Criminal Justice Act 1988

1988 CHAPTER 33

An Act to make fresh provision for extradition; to amend the rules of evidence in criminal proceedings; to provide for the reference by the Attorney General of certain questions relating to sentencing to the Court of Appeal; to amend the law with regard to the jurisdiction and powers of criminal courts, the collection, enforcement and remission of fines imposed by coroners, juries, supervision orders, the detention of children and young persons, probation and the probation service, criminal appeals, anonymity in cases of rape and similar cases, orders under sections 4 and 11 of the Contempt of Court Act 1981 relating to trials on indictment, orders 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 orders restricting the publication of any report of the whole or any part of a trial on indictment or any such ancillary proceedings, the alteration of names of petty sessions areas, officers of inner London magistrates' courts and the costs and expenses of prosecution witnesses and certain other persons; to make fresh provision for the payment of compensation by the Criminal Injuries Compensation Board; to make provision for the payment of compensation for a miscarriage of justice which has resulted in a wrongful conviction; to create an offence of torture and an offence of having an article with a blade or point in a public place; to create further offences relating to weapons; to create a summary offence of possession of an indecent photograph of a child; to amend the Police and Criminal Evidence Act 1984 in relation to searches, computer data about fingerprints and bail for persons in customs detention; to make provision in relation to the taking of body samples by the police in Northern Ireland; to amend the Bail Act 1976; to give a justice of the peace power to authorise entry and search of premises for offensive weapons; to provide for the enforcement of the Video Recordings Act 1984 by officers of a weights and measures authority and in Northern Ireland by officers of the Department of Economic Development; to extend to the purchase of easements and other rights over land the power to purchase land conferred on the Secretary of State by section 36 of the Prison Act 1952; and for connected purposes. [29th July 1988]

Status: *Point in time view as at 01/09/1996. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Criminal Justice Act 1988 is up to date with all changes known to be in force on or before 21 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Modifications etc. (not altering text)

C1 By Criminal Justice Act 1991 (c.53, SIF 39:1), s. 101(1), **Sch. 12 para. 23**; S.I. 1991/2208, art. 2(1), **Sch. 1** it is provided (14.10.1991) that in relation to any time before the commencement of s.70 of that 1991 Act (which came into force on 1.10.1992 by S.I. 1992/333, art. 2(2), **Sch. 2**) references in any enactment amended by that 1991 Act, to youth courts shall be construed as references to juvenile courts.

PART I

EXTRADITION

Preliminary

1—21. Scope of Part I.

. . . . . F1

Textual Amendments

F1 Ss. 1–21 repealed by Extradition Act 1989 (c. 33, SIF 48), s. 37, **Sch. 2**

Suppression of terrorism

22 Suppression of terrorism.

(1) Schedule 1 to the M1Suppression 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—

"13A **Nuclear material**

An offence under any provision of the Nuclear Material (Offences) Act 1983.".

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

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"21 **Conspiracy**

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

Marginal Citations
M1 1978 c. 26.

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 [M2]Criminal Appeal Act 1968 (evidence given orally at original trial to be given orally at retrial); and

(c) to section 69 of the [M3]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—

(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 [M4]Police and Criminal Evidence Act 1984.

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[F2(5) This section shall not apply to proceedings before a magistrates' court inquiring into an offence as examining justices.**]**

Textual Amendments

F2 S. 23(5) inserted (4.7.1996 with effect as mentioned in Sch. 1, Pt. III of the amending Act) by 1996 c. 25, s. 47, **Sch. 1 Pt. II para. 28**, Pt. III para. 39 (with s. 78(1)); S.I. 1997/683, **art. 1(2)**

Marginal Citations

M2 1968 c. 19.
M3 1984 c. 60.
M4 1984 c. 60.

24 Business etc. documents.

(1) Subject—

(a) to subsections (3) and (4) below;

(b) to paragraph 1A of Schedule 2 to the M5Criminal 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 **[**F3section 3 of the Criminal Justice (International Co-operation) Act 1990**]** 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

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the circumstances) to have any recollection of the matters dealt with in the statement.

[F4(5) This section shall not apply to proceedings before a magistrates' court inquiring into an offence as examining justices.**]**

Textual Amendments

F3 Words in s. 24(4) substituted (10.6.1991) by Criminal Justice (International Co-operation) Act 1990 (c. 5, SIF 39:1), s. 31(1), **Sch. 4 para. 6(2)**; S.I. 1991/1072, art. 2(a), **Sch**edule Pt. I

F4 S. 24(5) inserted (4.7.1996 with effect as mentioned in Sch. 1 Pt. III para. 39 of the amending Act) by 1996 c. 25, s. 47, **Sch. 1 Pt. II para. 29** (with s. 78(1)); S.I. 1997/683, **art. 1(2)**

Marginal Citations

M5 1968 c. 19.

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; F5. . .

(iii) on the hearing of an application under section 6 of the M6Criminal Justice Act 1987 (applications for dismissal of charges of fraud transferred from magistrates' court to Crown Court); or

[F6(iv) on the hearing of an application under paragraph 5 of Schedule 6 to the Criminal Justice Act 1991 (applications for dismissal of charges in certain cases involving children 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.

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Textual Amendments

F5 Word in s. 25(1)(a)(ii) repealed (4.9.1995) by 1994 c. 33, s. 168(3), **Sch.11**; S.I. 1995/1957, **art.6**

F6 S. 25(1)(a)(iv) inserted (3.2.1995) by 1994 c. 33, s. 168(1), **Sch. 9 para. 31**; S.I. 1995/127, art. 2, **Sch. 1**, APPENDIX

Modifications etc. (not altering text)

C2 S. 25 restricted (10.6.1991) by Criminal Justice (International Co-operation) Act 1990 (c. 5, SIF 39:1), **s. 3(8)**; S.I. 1991/1072, art. 2(a), **Sch. Pt. I**

Marginal Citations

M6 1987 c. 38.

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 **[**[F7]section 3 of the Criminal Justice (International Co-operation) Act 1990**]** 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;

(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.

