasonable amount;
 - (b) where a claim falls to be determined in accordance with the rules of the law of England and Wales, an award of compensation for bereavement may be made to any person falling within section 1A(2) of the Fatal Accidents Act 1976;
 - (c) where a claim falls to be determined in accordance with the rules of the law of Scotland, an award of compensation for loss of society may be made to any person who is a member of the deceased's immediate family within the meaning of section 10(2) of the Damages (Scotland) Act 1976; and
 - (d) an award may be made to a dependant of the deceased (whether or not an award is made to him or to any other person under paragraph (a), (b) or (c) above) in respect of any loss of support suffered by the dependant.
- (5) Subject to subsection (8) below, if a person who has sustained a qualifying injury dies otherwise than as a result of it, the Board may award compensation to a dependant of his in respect of any loss which he has suffered by reason—
- (a) of any reduction in earnings (not being prospective earnings) by the deceased; and
 - (b) of any expenses and liabilities incurred by the deceased as a result of the injury.
- (6) If—
- (a) a woman is awarded compensation for rape; and
 - (b) she has given birth to a child conceived as a result of the rape; and
 - (c) at the time of the award she intends to keep the child,
- the Board shall award her the additional statutory sum in respect of each child so conceived that she then intends to keep.
- (7) The Board may make an interim award, but without prejudice to their powers on a final determination.
- (8) If a person who has sustained a qualifying injury dies otherwise than as a result of it, the Board may not award compensation to a dependant of his if before he died he became entitled, otherwise than on an interim award, to a payment of compensation in respect of it.
- (9) If—
- (a) a deceased person was entitled to payment of compensation for an injury; and
 - (b) a claim for compensation for the same injury is made by one of his dependants,
- any compensation awarded to the dependant shall be reduced by the amount of the compensation to payment of which the deceased was entitled; and proportionate reductions shall be made on awards to two or more dependants.
- (10) Where a person has been awarded compensation by the Board in respect of a qualifying injury sustained by him, he may be awarded further compensation in respect of the injury if the Board are satisfied—
- (a) that since the date of the previous award his medical condition has deteriorated as a result of having sustained the injury; and

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- (b) that the extent to which his condition has so deteriorated is such that it would be unjust not to make an award of further compensation to him in respect of the injury.
- (11) In this Part of this Act—
- “the additional statutory sum” means £5,000 or such other sum as may for the time being be specified by virtue of an order under subsection (12) below; and
 - “dependant”—
 - (a) where the appropriate law for the determination of a claim is the law of England and Wales, has the same meaning as in the Fatal Accidents Act 1976; and
 - (b) where it is the law of Scotland, means a relative within the meaning of the Damages (Scotland) Act 1976.
- (12) The Secretary of State may by order made by statutory instrument substitute a different sum for the sum specified in subsection (11) above.
- (13) A statutory instrument containing an order under subsection (12) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

112 Powers to withhold and reduce compensation

- (1) It is for the claimant to satisfy the Board, on a balance of probabilities—
- (a) that he took all reasonable steps within a reasonable time to inform the police, or such other authority as the Board consider appropriate, of the circumstances of the injury to which the claim relates and that he has co-operated fully with the police, or with such other authority as the Board consider appropriate, in bringing to justice any person responsible for causing the injury;
 - (b) that he has given the Board, or such other authority as the Board consider appropriate, all the assistance in connection with the claim which it is reasonable for him to give; and
 - (c) that there is no possibility that a person responsible for causing the injury will benefit from an award,
- and if a claimant fails so to satisfy the Board, they may, if they think fit, refuse an award or award less than they would otherwise have awarded.
- (2) The Board may also, if they think fit, refuse an award or award less than they would otherwise have awarded because of any of the following—
- (a) criminal convictions or unlawful conduct of the claimant;
 - (b) conduct on his part connected with the injury.
- (3) The references to convictions and conduct in subsection (2) above are references to convictions and conduct at any time, including a time after the injury.
- (4) Where the person who sustained the injury is dead, the references to the claimant in subsections (1)(a) and (b) and (2) above shall include references to the person who sustained that injury.
- (5) Where an injury which is a criminal injury by virtue of section 109(1)(a) above is sustained by a person who, when he sustained it—
- (a) was under the age of 18 years; and

(b) was living in the same household as the person or, if more than one, any of the persons, responsible for causing it,
the Board shall consider whether, in all the circumstances, it is in the interest of the person who sustained the injury to make an award of compensation to him and shall not make an award unless they are satisfied that it is in his interest.

113 Right of appeal

- (1) If the Board have determined a claim after hearing, an appeal on any ground which involves a question of law alone shall lie—
 - (a) to the High Court if they determined it under the law of England and Wales; and
 - (b) to the Court of Session if they determined it under the law of Scotland.
- (2) No appeal to the Court of Appeal shall be brought from a decision of the High Court under this section except with the leave of the High Court or the Court of Appeal.
- (3) An appeal shall lie, with the leave of the Court of Session or the House of Lords, from any decision of the Court of Session under this section, and such leave may be given on such terms as to costs or otherwise as the Court of Session or the House of Lords may determine.

114 Minimum awards

- (1) The Secretary of State may by order provide that the Board shall not make any award of compensation, other than an award in respect of funeral expenses, which is less than the minimum amount specified in the order.
- (2) An order under this section may make different provision for different cases or classes of case.
- (3) An order under this section shall be made by statutory instrument.
- (4) A statutory instrument containing any such order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

115 Reimbursement and recovery

- (1) Where—
 - (a) a person has been convicted in England or Wales of an offence; and
 - (b) the Board have made an award of compensation in respect of an injury which is a criminal injury by virtue of the offence,proceedings may be brought by the Board in a county court for an order for the repayment by the offender to the Board of the whole of the award or such part of it as the court thinks fit.
- (2) The Board shall only make an application for an order under subsection (1) above if they have reason to believe that the offender is able to pay the whole or a substantial part of the award.
- (3) In considering whether to make an order under subsection (1) above, the court shall have regard to the financial position of the offender and to such other matters (not

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including the question whether he was properly convicted) as the court considers relevant.

- (4) Where after an award of compensation under this Part of this Act has been made to a person he receives any payment which, had he received it before the making of the award, would, under any provision contained in Schedule 7 to this Act, have led to any reduction in the amount of compensation payable to him he shall be liable to repay to the Board a sum equal to the amount of that reduction.
- (5) The Board may set-off any sum owed to them by any person by virtue of subsection (4) above against any compensation under this Part of this Act to which that person is or becomes entitled.
- (6) Where by virtue of any order under section 35 of the Powers of Criminal Courts Act 1973 (compensation orders against convicted persons) compensation is required to be paid for any personal injury, loss or damage which the Board are satisfied has been the subject of compensation under this Part of this Act, they may by notice require the magistrates' court for the time being having functions in relation to the enforcement of that order to pay to them any amount recovered in pursuance of that order in respect of any such personal injury, loss or damage.

116 Reimbursement and recovery in Scotland

- (1) Where any person has been convicted in Scotland of an offence and the Board have made an award of compensation in respect of an injury which is a criminal injury by virtue of the offence, the sheriff may, on a summary application made by the Board, require the offender to reimburse to the Board the whole or any specified part of the award.
- (2) In considering whether to make an order under subsection (1) above the sheriff shall have regard to the financial position of the offender and to such other matters (not including the question whether he was properly convicted) as the sheriff considers relevant.
- (3) The Board shall only make an application for an order under subsection (1) above if they have reason to believe that the offender is able to pay the whole or a substantial part of the award.
- (4) Section 115(4) and (5) above shall have effect in relation to Scotland.
- (5) Where by virtue of an order under section 58 of the Criminal Justice (Scotland) Act 1980 (compensation orders against convicted persons) compensation is required to be paid for any personal injury, loss or damage for which the person in whose favour the order is made has been compensated by an award under this Part of this Act, the Board may by notice require the clerk of the court having power to enforce the order to pay to them any amount recovered in pursuance of the order in respect of any such personal injury, loss or damage.

117 Inalienability of compensation awards

Every assignment or in Scotland assignation of, or charge on, an award of compensation under this Part of this Act and every agreement to assign or charge such an award shall be void; and, on the bankruptcy of a person in whose favour an award is made or in Scotland the sequestration of such a person's estate, the award shall not pass to any trustee or other person acting on behalf of his creditors.