[[F8]This section shall not apply to proceedings before a magistrates' court inquiring into an offence as examining justices.**]**

Textual Amendments

F7 Words in s. 26 substituted (10.6.1991) by Criminal Justice (International Co-operation) Act 1990 (c. 5, SIF 39:1), s. 31(1), **Sch. 4 para. 6(2)**; S.I. 1991/1072, art. 2(a), **Sch. Pt. I**

F8 Words in s. 26 inserted (4.7.1996 with effect as mentioned in Sch. 1 Pt. III para. 39 of the amending Act) by 1996 c. 25, s. 47, **Sch. 1 Pt. II para.30**, Pt. III para. 39 (with s. 78(1)); S.I. 1997/683, **art. 1(2)**

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—

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(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.

[F9This section shall not apply to proceedings before a magistrates' court inquiring into an offence as examining justices.**]**

Textual Amendments

F9 Words in s. 27 inserted (4.7.1996 with effect as mentioned in Sch. 1 Pt. III para. 39 of the amending Act) by 1996 c. 25, s. 47, **Sch. 1 Pt. II para. 31**, Pt. III para. 39 (with s. 78(1)); S.I. 1997/683, **art. 1(2)**

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

F10 29 . . . . . .

Textual Amendments

F10 S. 29 repealed (10.6.1991) by Criminal Justice (International Co-operation) Act 1990 (c. 5, SIF 39:1), s. 31(3), **Sch. 5**; S.I. 1991/1072, art. 2(a), **Sch**edule Pt. I

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;

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(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.

[F11(4A) Where the proceedings mentioned in subsection (1) above are proceedings before a magistrates' court inquiring into an offence as examining justices this section shall have effect with the omission of—

(a) in subsection (1) the words "whether or not the person making it attends to give oral evidence in those proceedings", and

(b) subsections (2) to (4).**]**

(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.

Textual Amendments

F11 S. 30(4A) inserted (4.7.1996 with effect as mentioned in Sch. 1 Pt. III para. 39 of the amending Act) by 1996 c. 25, s. 47, **Sch. 1 Pt. II para.32** (with s. 78(1)); S.I. 1997/683, **art. 1(2)**

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—

(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 **[**F12in proceedings to which subsection (1A) below applies**]** if—

(a) the witness is outside the United Kingdom; or

[F13(b) the witness is a child, or is to be cross-examined following the admission under section 32A below of a video recording of testimony from him, and the offence is one to which subsection (2) below applies,**]**

but evidence may not be so given without the leave of the court.

[F14(1A) This subsection applies—

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(a) to trials on indictment, appeals to the criminal division of the Court of Appeal and hearings of references under section 17 of the Criminal Appeal Act 1968; and

(b) to proceedings in youth courts and appeals to the Crown Court arising out of such proceedings.**]**

(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 [M7]Children and Young Persons Act 1933 (cruelty to persons under 16);

(c) to an offence under the [M8]Sexual Offences Act 1956, the [M9]Indecency with Children Act 1960, the [M10]Sexual Offences Act 1967, section 54 of the [M11]Criminal Law Act 1977 or the [M12]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 [M13]Perjury Act 1911 as having been made in the proceedings in which it is given in evidence.

[[F15](3A) Where, in the case of any proceedings before a youth court—

(a) leave is given by virtue of subsection (1)(b) above for evidence to be given through a television link; and

(b) suitable facilities for receiving such evidence are not available at any petty-sessional court-house in which the court can (apart from this subsection) lawfully sit,

the court may sit for the purposes of the whole or any part of those proceedings at any place at which such facilities are available and which has been appointed for the purposes of this subsection by the justices acting for the petty sessions area for which the court acts.

(3B) A place appointed under **[**[F16]subsection (3A) above**]]** may be outside the petty sessions area for which it is appointed; but it shall be deemed to be in that area for the purpose of the jurisdiction of the justices acting for that area.

[[F17](3C) Where—

(a) the court gives leave for a person to give evidence through a live television link, and

(b) the leave is given by virtue of subsection (1)(b) above,

then, subject to subsection (3D) below, the person concerned may not give evidence otherwise than through a live television link.

(3D) In a case falling within subsection (3C) above the court may give permission for the person to give evidence otherwise than through a live television link if it appears to the court to be in the interests of justice to give such permission.

(3E) Permission may be given under subsection (3D) above—

(a) on an application by a party to the case, or

(b) of the court's own motion;

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but no application may be made under paragraph (a) above unless there has been a material change of circumstances since the leave was given by virtue of subsection (1)(b) above.**]**

(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— **[**F18 Magistrates' Courts Rules, Crown Court Rules and Criminal Appeal Rules**]**

[F19(6) Subsection (7) of section 32A below shall apply for the purposes of this section as it applies for the purposes of that section, but with the omission of the references to a person being, in the cases there mentioned, under the age of fifteen years or under the age of eighteen years.**]**

Textual Amendments

F12 Words in s. 32(1) substituted (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), **s. 55(2)(a)**; S.I. 1992/333, art. 2(2), **Sch. 2**.

F13 S. 32(1)(b) substituted (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), **s. 55(2)(b)**; S.I. 1992/333, art.2(2), **Sch. 2**.

F14 S. 32(1A) inserted (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), **s. 55(3)**; S.I. 1992/333, art. 2(2), **Sch. 2**.

F15 S. 32(3A)(3B) inserted (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), **s. 55(4)**; S.I. 1992/333, art. 2(2), **Sch. 2**.

F16 Words in s. 32(3B) substituted (3.2.1995) by 1994 c. 33, s. 168(1), **Sch. 9 para. 32**; S.I. 1995/127. art. 2, Sch. 1, APPENDIX

F17 S. 32(3C)-(3E) inserted (4.7.1996 with application as mentioned in s. 62(3) of the amending Act) by 1996 c. 25, **s. 62(1)(3)(4)**(with s. 78(1))

F18 Words in s. 32(5) substituted (1.10.1992) for paras. (a) and (b) by Criminal Justice Act 1991 (c. 53, SIF 39:1), **s. 55(5)**; S.I. 1992/333, art. 2(2), **Sch. 2**.

F19 S. 32(6) inserted (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), **s. 55(6)**; S.I. 1992/333, art. 2(2), **Sch. 2**.

Modifications etc. (not altering text)

C3 S. 32(1)(1)(b)(2)(a)-(c)(3) applied (with modifications) (8.3.1993) by S.I. 1993/244, **art. 2**

Commencement Information

I1 S. 32 partly in force; s. 32 not in force at Royal Assent see s. 171; s. 32 except subsections (1)(a)(3) in force at 5.1.1989 by 1988/2073, art. 2, Sch.

Marginal Citations

M7 1933 c. 12.

M8 1956 c. 69.

M9 1960 c. 33.

M10 1967 c. 60.

M11 1977 c. 45.

M12 1978 c. 37.

M13 1911 c. 6.

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[32A [F20]Video recordings of testimony from child witnesses.

(1) This section applies in relation to the following proceedings, namely—

(a) trials on indictment for any offence to which section 32(2) above applies;

(b) appeals to the criminal division of the Court of Appeal and hearings of references under section 17 of the Criminal Appeal Act 1968 in respect of any such offence; and

(c) proceedings in youth courts for any such offence and appeals to the Crown Court arising out of such proceedings.

(2) In any such proceedings a video recording of an interview which—

(a) is conducted between an adult and a child who is not the accused or one of the accused (“the child witness"); and

(b) relates to any matter in issue in the proceedings,

may, with the leave of the court, be given in evidence in so far as it is not excluded by the court under subsection (3) below.

(3) Where a video recording is tendered in evidence under this section, the court shall (subject to the exercise of any power of the court to exclude evidence which is otherwise admissible) give leave under subsection (2) above unless—

(a) it appears that the child witness will not be available for cross-examination;

(b) any rules of court requiring disclosure of the circumstances in which the recording was made have not been complied with to the satisfaction of the court; or

(c) the court is of the opinion, having regard to all the circumstances of the case, that in the interests of justice the recording ought not to be admitted;

and where the court gives such leave it may, if it is of the opinion that in the interests of justice any part of the recording ought not to be admitted, direct that that part shall be excluded.

(4) In considering whether any part of a recording ought to be excluded under subsection (3) above, the court shall consider whether any prejudice to the accused, or one of the accused, which might result from the admission of that part is outweighed by the desirability of showing the whole, or substantially the whole, of the recorded interview.

(5) Where a video recording is admitted under this section—

(a) the child witness shall be called by the party who tendered it in evidence;

(b) that witness shall not be examined in chief on any matter which, in the opinion of the court, has been dealt with **[**[F21]adequately**]]** in his recorded testimony.

(6) Where a video recording is given in evidence under this section, any statement made by the child witness which is disclosed by the recording shall be treated as if given by that witness in direct oral testimony; and accordingly—

(a) any such statement shall be admissible evidence of any fact of which such testimony from him would be admissible;

(b) no such statement shall be capable of corroborating any other evidence given by him;

and in estimating the weight, if any, to be attached to such a statement, regard shall be had to all the circumstances from which any inference can reasonably be drawn (as to its accuracy or otherwise).

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[F22(6A) Where the court gives leave under subsection (2) above the child witness shall not give relevant evidence (within the meaning given by subsection (6D) below) otherwise than by means of the video recording; but this is subject to subsection (6B) below.

(6B) In a case falling within subsection (6A) above the court may give permission for the child witness to give relevant evidence (within the meaning given by subsection (6D) below) otherwise than by means of the video recording if it appears to the court to be in the interests of justice to give such permission.

(6C) Permission may be given under subsection (6B) above—

(a) on an application by a party to the case, or

(b) of the court's own motion;

but no application may be made under paragraph (a) above unless there has been a material change of circumstances since the leave was given under subsection (2) above.

(6D) For the purposes of subsections (6A) and (6B) above evidence is relevant evidence if—

(a) it is evidence in chief on behalf of the party who tendered the video recording, and

(b) it relates to matter which, in the opinion of the court, is dealt with in the recording and which the court has not directed to be excluded under subsection (3) above.**]**

(7) In this section "child" means a person who—

(a) in the case of an offence falling within section 32(2)(a) or (b) above, is under fourteen years of age or, if he was under that age when the video recording was made, is under fifteen years of age; or

(b) in the case of an offence falling within section 32(2)(c) above, is under seventeen years of age or, if he was under that age when the video recording was made, is under eighteen years of age.

(8) Any reference in subsection (7) above to an offence falling within paragraph (a), (b) or (c) of section 32(2) above includes a reference 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 that paragraph.

(9) In this section—

"statement" includes any representation of fact, whether made in words or otherwise;

"video recording" means any recording, on any medium, from which a moving image may by any means be produced and includes the accompanying sound-track.

(10) A magistrates' court inquiring into an offence as examining justices under section 6 of the Magistrates' Courts Act 1980 may consider any video recording as respects which leave under subsection (2) above is to be sought at the trial, F23. . ..

(11) Without prejudice to the generality of any enactment conferring power to make rules of court, such rules may make such provision as appears to the authority making them to be necessary or expedient for the purposes of this section.

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Changes to legislation: *Criminal Justice Act 1988 is up to date with all changes known to be in force on or before 21 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(12) Nothing in this section shall prejudice the admissibility of any video recording which would be admissible apart from this section.

Textual Amendments

F20 S. 32A inserted (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), **s. 54**; S.I. 1992/333, art. 2(2), **Sch. 2**.