PART VIII

AMENDMENTS OF LAW RELATING TO JURIES

118 Abolition of peremptory challenge

- (1) The right to challenge jurors without cause in proceedings for the trial of a person on indictment is abolished.
- (2) In addition and without prejudice to any powers which the Crown Court may possess to order the exclusion of the public from any proceedings a judge of the Crown Court may order that the hearing of a challenge for cause shall be in camera or in chambers.

119 Persons aged between 65 and 70 to be eligible as jurors

- (1) In section 1 of the Juries Act 1974 (qualification for jury service) for “sixty-five” there shall be substituted “seventy”.
- (2) The following shall be inserted at the beginning of Part III of Schedule 1 to that Act (persons excusable from jury service as of right)—

“General Persons more than sixty-five years of age.”

120 Discretionary deferral of jury service

The following section shall be inserted after section 9 of the Juries Act 1974—

“9A Discretionary deferral

- (1) If any person summoned under this Act shows to the satisfaction of the appropriate officer that there is good reason why his attendance in pursuance of the summons should be deferred, the appropriate officer may defer his attendance, and, if he does so, he shall vary the days on which that person is summoned to attend and the summons shall have effect accordingly.
- (2) If an application under subsection (1) above has been granted or refused, the powers conferred by that subsection may not be exercised subsequently in relation to the same summons.
- (3) Crown Court Rules shall provide a right of appeal to the court (or one of the courts) before which the person is summoned to attend against any refusal of the appropriate officer to defer his attendance under subsection (1) above.
- (4) Without prejudice to the preceding provisions of this section, the court (or any of the courts) before which a person is summoned to attend under this Act may defer his attendance.”

121 Continuation of trials for murder on death or discharge of juror

In section 16(2) of the Juries Act 1974 (cases where trial not to proceed on death or discharge of juror without assent of prosecution and accused) the words “for murder or” shall cease to have effect.

122 Autrefois acquit and autrefois convict

Where an accused pleads autrefois acquit or autrefois convict it shall be for the judge, without the presence of a jury, to decide the issue.

PART IX**YOUNG OFFENDERS****123 Custodial sentences for young offenders**

(1) Part I of the Criminal Justice Act 1982 shall be amended as mentioned in subsections (2) to (5) below.

(2) The following subsection shall be inserted after subsection (3) of section 1—

“(3A) Subject to section 53 of the Children and Young Persons Act 1933 (punishment of certain grave crimes), the only custodial orders that a court may make where a person under 21 years of age is convicted or found guilty of an offence are—

- (a) a sentence of detention in a young offender institution under section 1A below; and
- (b) a sentence of custody for life under section 8 below.”.

(3) The following subsections shall be substituted for subsection (4) of that section—

“(4) A court may not—

- (a) pass a sentence of detention in a young offender institution; or
- (b) pass a sentence of custody for life under section 8(2) below, unless it is satisfied—
 - (i) that the circumstances, including the nature and the gravity of the offence, are such that if the offender were aged 21 or over the court would pass a sentence of imprisonment; and
 - (ii) that he qualifies for a custodial sentence.

(4A) An offender qualifies for a custodial sentence if—

- (a) he has a history of failure to respond to non-custodial penalties and is unable or unwilling to respond to them; or
- (b) only a custodial sentence would be adequate to protect the public from serious harm from him; or
- (c) the offence of which he has been convicted or found guilty was so serious that a non-custodial sentence for it cannot be justified.”.

(4) The following sections shall be inserted after section 1—

“1A Detention in a young offender institution

(1) Subject to section 8 below and to section 53 of the Children and Young Persons Act 1933, where—

- (a) a male offender under 21 but not less than 14 years of age or a female offender under 21 but not less than 15 years of age is convicted of

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- an offence which is punishable with imprisonment in the case of a person aged 21 or over; and
- (b) the court is satisfied of the matters referred to in section 1(4) above, the sentence that the court is to pass is a sentence of detention in a young offender institution.
- (2) Subject to section 1B(1) and (2) below, the maximum term of detention in a young offender institution that a court may impose for an offence is the same as the maximum term of imprisonment that it may impose for that offence.
- (3) Subject to subsection (4) below and section 1B(3) below, a court shall not pass a sentence for an offender's detention in a young offender institution for less than 21 days.
- (4) A court may pass a sentence of detention in a young offender institution for less than 21 days for an offence under section 15(11) below.
- (5) Subject to section 1B(4) below, where—
- (a) an offender is convicted of more than one offence for which he is liable to a sentence of detention in a young offender institution; or
- (b) an offender who is serving a sentence of detention in a young offender institution is convicted of one or more further offences for which he is liable to such a sentence,
- the court shall have the same power to pass consecutive sentences of detention in a young offender institution as if they were sentences of imprisonment.
- (6) Where an offender who—
- (a) is serving a sentence of detention in a young offender institution; and
- (b) is aged over 21 years,
- is convicted of one or more further offences for which he is liable to imprisonment, the court shall have the power to pass one or more sentences of imprisonment to run consecutively upon the sentence of detention in a young offender institution.

1B Special provision for offenders under 17

- (1) In the case of a male offender under 15 the maximum term of detention in a young offender institution that a court may impose is whichever is the lesser of—
- (a) the maximum term of imprisonment the court may impose for the offence; and
- (b) 4 months.
- (2) In the case of an offender aged 15 or 16 the maximum term of detention in a young offender institution that a court may impose is whichever is the lesser of—
- (a) the maximum term of imprisonment the court may impose for the offence; and
- (b) 12 months.
- (3) Where an offender is a female under 17 a court shall not pass a sentence for her detention in a young offender institution whose effect would be that she would be sentenced to a total term of four months or less.

- (4) A court shall not pass a sentence of detention in a young offender institution on an offender whose effect would be that the offender would be sentenced to a total term which exceeds—
- (a) if the offender is male and under 15, 4 months; and
 - (b) if the offender is aged 15 or 16, 12 months.
- (5) Where the total term of detention in a young offender institution to which an offender is sentenced exceeds—
- (a) in the case of a male offender under 15, 4 months; and
 - (b) in the case of an offender aged 15 or 16, 12 months,
- so much of the term as exceeds 4 or 12 months, as the case may be, shall be treated as remitted.
- (6) In this section “total term” means—
- (a) in the case of an offender sentenced (whether or not on the same occasion) to two or more terms of detention in a young offender institution which are consecutive or wholly or partly concurrent, the aggregate of those terms;
 - (b) in the case of any other offender, the term of the sentence of detention in a young offender institution in question.

1C Accommodation of offenders sentenced to detention in a young offender institution

- (1) Subject to section 22(2)(b) of the Prison Act 1952 (removal to hospital etc.), an offender sentenced to detention in a young offender institution shall be detained in such an institution unless a direction under this section is in force in relation to him.
- (2) The Secretary of State may from time to time direct that an offender sentenced to detention in a young offender institution shall be detained in a prison or remand centre instead of a young offender institution, but if he is under 17 at the time of the direction, only for a temporary purpose.”.
- (5) The following subsection shall be substituted for section 2(4)—
- “(4) Where—
- (a) the Crown Court passes a sentence of detention in a young offender institution or a sentence of custody for life under section 8(2) below, or
 - (b) a magistrates' court passes a sentence of detention in a young offender institution,
- it shall be its duty—
- (i) to state in open court that it is satisfied that he qualifies for a custodial sentence under one or more of the paragraphs of section 1(4A) above, the paragraph or paragraphs in question and why it is so satisfied; and
 - (ii) to explain to the offender in open court and in ordinary language why it is passing a custodial sentence on him.”.

(6) The amendments and transitional provisions in Schedule 8 to this Act shall have effect.

124 Detention of young offenders in Scotland

(1) In each of sections 207 and 415 of the Criminal Procedure (Scotland) Act 1975 for subsections (5) to (10) there shall be substituted the following subsection—

“(5) A sentence of detention imposed under this section shall be a sentence of detention in a young offenders institution.”.

(2) Subject to subsection (3) below, in any enactment—

- (a) for a reference to a detention centre there shall be substituted a reference to a young offenders institution; and
- (b) for a reference (however expressed) to a detention centre order there shall be substituted a reference to a sentence of detention in a young offenders institution.

(3) Nothing in subsection (2) above applies—

- (a) to section 21 of the Firearms Act 1968;
- (b) to Part I of Schedule I to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980;
- (c) to section 41(2) of the Criminal Justice (Scotland) Act 1980.