F21 Word in s. 32A(5)(b) inserted (3.2.1995 with saving in S.I. 1995/127, art. 2(2), **Sch. 2 para. 2**) by 1994 c. 33, **s. 50**; S.I. 1995/127, art. 2(1), **Sch. 1**

F22 S. 32A(6A)-(6D) inserted (4.7.1996 with effect as mentioned in Sch. 1 Pt. III para. 39 of the repealing Act) by 1996 c. 25, **ss. 47**, 62(2)(3) (with s. 78(1)); S.I. 1997/683, **art. 1(2)**

F23 Words in s. 32A(10) repealed (4.7.1996 with effect as mentioned in Sch. 1 Pt. III para. 39 of the repealing Act) by 1996 c. 25, ss. 47, 80, Sch. 1 Pt. II para. 33, Pt. III para. 39, **Sch. 5 para. 2**, Table No.10 (with s. 78(1)); S.I. 1997/683, **art. 1(2)**

33 Evidence of persons under 14 in committal proceedings.

The following section shall be substituted for section 103 of the [M14]Magistrates' Courts Act 1980—

"**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

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(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.".

Marginal Citations

M14 1980 c. 43.

[33A [F24] Evidence given by children.

(1) A child's evidence in criminal proceedings shall be given unsworn.

(2) A deposition of a child's unsworn evidence may be taken for the purposes of criminal proceedings as if that evidence had been given on oath.

[F25](2A) A child's evidence shall be received unless it appears to the court that the child is incapable of giving intelligible testimony.]

(3) In this section "child" means a person under fourteen years of age.

Textual Amendments

F24 S. 33A inserted (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), **s. 52(1)**; S.I. 1992/333, art. 2(2), **Sch. 2**.

F25 S. 33A(2A) inserted (3.2.1995) by 1994 c. 33, s. 168(1), **Sch. 9 para.33**; S.I. 1995/127, art. 2(1), **Sch. 1**, APPENDIX A

34 Abolition of requirement of corroboration for unsworn evidence of children.

[F26](1) . . . . . .

(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 child is abrogated [F27]. . ..

(3) Unsworn evidence admitted by virtue of [[F28] section 52 of the Criminal Justice Act 1991] may corroborate evidence (sworn or unsworn) given by any other person.

Textual Amendments

F26 S. 34(1) repealed (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), ss. 100, 101(2), Sch. 11 para. 37, **Sch. 13**; S.I. 1992/333, art. 2(2), **Sch. 2**.

F27 Words in s. 34(2) repealed (4.9.1995) by 1994 c. 33, ss. 32(2), 168(3), **Sch. 11**; S.I. 1995/1957, **art.6**

Status: *Point in time view as at 01/09/1996. This version of this Act contains provisions that are not valid for this point in time.*
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F28 Words in s. 34(3) substituted (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), s. 100, **Sch. 11 para. 37**; S.I. 1992/333, art. 2(2), **Sch. 2**.

Modifications etc. (not altering text)

C4 S. 34(2) explained (1.10.1996 subject to savings in art. 3 of the commencing S.I.) by 1996 c. 46, **s.6(1)(2)**; S.I. 1996/2474, **arts.2**, 3(1)

[34A F29Cross-examination of alleged child victims.

(1) No person who is charged with an offence to which section 32(2) above applies shall cross-examine in person any witness who—

(a) is alleged—

(i) to be a person against whom the offence was committed; or

(ii) to have witnessed the commission of the offence; and

(b) is a child, or is to be cross-examined following the admission under section 32A above of a video recording of testimony from him.

(2) Subsection (7) of section 32A above shall apply for the purposes of this section as it applies for the purposes of that section, but with the omission of the references to a person being, in the cases there mentioned, under the age of fifteen years or under the age of eighteen years.**]**

Textual Amendments

F29 S. 34A inserted (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), **s. 55(7)**; S.I. 1992/333, art. 2(2), **Sch.2**.

Modifications etc. (not altering text)

C5 S. 34A applied (with modifications) (4.11.1996) by S.I. 1996/2592, art. 2, **Sch.**

PART IV

REVIEWS OF SENTENCING

Modifications etc. (not altering text)

C6 Pt. IV (ss. 35-36) applied (E.W.)(1.3.1994) by S.I. 1994/119, **art.2** (which Order was revoked (16.5.2006) by S.I. 2006/1116, art. 3, **Sch. 2**)

C7 Pt. IV (ss. 35-36) applied (E.W.) (8.2.1995) by S. I. 1995/10, **art.2** (which Order was revoked (16.5.2006) by S.I. 2006/1116, art. 3, **Sch. 2**)
Pt. IV (ss. 34-36) applied (8.4.1996) by S.R. 1996/40, **art. 2**
Pt. IV (ss. 34-36) applied (21.8.2000) by S.I. 2000/1924, **art. 2** (which Order was revoked (16.5.2006) by S.I. 2006/1116, art. 3, **Sch. 2**)

C8 Pt IV (ss. 35-36) applied (E.W.) (13.10.2003) by The Criminal Justice Act 1988 (Reviews of Sentencing) Order 2003 (S.I. 2003/2267), **art. 2** (which Order was revoked (16.5.2006) by S.I. 2006/1116, art. 3, Sch. 2)
Pt IV (ss. 35-36) applied (16.5.2006) by The Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006 (S.I. 2006/1116), **art. 2**, Sch. 1 (as amended (29.1.2018) by The Criminal Justice Act 1988 (Reviews of Sentencing) (Amendment No. 2) Order 2017 (S.I. 2017/1328), arts. 1(1), **2**)

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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 **[**F30—

(a) of a description specified in an order under this section; or

(b) in which sentence is passed on a person—

(i) for an offence triable only on indictment; or

(ii) 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 **[**F31of a description specified in the order or 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 M15Criminal Appeal Act 1968, except that it does not include an interim hospital order under Part III of the M16Mental 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 M17Criminal Appeal Act 1968 and Part III of the M18Mental Health Act 1983 shall be respectively construed as references to Part I of the M19Criminal Appeal (Northern Ireland) Act 1980 and Part III of the M20Mental Health (Northern Ireland) Order 1986.

Textual Amendments

F30 S. 35(3)(a)(b)(i)(ii) substituted (9.1.1995) by 1994 c. 33, s. 168(1), **Sch. 9 para. 34(a)**; S.I. 1994/3192, **art. 2**,Sch.

Status: *Point in time view as at 01/09/1996. This version of this Act contains provisions that are not valid for this point in time.*
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F31 Words in s. 35(4) inserted (9.1.1995) by 1994 c. 33, s. 168(1), **Sch. 9 para. 34(b)**; S.I. 1994/3192, **art. 2**,Sch.