(4) The amendments and transitional provisions in Schedule 9 to this Act shall have effect.

125 Abolition of power of court to commit juvenile to remand centre instead of local authority care. 1969 c. 54

Section 22(5) of the Children and Young Persons Act 1969 shall cease to have effect.

126 Amendment of section 53(2) of Children and Young Persons Act 1933

The following words shall be substituted for the words in section 53(2) of the Children and Young Persons Act 1933 (punishment of certain grave offences) from the beginning of the subsection to “law”—

“(2) Where—

- (a) a young person is convicted on indictment of any offence punishable in the case of an adult with imprisonment for fourteen years or more, not being an offence the sentence for which is fixed by law; or
- (b) a child is convicted of manslaughter;”

127 Payment of fine by parent or guardian

The following subsection shall be inserted after subsection (1) of section 55 of the Children and Young Persons Act 1933 (power to order parent or guardian to pay fine etc.)—

“(1A) Where but for this subsection—

- (a) a court would order a child or young person to pay a fine under section 15(2A) of the Children and Young Persons Act 1969 (failure to comply with requirement included in supervision order); or
- (b) a court would impose a fine on a young person under section 16(3) of the Powers of Criminal Courts Act 1973 (breach of requirements of community service order),

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it shall be the duty of the court to order that the fine be paid by the parent or guardian of the child or young person instead of by the child or young person himself, unless the court is satisfied—

- (i) that the parent or guardian cannot be found; or
- (ii) that it would be unreasonable to make an order for payment, having regard to the circumstances of the case.”.

128 Supervision

- (1) The sections set out in Part I of Schedule 10 to this Act shall be substituted for section 12 of the Children and Young Persons Act 1969.
- (2) The Act shall in consequence have effect with the amendments specified in Part II of that Schedule.
- (3) Section 15 shall also have effect with the amendments specified in Part III.
- (4) The section set out in Part IV shall be inserted after section 16.

129 Signature of orders relating to detention of young offenders

The words “or, in the case of a direction under section 53(1) or (2) above, of any authorised officer” shall be added at the end of section 106(1) of the Children and Young Persons Act 1933 (orders to be under hand of the Secretary of State or of an Under-Secretary or Assistant Under-Secretary of State).

130 Computation of sentence—time passed in care of local authority in accommodation provided for restricting liberty. 1967 c. 80

- (1) At the end of section 67(1A) of the Criminal Justice Act 1967 there shall be added the words “or—
 - (c) any period during which, in connection with the offence for which the sentence was passed, he was in the care of a local authority by virtue of an order under section 23 of the Children and Young Persons Act 1969 and in accommodation provided for the purpose of restricting liberty.”.
- (2) This section shall not have effect in relation to any sentence imposed before it comes into force.

PART X

PROBATION AND THE PROBATION SERVICE, ETC.

131 Bail: hostel conditions

- (1) In section 3 of the Bail Act 1976 (grant of bail) the following subsection shall be inserted after subsection (6)—
 - “(6ZA) Where he is required under subsection (6) above to reside in a bail hostel or probation hostel, he may also be required to comply with the rules of the hostel.”.

- (2) In paragraph 8 of Schedule 1 to that Act (restrictions on bail conditions) at the end of sub-paragraph (1) there shall be added the words “or, where the condition is that the defendant reside in a bail hostel or probation hostel, that it is necessary to impose it to assess his suitability for being dealt with for the offence in a way which would involve a period of residence in a probation hostel.”.

132 Administration of the probation service etc

The amendments specified in Schedule 11 to this Act, being miscellaneous amendments relating to the probation service and committees constituted in relation to it, shall have effect.

PART XI

MISCELLANEOUS

Miscarriages of justice

133 Compensation for miscarriages of justice

- (1) Subject to subsection (2) below, when a person has been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows beyond reasonable doubt that there has been a miscarriage of justice, the Secretary of State shall pay compensation for the miscarriage of justice to the person who has suffered punishment as a result of such conviction or, if he is dead, to his personal representatives, unless the non-disclosure of the unknown fact was wholly or partly attributable to the person convicted.
- (2) No payment of compensation under this section shall be made unless an application for such compensation has been made to the Secretary of State.
- (3) The question whether there is a right to compensation under this section shall be determined by the Secretary of State.
- (4) If the Secretary of State determines that there is a right to such compensation, the amount of the compensation shall be assessed by an assessor appointed by the Secretary of State.
- (5) In this section “reversed” shall be construed as referring to a conviction having been quashed—
- (a) on an appeal out of time; or
 - (b) on a reference—
 - (i) under section 17 of the Criminal Appeal Act 1968;
 - (ii) under section 263 of the Criminal Procedure (Scotland) Act 1975; or
 - (iii) under section 14 of the Criminal Appeal (Northern Ireland) Act 1980.
- (6) For the purposes of this section a person suffers punishment as a result of a conviction when sentence is passed on him for the offence of which he was convicted.
- (7) Schedule 12 shall have effect.

*Torture***134 Torture**

- (1) A public official or person acting in an official capacity, whatever his nationality, commits the offence of torture if in the United Kingdom or elsewhere he intentionally inflicts severe pain or suffering on another in the performance or purported performance of his official duties.
- (2) A person not falling within subsection (1) above commits the offence of torture, whatever his nationality, if—
 - (a) in the United Kingdom or elsewhere he intentionally inflicts severe pain or suffering on another at the instigation or with the consent or acquiescence—
 - (i) of a public official; or
 - (ii) of a person acting in an official capacity; and
 - (b) the official or other person is performing or purporting to perform his official duties when he instigates the commission of the offence or consents to or acquiesces in it.
- (3) It is immaterial whether the pain or suffering is physical or mental and whether it is caused by an act or an omission.
- (4) It shall be a defence for a person charged with an offence under this section in respect of any conduct of his to prove that he had lawful authority, justification or excuse for that conduct.
- (5) For the purposes of this section “lawful authority, justification or excuse” means—
 - (a) in relation to pain or suffering inflicted in the United Kingdom, lawful authority, justification or excuse under the law of the part of the United Kingdom where it was inflicted;
 - (b) in relation to pain or suffering inflicted outside the United Kingdom—
 - (i) if it was inflicted by a United Kingdom official acting under the law of the United Kingdom or by a person acting in an official capacity under that law, lawful authority, justification or excuse under that law;
 - (ii) if it was inflicted by a United Kingdom official acting under the law of any part of the United Kingdom or by a person acting in an official capacity under such law, lawful authority, justification or excuse under the law of the part of the United Kingdom under whose law he was acting; and
 - (iii) in any other case, lawful authority, justification or excuse under the law of the place where it was inflicted.
- (6) A person who commits the offence of torture shall be liable on conviction on indictment to imprisonment for life.

135 Requirement of Attorney General’s consent for prosecutions

Proceedings for an offence under section 134 above shall not be begun—

- (a) in England and Wales, except by, or with the consent of, the Attorney General; or
- (b) in Northern Ireland, except by, or with the consent of, the Attorney General for Northern Ireland.

136 Extradition under 1870 Act

- (1) Torture shall be deemed to be included in the list of extradition crimes contained in Schedule 1 to the Extradition Act 1870.
- (2) For the purposes of the Extradition Act 1870 any act or omission, wherever committed, which constitutes torture and a corresponding offence against the law of any State in the case of which the Extradition Act 1870 has been applied by an Order in Council under section 2 of that Act shall be deemed to be an offence committed within the jurisdiction of that State.

137 Extradition under Part I

- (1) Where—
 - (a) no such arrangement as is mentioned in section 2 of the Extradition Act 1870 has been made with a State which is a party to the Torture Convention; and
 - (b) general extradition arrangements have not been made with that State under Part I of this Act,

Her Majesty may by Order in Council direct that the provisions of this Act specified in subsection (2) below shall apply as between the United Kingdom and that State, subject to the limitations, restrictions, exceptions and qualifications, if any, contained in the Order, as if the Torture Convention constituted general extradition arrangements made with that State under Part I of this Act, but only in respect of the following offences—

- (i) torture;
 - (ii) attempted torture;
 - (iii) counselling, procuring, commanding, aiding or abetting torture; and
 - (iv) being accessory before or after the fact to torture.
- (2) The provisions of this Act mentioned in subsection (1) above are—
 - (a) section 1(1) to (8);
 - (b) sections 3 to 10; and
 - (c) sections 12 to 18.
- (3) An Order in Council under this section may not provide that a court dealing with a person arrested for an offence mentioned in subsection (1) above shall not be under a duty to determine whether the evidence would be sufficient to warrant his trial if the offence had taken place within the jurisdiction of the court.
- (4) For the purposes of the provisions of this Act specified in subsection (2) above, in their application by virtue of an Order in Council under this section as between the United Kingdom and any other State, any act or omission, wherever it takes place, which constitutes—
 - (a) an offence mentioned in subsection (1) above; and
 - (b) an offence against the law of that State,shall be deemed to be an offence committed within the territory of that State.
- (5) In this section “the Torture Convention” means the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the General Assembly of the United Nations on 10th December 1984.

138 Application to Channel Islands, Isle of Man and colonies

- (1) Her Majesty may by Order in Council make provision for extending sections 134 and 135 above, with such modifications and exceptions as may be specified in the Order, to any of the Channel Islands, the Isle of Man or any colony.
- (2) Sections 17 and 22 of the Extradition Act 1870 shall extend to section 136 above.
- (3) Sections 19 and 20 above shall extend to section 137 above.

*Articles with blades or points and offensive weapons***139 Offence of having article with blade or point in public place**

- (1) Subject to subsections (4) and (5) below, any person who has an article to which this section applies with him in a public place shall be guilty of an offence.
- (2) Subject to subsection (3) below, this section applies to any article which has a blade or is sharply pointed except a folding pocketknife.
- (3) This section applies to a folding pocketknife if the cutting edge of its blade exceeds 3 inches.
- (4) It shall be a defence for a person charged with an offence under this section to prove that he had good reason or lawful authority for having the article with him in a public place.
- (5) Without prejudice to the generality of subsection (4) above, it shall be a defence for a person charged with an offence under this section to prove that he had the article with him—
 - (a) for use at work;
 - (b) for religious reasons; or
 - (c) as part of any national costume.
- (6) A person guilty of an offence under subsection (1) above shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (7) In this section “public place” includes any place to which at the material time the public have or are permitted access, whether on payment or otherwise.
- (8) This section shall not have effect in relation to anything done before it comes into force.

140 Extension of constable’s power to stop and search

- (1) In section 1 of the Police and Criminal Evidence Act 1984 (powers of constable to stop and search)—
 - (a) the words “or any article to which subsection (8A) below applies” shall be inserted—
 - (i) in subsection (2)(a), after the word “articles”; and
 - (ii) at the end of subsection (3);
 - (b) in subsection (6), after the word “article”, in the second place where it occurs, there shall be inserted the words “or an article to which subsection (8A) below applies”; and

(c) the following subsection shall be inserted after subsection (8)—

“(8A) This subsection applies to any article in relation to which a person has committed, or is committing or is going to commit an offence under section 139 of the Criminal Justice Act 1988.”.

(2) In section 5(2)(a)(ii) of that Act (annual reports to contain total numbers of searches for offensive weapons) after the word “weapons” there shall be inserted the words “or articles to which section 1(8A) above applies”.

141 Offensive weapons

(1) Any person who manufactures, sells or hires or offers for sale or hire, exposes or has in his possession for the purpose of sale or hire, or lends or gives to any other person, a weapon to which this section applies shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or both.

(2) The Secretary of State may by order made by statutory instrument direct that this section shall apply to any description of weapon specified in the order except—

- (a) any weapon subject to the Firearms Act 1968; and
- (b) crossbows.

(3) A statutory instrument containing an order under this section shall not be made unless a draft of the instrument has been laid before Parliament and has been approved by a resolution of each House of Parliament.

(4) The importation of a weapon to which this section applies is hereby prohibited.

(5) It shall be a defence for any person charged in respect of any conduct of his relating to a weapon to which this section applies—

- (a) with an offence under subsection (1) above; or
- (b) with an offence under section 50(2) or (3) of the Customs and Excise Management Act 1979 (improper importation),

to prove that his conduct was only for the purposes of functions carried out on behalf of the Crown or of a visiting force.

(6) In this section the reference to the Crown includes the Crown in right of Her Majesty’s Government in Northern Ireland; and

“visiting force” means any body, contingent or detachment of the forces of a country—

- (a) mentioned in subsection (1)(a) of section 1 of the Visiting Forces Act 1952; or
- (b) designated for the purposes of any provision of that Act by Order in Council under subsection (2) of that section,

which is present in the United Kingdom (including United Kingdom territorial waters) or in any place to which subsection (7) below applies on the invitation of Her Majesty’s Government in the United Kingdom.

(7) This subsection applies to any place on, under or above an installation in a designated area within the meaning of section 1(7) of the Continental Shelf Act 1964 or any waters within 500 metres of such an installation.

- (8) It shall be a defence for any person charged in respect of any conduct of his relating to a weapon to which this section applies—
- (a) with an offence under subsection (1) above; or
 - (b) with an offence under section 50(2) or (3) of the Customs and Excise Management Act 1979,
- to prove that the conduct in question was only for the purposes of making the weapon available to a museum or gallery to which this subsection applies.
- (9) If a person acting on behalf of a museum or gallery to which subsection (8) above applies is charged with hiring or lending a weapon to which this section applies, it shall be a defence for him to prove that he had reasonable grounds for believing that the person to whom he lent or hired it would use it only for cultural, artistic or educational purposes.
- (10) Subsection (8) above applies to a museum or gallery only if it does not distribute profits.
- (11) In this section “museum or gallery” includes any institution which has as its purpose, or one of its purposes, the preservation, display and interpretation of material of historical, artistic or scientific interest and gives the public access to it.
- (12) This section shall not have effect in relation to anything done before it comes into force.
- (13) In the application of this section to Northern Ireland the reference in subsection (2) above to the Firearms Act 1968 shall be construed as a reference to the Firearms (Northern Ireland) Order 1981.

142 Power of justice of the peace to authorise entry and search of premises for offensive weapons

- (1) If on an application made by a constable a justice of the peace (including, in Scotland, the sheriff) is satisfied that there are reasonable grounds for believing—
- (a) that there are on premises specified in the application—
 - (i) knives such as are mentioned in section 1(1) of the Restriction of Offensive Weapons Act 1959; or
 - (ii) weapons to which section 141 above applies; and
 - (b) that an offence under section 1 of the Restriction of Offensive Weapons Act 1959 or section 141 above has been or is being committed in relation to them; and
 - (c) that any of the conditions specified in subsection (3) below applies,
- he may issue a warrant authorising a constable to enter and search the premises.
- (2) A constable may seize and retain anything for which a search has been authorised under subsection (1) above.
- (3) The conditions mentioned in subsection (1)(b) above are—
- (a) that it is not practicable to communicate with any person entitled to grant entry to the premises;
 - (b) that it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the knives or weapons to which the application relates;

- (c) that entry to the premises will not be granted unless a warrant is produced;
 - (d) that the purpose of a search may be frustrated or seriously prejudiced unless a constable arriving at the premises can secure immediate entry to them.
- (4) Subsection (1)(a)(i) shall be omitted in the application of this section to Northern Ireland.

Serious fraud

143 Assistance to Isle of Man and Channel Islands

In subsection (1) of section 2 of the Criminal Justice Act 1987 (investigation powers of Director of Serious Fraud Office) after the word “above,” there shall be inserted the words “or, on a request made by the Attorney General of the Isle of Man, Jersey or Guernsey, under legislation corresponding to that section and having effect in the Island whose Attorney General makes the request,”.

144 Transferred charges

- (1) The Criminal Justice Act 1987 shall be amended as follows.
- (2) In section 4(1) (under which, on a notice of transfer in a fraud case, the functions of a magistrates' court, subject to certain exceptions, cease in relation to the case) after “5(3)” there shall be inserted “, (7A)”.
- (3) In section 5 (notices of transfer—procedure)—
- (a) in subsection (4), for the words “without the person charged” there shall be substituted the words “in relation to a person charged without his”;
 - (b) in subsection (5)(a), for the word “charged” there shall be substituted the words “in question”;
 - (c) in subsection (6)—
 - (i) for the words “the person charged” there shall be substituted the words “a person to whom it relates”; and
 - (ii) for the words “examining justices” there shall be substituted the words “a magistrates' court”;
 - (d) in subsection (7)—
 - (i) for the word “charged” there shall be substituted the words “to whom the notice of transfer relates”; and
 - (ii) for the words “examining justices” there shall be substituted the words “a magistrates' court”;
 - (e) in subsection (8)(b), for the words “whose written statement is tendered in evidence for the purposes of the notice of transfer” there shall be substituted the words “indicated in the notice of transfer as a proposed witness;” and
 - (f) in subsection (9)(a)—
 - (i) in sub-paragraph (i), for the words “the person charged” there shall be substituted the words “any person to whom the notice of transfer relates”; and
 - (ii) in sub-paragraph (ii), after the word “the”, in the second place where it occurs, there shall be inserted the words “place specified by the notice of transfer as the”.