Marginal Citations

M15 1968 c. 19.
M16 1983 c. 20.
M17 1968 c. 19.
M18 1983 c. 20.
M19 1980 c. 47.
M20 S.I. 1986/4 (N.I.).

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.

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(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;

(b) the references to sections 10 and 35(1) of the [M21]Criminal Appeal Act 1968 shall be construed as references to sections 10(2) and 33(1) of the [M22]Criminal Appeal (Northern Ireland) Act 1980, respectively.

Marginal Citations

M21 1968 c. 19.

M22 1980 c. 47.

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 [M23]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[F32]

Textual Amendments

F32 Ss. 37(2), 63, 68 repealed by Road Traffic (Consequential Provisions) Act 1988 (c. 54, SIF 107:1), ss. 3, 5, Sch. 1, Sch. 4 paras. 1, **2**

Marginal Citations

M23 1968 c. 60.

38 Criminal damage etc. as summary offences.

(1) In subsection (1) of section 22 of the [M24]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)

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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,

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.

Marginal Citations
M24 1980 c. 43.

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 **[**F33to a magistrates' court inquiring into the offence as examining justices**]**.

(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;

[F34(aa) an offence under section 90(1) of the Criminal Justice Act 1991 (assaulting a prisoner custody officer);

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(ab) an offence under section 13(1) of the Criminal Justice and Public Order Act 1994 (assaulting a secure training centre custody officer)**]**

(b) an offence under section 12(1) of the [M25]Theft Act 1968 (taking motor vehicle or other conveyance without authority etc.);

(c) an offence under **[**[F35]section 103(1)(b) of the Road Traffic Act 1988**]** (driving a motor vehicle while disqualified);

(d) an offence mentioned in the first column of Schedule 2 to the [M26]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.

Textual Amendments

F33 Words in s. 40(1) substituted (4.7.1996 with effect as mentioned in Sch. 1 Pt. III para. 39 of the substituting Act) by 1996 c. 25, s. 47, **Sch. 1 Pt. II para.34**, Pt. III para. 39 (with s. 78(1)); S.I. 1997/683, **art. 1(2)**

F34 S. 40(3)(aa)(ab) inserted (3.2.1995) by 1994 c. 33, s. 168(1), **Sch. 9 para. 35**; S.I. 1995/127, art. Sch. 1 Appendix A

F35 Words substituted by Road Traffic (Consequential Provisions) Act 1988 (c. 54, SIF 108:1), s. 4, **Sch. 3 para. 39**

Marginal Citations

M25 1968 c. 60.

M26 1980 c. 43.

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 [M27]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

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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 [M28]Magistrates' Courts Act 1980.

Modifications etc. (not altering text)

C9 S. 41(7) amended (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), **s. 18(9)** (with ss. 58(4), 101(1), Sch. 12 para. 6); S.I. 1992/333, art. 2(2), **Sch.2**.

Status: *Point in time view as at 01/09/1996. This version of this Act contains provisions that are not valid for this point in time.*
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Marginal Citations

M27 1980 c. 43.

M28 1980 c. 43.

42 Amendments relating to committal for sentence.

(1) Section 56 of the [M29]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 [M30]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 [M31]Criminal Law Act 1977 (committal to be dealt with in respect of a wholly or partly suspended sentence)".

Marginal Citations

M29 1967 c. 80.

M30 1973 c. 62.

M31 1977 c. 45.

Power of Court of Appeal to order retrial

43 Power of Court of Appeal to order retrial.

(1) The [M32]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.

Marginal Citations
M32 1968 c. 19.

Imprisonment

44 Firearms offences.

(1) Part 1 of Schedule 6 to the [M33]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.

Marginal Citations
M33 1968 c. 27.

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

(1) In section 1(1)(a) of the [M34]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 [M35]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.

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Marginal Citations
M34 1933 c. 12.
M35 1937 c. 37.

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 [M36]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 [M37]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.

Marginal Citations
M36 1953 c. 14.
M37 1959 c. 37.

47 Corruption.

(1) The following paragraph shall be substituted for paragraph (a) of section 2 of the [M38]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 [M39]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.

Marginal Citations
M38 1889 c. 69.

Status: *Point in time view as at 01/09/1996. This version of this Act contains provisions that are not valid for this point in time.*
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M39 1906 c. 34.

F36 48 . . . . . .

Textual Amendments

F36 S. 48 repealed (15.2.1994) by 1993 c. 36, ss. 78(3), 79(14), **Sch. 6 Pt.I**; S.I. 1994/71, **art. 2**,Sch., Appendix

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

Section 134 of the [M40]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.

Marginal Citations

M40 1980 c. 43.

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 [M41]Army Act 1955 applies by virtue of section 209 of that Act;

(b) persons to whom Part II of the [M42]Air Force Act 1955 applies by virtue of section 209 of that Act; and

(c) persons to whom Parts I and II of the [M43]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 [M44]Armed Forces Act 1976;

(b) may apply, with or without modifications, any enactment contained in—

(i) the [M45]Powers of Criminal Courts Act 1973;

(ii) the [M46]Criminal Law Act 1977; or

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(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 [M47]Army Act 1955 or the [M48]Air Force Act 1955 or paragraph 4 of Schedule 4A to the [M49]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.

Marginal Citations

M41 1955 c. 18.
M42 1955 c. 19.
M43 1957 c. 53.
M44 1976 c. 52.
M45 1973 c. 62.
M46 1977 c. 45.
M47 1955 c. 18.
M48 1955 c. 19.
M49 1957 c. 53.

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 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.

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(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.

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

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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 [M50]Magistrates' Courts Act 1980 alters the sums specified in section 37(2) of the [M51]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.

Marginal Citations
M50 1980 c. 43.
M51 1982 c. 48.

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

In the [M52]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".

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Marginal Citations
M52 1975 c. 21.

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 [M53]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 [M54]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

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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.

Marginal Citations

M53 1982 c. 48.

M54 1982 c. 48.