Status: This is the original version (as it was originally enacted).

(4) The following subsection shall be inserted after section 5(7)—

“(7A) If the notice states that the requirement is to continue, when a person to whom the notice relates appears before the magistrates' court, the court shall have—

- (a) the powers and duty conferred on a magistrates' court by subsection (3) above, but subject as there provided; and
- (b) power to enlarge, in the surety's absence, a recognizance conditioned in accordance with section 128(4)(a) of the Magistrates' Courts Act 1980 so that the surety is bound to secure that the person charged appears also before the Crown Court.”.

(5) The following section shall be substituted for section 6—

“6 Applications for dismissal

- (1) Where notice of transfer has been given, any person to whom the notice relates, at any time before he is arraigned (and whether or not an indictment has been preferred against him), may apply orally or in writing to the Crown Court sitting at the place specified by the notice of transfer as the proposed place of trial for the charge, or any of the charges, in the case to be dismissed; and the judge shall dismiss a charge (and accordingly quash a count relating to it in any indictment preferred against the applicant) if it appears to him that the evidence against the applicant would not be sufficient for a jury properly to convict him.
- (2) No oral application may be made under subsection (1) above unless the applicant has given the Crown Court sitting at the place specified by the notice of transfer as the proposed place of trial written notice of his intention to make the application.
- (3) Oral evidence may be given on such an application only with the leave of the judge or by his order, and the judge shall give leave or make an order only if it appears to him, having regard to any matters stated in the application for leave, that the interests of justice require him to do so.
- (4) If the judge gives leave permitting, or makes an order requiring, a person to give oral evidence, but he does not do so, the judge may disregard any document indicating the evidence that he might have given.
- (5) Dismissal of the charge, or all the charges, against the applicant shall have the same effect as a refusal by examining magistrates to commit for trial, except that no further proceedings may be brought on a dismissed charge except by means of the preferment of a voluntary bill of indictment.
- (6) Crown Court Rules may make provision for the purposes of this section and, without prejudice to the generality of this subsection—
 - (a) as to the time or stage in the proceedings at which anything required to be done is to be done (unless the court grants leave to do it at some other time or stage);
 - (b) as to the contents and form of notices or other documents;
 - (c) as to the manner in which evidence is to be submitted; and
 - (d) as to persons to be served with notices or other material.”.

145 Power to petition for winding-up etc. on information obtained on investigation by Director of Serious Fraud Office

The words “or section 2 of the Criminal Justice Act 1987” shall be inserted—

- (a) in section 440 of the Companies Act 1985, after the words “that Act”;
- (b) in section 8(1) of the Company Directors Disqualification Act 1986, after the words “the Financial Services Act 1986”, in the second place where they occur; and
- (c) in Article 433 of the Companies (Northern Ireland) Order 1986, after the words “that Act”.

Evidence before Service courts

146 Evidence before courts-martial etc

Schedule 13 to this Act shall have effect in relation to evidence before courts-martial, disciplinary courts constituted under section 50 of the Naval Discipline Act 1957, the Courts-Martial Appeal Court and Standing Civilian Courts.

Amendments of Police and Criminal Evidence Act 1984 etc.

147 Searches of detained persons

In section 54 of the Police and Criminal Evidence Act 1984 (searches of detained persons)—

- (a) the following paragraph shall be substituted for subsection (1)(b)—
 - “(b) arrested at the station or detained there under section 47(5) above.”; and
- (b) the following subsections shall be inserted after subsection (6)—
 - “(6A) A person who is in custody at a police station or is in police detention otherwise than at a police station may at any time be searched in order to ascertain whether he has with him anything which he could use for any of the purposes specified in subsection (4)(a) above.
 - (6B) Subject to subsection (6C) below, a constable may seize and retain, or cause to be seized and retained, anything found on such a search.
 - (6C) A constable may only seize clothes and personal effects in the circumstances specified in subsection (4) above.”.

148 Computer data about fingerprints

(1) The following subsection shall be substituted for subsection (5) of section 64 of the Police and Criminal Evidence Act 1984 (destruction of fingerprints etc.)—

- “(5) If fingerprints are destroyed—
 - (a) any copies of the fingerprints shall also be destroyed; and
 - (b) any chief officer of police controlling access to computer data relating to the fingerprints shall make access to the data impossible, as soon as it is practicable to do so.”.

(2) The following subsections shall be inserted after subsection (6) of that section—

“(6A) If—

- (a) subsection (5)(b) above falls to be complied with; and
- (b) the person to whose fingerprints the data relate asks for a certificate that it has been complied with,

such a certificate shall be issued to him, not later than the end of the period of three months beginning with the day on which he asks for it, by the responsible chief officer of police or a person authorised by him or on his behalf for the purposes of this section.

(6B) In this section—

“chief officer of police” means the chief officer of police for an area mentioned in Schedule 8 to the Police Act 1964; and

“the responsible chief officer of police” means the chief officer of police in whose area the computer data were put on to the computer.”.

149 Body samples— Northern Ireland

Schedule 14 shall have effect with respect to the taking of samples from persons in Northern Ireland in connection with the investigation of offences to which it applies.

Provisions relating to Customs and Excise

150 Bail for persons in customs detention

At the end of section 114(2)(b) of the Police and Criminal Evidence Act 1984 there shall be added the words “and

- (c) that in relation to customs detention (as defined in any order made under this subsection) the Bail Act 1976 shall have effect as if references in it to a constable were references to an officer of Customs and Excise of such grade as may be specified in the order.”.

151 Customs and Excise power of arrest

(1) If—

- (a) a person—
 - (i) has been released on bail in criminal proceedings for an offence falling within subsection (4) below; and
 - (ii) is under a duty to surrender into customs detention; and
- (b) an officer of Customs and Excise has reasonable grounds for believing that that person is not likely to surrender to custody,

he may be arrested without warrant by an officer of Customs and Excise.

(2) A person arrested in pursuance of subsection (1) above shall be brought as soon as practicable and in any event within 24 hours after his arrest before a justice of the peace for the petty sessions area in which he was arrested.

(3) In reckoning for the purposes of subsection (2) above any period of 24 hours, no account shall be taken of Christmas Day, Good Friday or any Sunday.

- (4) The offences that fall within this subsection are—
- (a) an offence against section 5(2) of the Misuse of Drugs Act 1971 (possession of controlled drugs); and
 - (b) a drug trafficking offence.
- (5) In this section and section 152 below “drug trafficking offence” means a drug trafficking offence as defined by section 38(1) of the Drug Trafficking Offences Act 1986 other than an offence under section 24 of that Act (assisting another to retain the benefit of drug trafficking).

152 Remands of suspected drug offenders to customs detention

- (1) Subject—
- (a) to subsection (2) below; and
 - (b) to section 4 of the Bail Act 1976,
- where—
- (i) a person is brought before a magistrates' court on a charge of an offence against section 5(2) of the Misuse of Drugs Act 1971 or a drug trafficking offence; and
 - (ii) the court has power to remand him,
- it shall have power, if it considers it appropriate to do so, to remand him to customs detention, that is to say, commit him to the custody of a customs officer for a period not exceeding 192 hours.
- (2) This section does not apply where a charge is brought against a person under the age of 17.
- (3) In the application of this section to Northern Ireland, for the words from the beginning of subsection (1) above to “1976” there shall be substituted the words “Subject to subsection (2) below,”.
- (4) The definition of “drug trafficking offence” in section 38(1) of the Drug Trafficking Offences Act 1986 shall extend to Northern Ireland for the purposes of this section but shall have effect in relation to Northern Ireland as if—
- (a) the reference in paragraph (e) to section 1 of the Criminal Law Act 1977 were a reference to Article 9 of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983; and
 - (b) the reference in paragraph (f) to section 1 of the Criminal Attempts Act 1981 were a reference to Article 3 of that Order.