56 Fines under secondary subordinate instruments: Scotland.

(1) In the [M55]Criminal Procedure (Scotland) Act 1975, after section 289GB (which was inserted by the [M56]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

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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 [M57]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.

Marginal Citations

M55 1975 c. 21.

M56 1987 c. 41.

M57 1975 c. 21.

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.

[F37]58 . . . . . .

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Textual Amendments

F37 S. 58 repealed (18.2.1993) by Environmental Protection Act 1990 (c. 43, SIF 46:4), s. 162(2), **Sch. 16 Pt. IX**; S.I. 1993/274, **art.2**

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.

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Default in payment of fines etc.

60 Periods of imprisonment for default.

(1) In the Tables in section 31(3A) of the [M58]Powers of Criminal Courts Act 1973 and paragraph 1 of Schedule 4 to the [M59]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
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 [M60]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".

Marginal Citations

M58 1973 c. 62.
M59 1980 c. 43.
M60 1973 c. 62.

Status: *Point in time view as at 01/09/1996. This version of this Act contains provisions that are not valid for this point in time.*
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61 Default – procedure.

(1) The [M61]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

(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;

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(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—

(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—

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(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 77 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.".

(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".

Marginal Citations
M61 1980 c. 43.

62 Fines on companies.

(1) The following section shall be inserted after section 87 of the [M62]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.".

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(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.

Marginal Citations

M62 1980 c. 43.

Fines and other pecuniary penalties—miscellaneous

63 . . . . . F38

Textual Amendments

F38 Ss. 37(2), 63, 68 repealed by Road Traffic (Consequential Provisions) Act 1988 (c. 54, SIF 107:1), ss. 3, 5, Sch. 1, Sch. 4 paras. 1, **2**

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 [M63]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.".

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Marginal Citations
M63 1980 c. 43.

66 Fisheries offences on River Tweed.

(1) Section 38 of the [M64]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 [M65]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.

Marginal Citations
M64 1981 c. 29.
M65 1982 c. 48.

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 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 . . . . . [F39]

Textual Amendments
F39 Ss. 37(2), 63, 68 repealed by Road Traffic (Consequential Provisions) Act 1988 (c. 54, SIF 107:1), ss. 3, 5, Sch. 1, Sch. 4 paras. 1, **2**

Forfeiture

69 Forfeiture general.

(1) The following subsections shall be substituted for section 43(1) of the [M66]Powers of Criminal Courts Act 1973—

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"(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—

(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".

Marginal Citations
M66 1973 c. 62.

70 Forfeiture for drug offences.

In section 27(1) of the [M67]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 [M68]Drug Trafficking Offences Act 1986".

Marginal Citations
M67 1971 c. 38.

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M68 1986 c. 32.

PART VI

CONFISCATION OF THE PROCEEDS OF AN OFFENCE

Modifications etc. (not altering text)

C10 Part VI (ss. 71 to 103) modified: (29.12.1991) by S.I. 1991/2873, art. 3(2), **Sch. 2**; and (1.9.1995) by S.I. 1995/1968, **art. 2(1)**

C11 Part VI (ss. 71 to 103) applied (1.11.1995) by 1995 c. 11, **s. 15(3)**; S.I. 1995/2650, **art. 2**

71 Confiscation orders.

[F40(1) Where an offender is convicted, in any proceedings before the Crown Court or a magistrates' court, of an offence of a relevant description, it shall be the duty of the court—

(a) if the prosecutor has given written notice to the court that he considers that it would be appropriate for the court to proceed under this section, or

(b) if the court considers, even though it has not been given such notice, that it would be appropriate for it so to proceed,

to act as follows before sentencing or otherwise dealing with the offender in respect of that offence or any other relevant criminal conduct.

(1A) The court shall first determine whether the offender has benefited from any relevant criminal conduct.

(1B) Subject to subsection (1C) below, if the court determines that the offender has benefited from any relevant criminal conduct, it shall then—

(a) determine in accordance with subsection (6) below the amount to be recovered in his case by virtue of this section, and

(b) make an order under this section ordering the offender to pay that amount.

(1C) If, in a case falling within subsection (1B) above, the court is satisfied that a victim of any relevant criminal conduct has instituted, or intends to institute, civil proceedings against the defendant in respect of loss, injury or damage sustained in connection with that conduct—

(a) the court shall have a power, instead of a duty, to make an order under this section;

(b) subsection (6) below shall not apply for determining the amount to be recovered in that case by virtue of this section; and

(c) where the court makes an order in exercise of that power, the sum required to be paid under that order shall be of such amount, not exceeding the amount which (but for paragraph (b) above) would apply by virtue of subsection (6) below, as the court thinks fit.

(1D) In this Part of this Act "relevant criminal conduct", in relation to a person convicted of an offence in any proceedings before a court, means (subject to section 72AA(6) below) that offence taken together with any other offences of a relevant description which are either—

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(a) offences of which he is convicted in the same proceedings, or

(b) offences which the court will be taking into consideration in determining his sentence for the offence in question.

(1E) For the purposes of this Part of this Act an offence is an offence of a relevant description—

(a) in the case of an offence of which a person is convicted in any proceedings before the Crown Court or which is or will be taken into consideration by the Crown Court in determining any sentence, if it is an offence to which this Part of this Act applies; and

(b) in the case of an offence of which a person is convicted in any proceedings before a magistrates' court or which is or will be taken into consideration by a magistrates' court in determining any sentence, if it is an offence listed in Schedule 4 to this Act.**]**

(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.

(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) **[**F41Subject to subsection (1C) above**]**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.

F42(7) . . . . . .

[F43(7A) The standard of proof required to determine any question arising under this Part of this Act as to—

(a) whether a person has benefited **[**F44from any offence**]][**F45or**]**;

F46(b) . . . . . .

(c) the amount to be recovered in his case F47. . .,

shall be that applicable in civil proceedings.

F48(8) . . . . . .

(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 **[**F49Drug Trafficking Act 1994**]**;

(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

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(ii) if not so listed, is an indictable offence, other than a drug trafficking offence **[**F50or an offence under Part III of the Prevention of Terrorism (Temporary Provisions) Act 1989**]**; 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".