Bail and custody

153 Court to give reasons for granting bail to a person accused of serious offence

The following paragraph shall be inserted after paragraph 9 (decisions as to grant or refusal of bail) of Part I of Schedule 1 to the Bail Act 1976—

- “9A (1) If—
- (a) the defendant is charged with an offence to which this paragraph applies; and

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- (b) representations are made as to any of the matters mentioned in paragraph 2 of this Part of this Schedule; and
 - (c) the court decides to grant him bail,
- the court shall state the reasons for its decision and shall cause those reasons to be included in the record of the proceedings.

- (2) The offences to which this paragraph applies are—
- (a) murder;
 - (b) manslaughter;
 - (c) rape;
 - (d) attempted murder; and
 - (e) attempted rape.”.

154 Decisions where bail refused on previous hearing

The following new Part shall be inserted after Part II of Schedule 1 to the Bail Act 1976—

“PART IIA

DECISIONS WHERE BAIL REFUSED ON PREVIOUS HEARING

- 1 If the court decides not to grant the defendant bail, it is the court’s duty to consider, at each subsequent hearing while the defendant is a person to whom section 4 above applies and remains in custody, whether he ought to be granted bail.
- 2 At the first hearing after that at which the court decided not to grant the defendant bail he may support an application for bail with any argument as to fact or law that he desires (whether or not he has advanced that argument previously).
- 3 At subsequent hearings the court need not hear arguments as to fact or law which it has heard previously.”.

155 Remands in custody for more than eight days

- (1) The following section shall be inserted after section 128 of the Magistrates' Courts Act 1980—

“128A Remands in custody for more than eight days

- (1) The Secretary of State may by order made by statutory instrument provide that this section shall have effect—
 - (a) in an area specified in the order; or
 - (b) in proceedings of a description so specified,
 in relation to any accused person (“the accused”) who has attained the age of 17.
- (2) A magistrates' court may remand the accused in custody for a period exceeding 8 clear days if—

Status: This is the original version (as it was originally enacted).

- (a) it has previously remanded him in custody for the same offence; and
 - (b) he is before the court,
- but only if, after affording the parties an opportunity to make representations, it has set a date on which it expects that it will be possible for the next stage in the proceedings, other than a hearing relating to a further remand in custody or on bail, to take place, and only—
- (i) for a period ending not later than that date; or
 - (ii) for a period of 28 clear days,
- whichever is the less.
- (3) Nothing in this section affects the right of the accused to apply for bail during the period of the remand.
 - (4) A statutory instrument containing an order under this section shall not be made unless a draft of the instrument has been laid before Parliament and been approved by a resolution of each House.”.
- (2) After paragraph 9A of Schedule 1 to the Bail Act 1976 there shall be inserted—

“Cases under section 128A of Magistrates' Courts Act 1980

- 9B Where the court is considering exercising the power conferred by section 128A of the Magistrates' Courts Act 1980 (power to remand in custody for more than 8 clear days), it shall have regard to the total length of time which the accused would spend in custody if it were to exercise the power.”.

Appeals

156 Appeals to Crown Court

In paragraph (a) of section 48(2) of the Supreme Court Act 1981 (which sets out the powers of the Crown Court on the termination of the hearing of an appeal) for the words “the decision appealed against” there shall be substituted the words “any part of the decision appealed against, including a determination not to impose a separate penalty in respect of an offence”.

157 Groundless appeals and applications for leave to appeal

The following section shall be substituted for section 20 of the Criminal Appeal Act 1968—

“20 Disposal of groundless appeal or application for leave to appeal

If it appears to the registrar that a notice of appeal or application for leave to appeal does not show any substantial ground of appeal, he may refer the appeal or application for leave to the Court for summary determination; and where the case is so referred the Court may, if they consider that the appeal or application for leave is frivolous or vexatious, and can be determined without adjourning it for a full hearing, dismiss the appeal or application for leave summarily, without calling on anyone to attend the hearing or to appear for the Crown thereon.”.

Status: This is the original version (as it was originally enacted).

Reports of criminal proceedings

158 Anonymity in rape etc. cases

- (1) The Sexual Offences (Amendment) Act 1976 shall be amended as follows.
- (2) The following subsections shall be substituted for subsection (1) of section 4 (anonymity of complainants in rape etc. cases)—

“(1) Except as authorised by a direction given in pursuance of this section—

- (a) after an allegation that a woman has been the victim of a rape offence has been made by the woman or by any other person, neither the woman’s name nor her address nor a still or moving picture of her shall during her lifetime—

(i) be published in England and Wales in a written publication available to the public; or

(ii) be broadcast or included in a cable programme in England and Wales,

if that is likely to lead members of the public to identify her as an alleged victim of such an offence; and

- (b) after a person is accused of a rape offence, no matter likely to lead members of the public to identify a woman as the complainant in relation to that accusation shall during her lifetime—

(i) be published in England and Wales in a written publication available to the public; or

(ii) be broadcast or included in a cable programme in England and Wales;

but nothing in this subsection prohibits the publication or broadcasting or inclusion in a cable programme of matter consisting only of a report of criminal proceedings other than proceedings at, or intended to lead to, or on an appeal arising out of, a trial at which the accused is charged with the offence.

(1A) In subsection (1) above “picture” includes a likeness however produced.”.

- (3) The following subsections shall be inserted after subsection (5) of that section—

“(5A) Where a person is charged with an offence under subsection (5) of this section in respect of the publication or broadcast of any matter or the inclusion of any matter in a cable programme, it shall be a defence, subject to subsection (5B) below, to prove that the publication, broadcast or cable programme in which the matter appeared was one in respect of which the woman had given written consent to the appearance of matter of that description.

(5B) Written consent is not a defence if it is proved that any person interfered unreasonably with the woman’s peace or comfort with intent to obtain the consent.”.

- (4) In subsection (3) of that section—

(a) the words “before the Crown Court at which a person is charged with a rape offence” and “relating to the complainant” shall cease to have effect; and

(b) for the words “an acquittal of a defendant at” there shall be substituted the words “the outcome of”.

- (5) Section 6 (anonymity of defendants in rape etc. cases) shall cease to have effect.
- (6) In section 7(2), in the definition of a “rape offence”, for the words “and incitement to rape” there shall be substituted the words, “incitement to rape, conspiracy to rape and burglary with intent to rape”.

159 Crown Court proceedings— orders restricting or preventing reports or restricting public access

- (1) A person aggrieved may appeal to the Court of Appeal, if that court grants leave, against—
 - (a) an order under section 4 or 11 of the Contempt of Court Act 1981 made in relation to a trial on indictment;
 - (b) any order restricting the access of the public to the whole or any part of a trial on indictment or to any proceedings ancillary to such a trial; and
 - (c) any order restricting the publication of any report of the whole or any part of a trial on indictment or any such ancillary proceedings;and the decision of the Court of Appeal shall be final.
- (2) Subject to Rules of Court, the jurisdiction of the Court of Appeal under this section shall be exercised by the criminal division of the Court, and references to the Court of Appeal in this section shall be construed as references to that division.
- (3) On an application for leave to appeal under this section a judge shall have power to give such directions as appear to him to be appropriate and, without prejudice to the generality of this subsection, power—
 - (a) to order the production in court of any transcript or note of proceedings or other document;
 - (b) to give directions as to persons who are to be parties to the appeal or who may be parties to it if they wish and as to service of documents on any person;and the Court of Appeal shall have the same powers as the single judge.
- (4) Subject to Rules of Court made by virtue of subsection (6) below, any party to an appeal under this section may give evidence before the Court of Appeal orally or in writing.
- (5) On the hearing of an appeal under this section the Court of Appeal shall have power—
 - (a) to stay any proceedings in any other court until after the appeal is disposed of;
 - (b) to confirm, reverse or vary the order complained of; and
 - (c) to make such order as to costs as it thinks fit.
- (6) Without prejudice to the generality of section 84 of the Supreme Court Act 1981, Rules of Court may make in relation to trials satisfying specified conditions special provision as to the practice and procedure to be followed in relation to hearings in camera and appeals from orders for such hearings and may in particular, but without prejudice to the generality of this subsection, provide that subsection (4) above shall not have effect.
- (7) In the application of this section to Northern Ireland—
 - (a) subsection (2) shall be omitted; and

Status: This is the original version (as it was originally enacted).