[F51(10) Subsection (9) above is subject to section 93E below.**]**

Textual Amendments

F40 S. 71(1)(1A)-(1E) substituted for s. 71(1)-(3) (1.11.1995) by 1995 c. 11, **s. 1(2)** (with s. 16(5)); S.I. 1995/2650, **art.2**

F41 Words in s. 71(6) inserted (1.11.1995) by 1995 c. 11, **s. 1(3)** (with s. 16(5)); S.I. 1995/2650, **art.2**

F42 S. 71(7) repealed (1.11.1995) by 1995 c. 11, ss. 1(4), 15(4), **Sch.2** (with s. 16(5)); S.I. 1995/2650, **art.2**

F43 S. 71(7A) inserted (3.2.1995) by 1993 c. 36, **ss. 27**; S.I. 1995/43, **art. 2 Sch.**

F44 Words in s. 71(7A)(a) substituted (1.11.1995) by 1995 c. 11, 1(5)(a) (with s. 16(5)); S.I. 1995/2650, **art.2**

F45 Word in s. 71(7A)(a) inserted (1.11.1995) by 1995 c. 11, **ss. 1(5)(a)** (with s. 16(5)); S.I. 1995/2650, **art. 2**

F46 S. 71(7A)(b) repealed (1.11.1995) by 1995 c. 11, ss. 1(5)(b), 15(4), **Sch.2** (with s. 16(5)); S.I. 1995/2650, **art.2**

F47 Words in s. 71(7A)(c) repealed (1.11.1995) by 1995 c. 11, ss. 1(5)(c), 15(4), **Sch.2** (with s. 16(5)); S.I. 1995/2650, **art.2**

F48 S. 71(8) repealed (1.11.1995) by 1995 c. 11, ss. 1(4), 15(4), **Sch.2**; S.I. 1995/2650, **art.2**

F49 Words in s. 71(9)(b) substituted (3.2.1995) by 1994 c. 37, ss. 65, 69(2), **Sch. 1 para. 21**

F50 Words inserted by Prevention of Terrorism (Temporary Provisions) Act 1989 (c. 4, SIF 39:2), s. 25(1), **Sch. 8 para. 10(2)**

F51 S. 71(10) inserted (3.2.1995) by 1993 c. 36, **ss. 27**; S.I. 1995/43, **art. 2 Sch.**

72 Making of confiscation orders.

F52(1) . . . . . .

F52(2) . . . . . .

F52(3) . . . . . .

F52(4) . . . . . .

(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 **M69**Powers of Criminal Courts Act 1973 (compensation orders); or

(c) making any order under—

(i) section 27 of the **M70**Misuse of Drugs Act 1971 (forfeiture orders); or

(ii) section 43 of the **M71**Powers of Criminal Courts Act 1973 (deprivation orders),

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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.

Textual Amendments

F52 S. 72(1)-(4) repealed (1.11.1995) by 1995 c. 11, s. 15(1)(4), Sch. 1 para. 1, **Sch.2**; S.I. 1995/2650, **art.2**

Marginal Citations

M69 1973 c. 62.

M70 1971 c. 38.

M71 1973 c. 62.

[72A F53Postponed determinations.

(1) Where a court is acting under section 71 above but considers that it requires further information before—

(a) determining whether the defendant has benefited **[**F54from any relevant criminal conduct**]][**F55or**]**;

F56(b) . . . . . .

(c) determining the amount to be recovered in his case F57. . .,

it may, for the purpose of enabling that information to be obtained, postpone making that determination for such period as it may specify.

(2) More than one postponement may be made under subsection (1) above in relation to the same case.

(3) Unless it is satisfied that there are exceptional circumstances, the court shall not specify a period under subsection (1) above which—

(a) by itself; or

(b) where there have been one or more previous postponements under subsection (1) above or (4) below, when taken together with the earlier specified period or periods,

exceeds six months beginning with the date of conviction.

(4) Where the defendant appeals against his conviction, the court may, on that account—

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(a) postpone making any of the determinations mentioned in subsection (1) above for such period as it may specify; or

(b) where it has already exercised its powers under this section to postpone, extend the specified period.

(5) A postponement or extension under subsection (1) or (4) above may be made—

(a) on application by the defendant or the prosecutor; or

(b) by the court of its own motion.

(6) Unless the court is satisfied that there are exceptional circumstances, any postponement or extension under subsection (4) above shall not exceed the period ending three months after the date on which the appeal is determined or otherwise disposed of.

(7) Where the court exercises its power under subsection (1) or (4) above, it may nevertheless proceed to sentence, or otherwise deal with, the defendant in respect of the offence or any of the offences concerned.

[F58(8) Where the court has so proceeded—

(a) subsection (1) of section 71 above shall have effect as if the words from "before sentencing" onwards were omitted;

(b) that section shall further have effect as if references to an offence that will be taken into consideration in determining any sentence included references to an offence that has been so taken into account; and

(c) section 72(5) above shall have effect as if after "determining" there were inserted "in relation to any offence in respect of which he has not been sentenced or otherwise dealt with".**]**

(9) In sentencing, or otherwise dealing with, the defendant in respect of the offence, or any of the offences, concerned at any time during the specified period, the court shall not—

(a) impose any fine on him; or

(b) make any such order as is mentioned in section 72(5)(b) or (c) above.

[F59(9A) Where the court has sentenced the defendant under subsection (7) above during the specified period it may, after the end of that period, vary the sentence by imposing a fine or making any such order as is mentioned in section 72(5)(b) or (c) above so long as it does so within a period corresponding to that allowed by section 47(2) or (3) of the Supreme Court Act 1981 (time allowed for varying a sentence) but beginning with the end of the specified period.**]**

(10) In this section, references to an appeal include references to an application under section 111 of the M72Magistrates' Courts Act 1980 (statement of case by magistrates' court).