- (b) the reference in subsection (6) to section 84 of the Supreme Court Act 1981 shall be construed as a reference to sections 52 and 55 of the Judicature (Northern Ireland) Act 1978.

Possession of indecent photograph of child

160 Summary offence of possession of indecent photograph of child

- (1) It is an offence for a person to have any indecent photograph of a child (meaning in this section a person under the age of 16) in his possession.
- (2) Where a person is charged with an offence under subsection (1) above, it shall be a defence for him to prove—
 - (a) that he had a legitimate reason for having the photograph in his possession; or
 - (b) that he had not himself seen the photograph and did not know, nor had any cause to suspect, it to be indecent; or
 - (c) that the photograph was sent to him without any prior request made by him or on his behalf and that he did not keep it for an unreasonable time.
- (3) A person shall be liable on summary conviction of an offence under this section to a fine not exceeding level 5 on the standard scale.
- (4) Sections 1(3), 2(3), 3 and 7 of the Protection of Children Act 1978 shall have effect as if any reference in them to that Act included a reference to this section.
- (5) Possession before this section comes into force is not an offence.

161 Possession of indecent photographs of children: Scotland

- (1) The following section shall be inserted after section 52 of the Civic Government (Scotland) Act 1982—

“52A Possession of indecent photographs of children

- (1) It is an offence for a person to have any indecent photograph of a child (meaning in this section a person under the age of 16) in his possession.
- (2) Where a person is charged with an offence under subsection (1), it shall be a defence for him to prove—
 - (a) that he had a legitimate reason for having the photograph in his possession; or
 - (b) that he had not himself seen the photograph and did not know, nor had any cause to suspect, it to be indecent; or
 - (c) that the photograph was sent to him without any prior request made by him or on his behalf and that he did not keep it for an unreasonable time.
- (3) A person shall be liable on summary conviction of an offence under this section to a fine not exceeding level 5 on the standard scale.
- (4) Subsections (2) and (8) of section 52 of this Act shall have effect for the purposes of this section as they have for the purposes of that section.”

- (2) Section 52A of that Act shall not have effect in relation to anything done before it comes into force.

Video recordings

162 Enforcement of Video Recordings Act 1984

The following section shall be inserted after section 16 of the Video Recordings Act 1984—

“16A Enforcement

- (1) The functions of a local weights and measures authority include the enforcement in their area of this Act.
- (2) The following provisions of the Trade Descriptions Act 1968 apply in relation to the enforcement of this Act by such an authority as in relation to the enforcement of that Act—
 - section 27 (power to make test purchases),
 - section 28 (power to enter premises and inspect and seize goods and documents),
 - section 29 (obstruction of authorised officers), and
 - section 33 (compensation for loss, &c. of goods seized under s. 28).
- (3) Nothing in this section shall be taken as authorising a local weights and measures authority in Scotland to initiate proceedings for an offence.
- (4) Subsection (1) above does not apply in relation to the enforcement of this Act in Northern Ireland, but the functions of the Department of Economic Development include the enforcement of this Act in Northern Ireland.

For that purpose the provisions of the Trade Descriptions Act 1968 specified in subsection (2) apply as if for the references to a local weights and measures authority and any officer of such an authority there were substituted references to that Department and any of its officers.

- (5) Any enactment which authorises the disclosure of information for the purpose of facilitating the enforcement of the Trade Descriptions Act 1968 shall apply as if the provisions of this Act were contained in that Act and as if the functions of any person in relation to the enforcement of this Act were functions under that Act.”.

Restitution orders

163 Application of restitution orders to the Crown

The following subsection shall be added at the end of section 28 of the Theft Act 1968 —

- “(7) An order may be made under this section in respect of money owed by the Crown.”.

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Magistrates' courts areas and officers

164 Alteration of names of petty sessions areas

- (1) The Justices of the Peace Act 1979 shall be amended as follows.
- (2) The following sections shall be inserted after section 24—

“24A Alteration of names of petty sessions areas outside inner London area

- (1) Subject to the provisions of this and the next section, a magistrates' courts committee for an area mentioned in section 19(2) above other than the City of London may at any time submit to the Secretary of State a draft order altering the name of the petty sessions area for which they are the committee or, if they are the committee for more than one petty sessions area, the name of any of those areas.
- (2) Subject to the provisions of this and the next following section, where such a committee submit a draft order to the Secretary of State under this section, he may by statutory instrument make the order either in the terms of the draft or with such modifications as he thinks fit.
- (3) Any order under this section may contain transitional and other consequential provisions.

24B Procedure relating to s. 24A

- (1) Before submitting to the Secretary of State a draft order under section 24A of this Act, a magistrates' courts committee—
 - (a) shall consult the council of the non-metropolitan county, metropolitan district or outer London borough concerned and the magistrates of the petty sessions area to which their proposals relate; and
 - (b) after complying with paragraph (a) above, shall send a copy of their proposals to every interested authority and take into consideration any objections made in the prescribed manner and within the prescribed time.
- (2) A magistrates' courts committee submitting to the Secretary of State a draft order under section 24A of this Act shall comply with such requirements (if any) as to notice as may be prescribed; and the Secretary of State, before making an order under that section otherwise than in accordance with a draft submitted to him by the magistrates' court committee, shall send a copy of his proposals to the committee, to the council of the non-metropolitan county, metropolitan district or outer London borough concerned and, if a non-metropolitan county is concerned, every interested authority.
- (3) Before making any order under section 24A of this Act the Secretary of State shall take into consideration any objections made in the prescribed manner and within the prescribed time, and may cause a local inquiry to be held.
- (4) For the purposes of this section—
 - (a) “interested authority”, in relation to any order or draft order concerning a non-metropolitan county, means the council of any

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district in the county which is wholly or partly included in the area to which the order or draft order relates; and

- (b) an order shall be deemed to be made in accordance with a draft order if either it is made in terms of the draft order or the departures from the draft order do not, in the opinion of the Secretary of State, effect important alterations in the draft order.”.

- (3) The following section shall be inserted after section 36—

“36A Alteration of names of petty sessions areas in inner London area

- (1) The committee of magistrates may at any time submit to the Secretary of State a draft order altering the name of any petty sessions area in the inner London area.
- (2) Where the committee submit a draft order to the Secretary of State under this section, he may by statutory instrument make the order either in the terms of the draft or with such modifications as he thinks fit.
- (3) Any order under this section may contain transitional and other consequential provisions.”.

165 Officers of inner London magistrates' courts

- (1) Section 37 of the Justices of the Peace Act 1979 shall be amended as follows.
- (2) In paragraph (b) of subsection (1), after “such” insert “senior deputy chief clerks”.
- (3) At the end of that subsection add “and, where there is only one, designate him”.
- (4) In subsection (3), after “clerks”, in the first place where it occurs, insert “senior deputy chief clerks”.

Costs and expenses

166 Costs and expenses of prosecution witnesses and other persons

- (1) Section 14 of the Prosecution of Offences Act 1985 (control of certain fees and expenses etc. paid by Crown Prosecution Service) shall be amended as follows—
- (a) at the end of paragraph (b) of subsection (1) there shall be added the words “and, subject to subsection (1A) below, of any other person who in the opinion of the Service necessarily attends for the purpose of the case otherwise than to give evidence”;
- (b) the following subsections shall be inserted after that subsection—
- “(1A) The power conferred on the Attorney General by subsection (1)(b) above only relates to the costs and expenses of an interpreter if the interpreter is required because of the lack of English of a person attending to give evidence at the instance of the Service.
- (1B) In subsection (1)(b) above “attending” means attending at the court or elsewhere.”; and
- (c) the following subsection shall be inserted after subsection (2)—

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- “(3) Regulations made under subsection (1)(b) above may provide that scales or rates of costs and expenses shall be determined by the Attorney General with the consent of the Treasury.”.
- (2) In paragraph (a) of section 19(3) of that Act (regulations as to payment out of central funds) after the word “proceedings” there shall be inserted the words “, and any other person who in the opinion of the court necessarily attends for the purpose of the proceedings otherwise than to give evidence,”.
- (3) The following subsection shall be inserted after that subsection—
- “(3A) In subsection (3)(a) above “attendance” means attendance at the court or elsewhere.”.
- (4) The amendments made by subsections (2) and (3) above shall be deemed to have come into force on 1st October 1986.
- (5) In Schedule 1 to the Criminal Justice Act 1987 (control of certain fees and expenses etc. paid by Serious Fraud Office)—
- (a) in sub-paragraph (1)(b) of paragraph 8, for the word “to” in the third place it occurs there shall be substituted the word “of”; and
 - (b) the following sub-paragraph shall be inserted after sub-paragraph (4) of that paragraph—
- “(5) In sub-paragraph (1)(b) above “attends” means attends at the court or elsewhere.”

Acquisition of easements etc.

167 Acquisition of easements etc. under Prison Act 1952

The power to purchase land conferred on the Secretary of State by section 36 of the Prison Act 1952 (acquisition of land for prisons) shall include and be deemed always to have included power to purchase easements and other rights over land, including easements and other rights not previously in existence.

PART XII

GENERAL AND SUPPLEMENTARY

168 Northern Ireland

- (1) An Order in Council under paragraph 1(1)(b) of Schedule 1 to the Northern Ireland Act 1974 (legislation for Northern Ireland in the interim period) which contains a statement that it is made only for purposes corresponding to those of any provision of this Act to which this section applies—
- (a) shall not be subject to paragraph 1(4) and (5) of that Schedule (affirmative resolution of both Houses of Parliament); but
 - (b) shall be subject to annulment in pursuance of a resolution of either House.
- (2) The provisions of this Act to which this section applies are—
- sections 23 to 27;

section 28;
sections 29 to 34;
section 44(4) and (5);
section 47;
section 144;
section 160.

169 Financial provision

There shall be paid out of money provided by Parliament—

- (a) any expenses incurred under this Act by a Minister of the Crown; and
- (b) any increase attributable to the provisions of this Act in the sums payable out of such money under any other Act.

170 Minor and consequential amendments and repeals

- (1) The enactments mentioned in Schedule 15 to this Act shall have effect with the amendments there specified (being minor amendments and amendments consequential on the foregoing provisions of this Act).
- (2) The enactments mentioned in Schedule 16 to this Act (which include enactments already obsolete or unnecessary) are repealed to the extent specified in the third column of that Schedule but subject to the Notes at the end of the Schedule.

171 Commencement

- (1) Subject to the following provisions of this section, this Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint and different days may be appointed in pursuance of this subsection for different provisions or different purposes of the same provision.
- (2) An order under this section may make such transitional provision as appears to the Secretary of State to be necessary or expedient in connection with any provision thereby brought into force other than a provision contained in sections 108 to 117 above or in Schedule 6 or 7 to this Act.
- (3) The Secretary of State may by regulations made by statutory instrument make such provision as he considers necessary or expedient in preparation for or in connection with the coming into force of any provision contained in those sections or Schedules.
- (4) A statutory instrument containing any such regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) The following provisions shall come into force on the day this Act is passed—
 - section 66;
 - section 67;
 - section 103(1), so far as it relates—
 - (a) to the addition of two subsections at the end of section 8 of the Drug Trafficking Offences Act 1986;
 - (b) to the insertion of a new subsection in section 24 of that Act; and
 - (c) to the substitution of two new sections for section 26 of that Act;

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section 129;
section 132, so far as it relates to the Local Government Finance Act 1982;
section 141;
section 142;
section 143;
section 144;
section 149;
section 166;
section 167;
section 168;
section 169;
subsection (1) of section 170, so far as relating to the following—
 section 112A(1) of the Land Registration Act 1925;
 the extension of references in the Children and Young Persons Act 1933 to
 the offences mentioned in Schedule 1 to that Act so as to include offences
 under Part I of the Child Abduction Act 1984;
 the Visiting Forces Act 1952;
 section 67(6) of the Criminal Justice Act 1967;
 section 29 of the Children and Young Persons Act 1969;
 section 6(1) of the Juries Act 1974;
 sections 171 and 368 of and Schedule 1 to the Criminal Procedure
 (Scotland) Act 1975;
 the Child Care Act 1980;
 sections 37 and 133 of the Magistrates' Courts Act 1980;
 section 52(7) of the Civic Government (Scotland) Act 1982;
 the Criminal Justice Act 1982;
 the Police and Criminal Evidence Act 1984;
 the Prosecution of Offences Act 1985;
 the Criminal Justice Act 1987;
 the Criminal Justice (Scotland) Act 1987;
subsection (2) of that section, so far as relating to the following—
 section 49 of the Criminal Justice Act 1967;
 section 29 of the Children and Young Persons Act 1969;
 the Criminal Justice Act 1987;
this section;
sections 172 and 173.

(6) The following provisions—

section 44;
section 45;
section 46;
section 47;
section 48;
section 58;
section 64;
section 68;

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section 69;
section 134;
section 135;
section 136;
section 137;
section 138;
section 139;
section 140;
section 158;
sections 160 and 161;
subsection (1) of section 170, so far as relating to the Sexual Offences (Amendment) Act 1976, the Protection of Children Act 1978 and section 6(5) of the Magistrates' Courts Act 1980;
subsection (2) of that section, so far as relating to the following—
 the Prevention of Corruption Act 1916;
 Schedule 3 to the Criminal Justice Act 1967;
 section 28(3) of the Criminal Justice Act 1972;
 the Sexual Offences (Amendment) Act 1976;
 the Protection of Children Act 1978;
 the Cable and Broadcasting Act 1984;
 section 24(2)(e) of the Police and Criminal Evidence Act 1984,

shall come into force at the end of the period of two months beginning with the day this Act is passed.

- (7) Section 162 above shall come into force—
- (a) on the day appointed under section 23(2) of the Video Recordings Act 1984 for the coming into force of the provisions of that Act not in force at the passing of this Act; or
 - (b) on the passing of this Act,
- whichever is the later.

172 Extent

- (1) Subject to the following provisions of this section, and to sections 19, 20 and 21 above, this Act extends to England and Wales only.
- (2) The following provisions extend also to Scotland—
- Part I;
 - sections 44 to 48;
 - section 50;
 - section 57;
 - section 63;
 - section 68;
 - section 76(3);
 - section 77(10) and (11);
 - section 82;
 - sections 84 to 88;

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section 94;
section 102, so far as relating to other provisions of this Act extending to Scotland;
sections 108 to 115 and 117;
section 133;
section 134;
section 136;
section 137;
sections 141 and 142;
section 143;
section 145(a) and (b);
section 162;
section 170;
section 171;
this section; and
section 173.

(3) The following provisions extend also to Northern Ireland—

Part I;
Part IV;
section 50;
section 133;
section 134;
section 135;
section 136;
section 137;
section 139;
section 141;
section 142;
section 143;
section 152;
section 159;
section 162;
section 166(5);
section 170;
section 171;
this section; and
section 173;

(4) The following provisions—

section 56;
sections 90 to 93;
section 103(2);
section 116;
section 124;
section 161;

extend to Scotland only.

- (5) Section 95 above extends only to Scotland and Northern Ireland.
- (6) Sections 145(c), 149 and 168 above extend to Northern Ireland only.
- (7) So far as any provision of this Act to which this subsection applies relates to an Act specified in subsection (9) below, it extends to any place to which that Act extends.
- (8) Subsection (7) above applies—
 - (a) to section 50 above;
 - (b) to section 146 above; and
 - (c) to any other provision of this Act so far as it has effect in relation to courts-martial, the Courts-Martial Appeal Court or Standing Civilian Courts.
- (9) The Acts mentioned in subsection (7) above are—
 - (a) the Army Act 1955;
 - (b) the Air Force Act 1955;
 - (c) the Naval Discipline Act 1957;
 - (d) the Courts-Martial (Appeals) Act 1968; and
 - (e) the Armed Forces Act 1976.
- (10) Section 158 above extends—
 - (a) to Scotland, so far as it relates to courts-martial; and
 - (b) to Northern Ireland, so far as it relates to courts-martial and to such a publication or broadcast or inclusion in a cable programme in Northern Ireland as is mentioned in section 4(1) of the Sexual Offences (Amendment) Act 1976 as adapted by section 5(1)(b) of that Act.
- (11) The extent of any amendment of an enactment in Schedule 15 to this Act is the same as that of the enactment amended, except that the amendments of the Offences against the Person Act 1861 do not extend to Northern Ireland.
- (12) The extent of any repeal of an enactment in Schedule 16 to this Act is the same as that of the enactment repealed, subject to the Notes at the end of the Schedule.

173 Citation

This Act may be cited as the Criminal Justice Act 1988.