(11) In this section "the date of conviction" means—

(a) the date on which the defendant was convicted of the offence concerned, or

(b) where he was convicted in the same proceedings, but on different dates, of two or more offences which **[**F60are comprised in relevant criminal conduct**]**, the date of the latest of those convictions.

Textual Amendments

F53 S. 72A inserted (3.2.1995) by 1993 c. 36, **s. 28**; S.I. 1995/43, **art. 2**

Status: *Point in time view as at 01/09/1996. This version of this Act contains provisions that are not valid for this point in time.*
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F54 Words in s. 72A(1)(a) substituted (1.11.1995) by 1995 c. 11, s. 15(1), **Sch. 1 para. 2(2)(a)**; S.I. 1995/2650, **art.2**
F55 Word in s. 72A(1)(a) inserted (1.11.1995) by 1995 c. 11, s. 15(1), **Sch. 1 para. 2(2)(a)**; S.I. 1995/2650, **art.2**
F56 S. 72A(1)(b) repealed (1.11.1995) by 1995 c. 11, s. 15(1)(4), Sch. 1 para. 2(2)(b), **Sch.2**; S.I. 1995/2650, **art.2**
F57 Words in s. 72A(1)(c) repealed (1.11.1995) by 1995 c. 11, s. 15(1)(4), Sch. 1 para. 2(2)(c), **Sch.2**; S.I. 1995/2650, **art.2**
F58 S. 72A(8) substituted (1.11.1995) by 1995 c. 11, s. 15(1), **Sch. 1 para. 2(3)**; S.I. 1995/2650, **art.2**
F59 S. 72A(9A) inserted (3.2.1995) by 1995 c. 11, s. 168(1), **Sch. 9 para. 36**; S.I. 1995/127, art. 2, **Sch. 1** Appendix A
F60 Words in s. 72A(11)(b) substituted (1.11.1995) by 1995 c. 11, s. 15(1), **Sch. 1 para. 2(4)**; S.I. 1995/2650, **art.2**

Marginal Citations
M72 1980 c. 43.

[72AA F61 Confiscation relating to a course of criminal conduct.

(1) This section applies in a case where an offender is convicted, in any proceedings before the Crown Court or a magistrates' court, of a qualifying offence which is an offence of a relevant description, if—

(a) the prosecutor gives written notice for the purposes of subsection (1)(a) of section 71 above;

(b) that notice contains a declaration that it is the prosecutor's opinion that the case is one in which it is appropriate for the provisions of this section to be applied; and

(c) the offender—

(i) is convicted in those proceedings of at least two qualifying offences (including the offence in question); or

(ii) has been convicted of a qualifying offence on at least one previous occasion during the relevant period.

(2) In this section "qualifying offence", in relation to proceedings before the Crown Court or a magistrates' court, means any offence in relation to which all the following conditions are satisfied, that is to say—

(a) it is an offence to which this Part of this Act applies;

(b) it is an offence which was committed after the commencement of section 2 of the Proceeds of Crime Act 1995; and

(c) that court is satisfied that it is an offence from which the defendant has benefited.

(3) When proceeding under section 71 above in pursuance of the notice mentioned in subsection (1)(a) above, the court may, if it thinks fit, determine that (subject to subsection (5) below) the assumptions specified in subsection (4) below are to be made for the purpose—

(a) of determining whether the defendant has benefited from relevant criminal conduct; and

(b) if he has, of assessing the value of the defendant's benefit from such conduct.

(4) Those assumptions are—

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(a) that any property appearing to the court—

(i) to be held by the defendant at the date of conviction or at any time in the period between that date and the determination in question, or

(ii) to have been transferred to him at any time since the beginning of the relevant period,

was received by him, at the earliest time when he appears to the court to have held it, as a result of or in connection with the commission of offences to which this Part of this Act applies;

(b) that any expenditure of his since the beginning of the relevant period was met out of payments received by him as a result of or in connection with the commission of offences to which this Part of this Act applies; and

(c) that, for the purposes of valuing any benefit which he had or which he is assumed to have had at any time, he received the benefit free of any other interests in it.

(5) Where the court has determined that the assumptions specified in subsection (4) above are to be made in any case it shall not in that case make any such assumption in relation to any particular property or expenditure if—

(a) that assumption, so far as it relates to that property or expenditure, is shown to be incorrect in the defendant's case;

(b) that assumption, so far as it so relates, is shown to be correct in relation to an offence the defendant's benefit from which has been the subject of a previous confiscation order; or

(c) the court is satisfied that there would (for any other reason) be a serious risk of injustice in the defendant's case if the assumption were to be made in relation to that property or expenditure.

(6) Where the assumptions specified in subsection (4) above are made in any case, the offences from which, in accordance with those assumptions, the defendant is assumed to have benefited shall be treated as if they were comprised, for the purposes of this Part of this Act, in the conduct which is to be treated, in that case, as relevant criminal conduct in relation to the defendant.

(7) In this section "the date of conviction" means—

(a) in a case not falling within paragraph (b) below, the date on which the defendant is convicted of the offence in question, or

(b) where he is convicted of that offence and one or more other offences in the proceedings in question and those convictions are not all on the same date, the date of the latest of those convictions; and

"the relevant period" means the period of six years ending when the proceedings in question were instituted against the defendant.**]**

Textual Amendments

F61 S. 72AA inserted (1.11.1995) by 1995 c. 11, **s.2**; S.I. 1995/2650, **art.2**

73 Statements, etc. relevant to making confiscation orders.

[F62(1) Subsection (1A) below applies in a case where a person has been convicted of an offence of a relevant description if—

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(a) the prosecutor has given written notice to the court for the purposes of subsection (1)(a) of section 71 above; or

(b) the court is proceeding in pursuance of subsection (1)(b) of that section and requires a statement under this section from the prosecutor.

(1A) Where this subsection applies, the prosecutor shall, within such period as the court may direct, tender to the court a statement as to any matters relevant—

(a) to determining whether the defendant has benefited from any relevant criminal conduct; or

(b) to an assessment of the value of the defendant's benefit from that conduct;

and, where such a statement is tendered in a case in which a declaration has been made for the purposes of subsection (1)(b) of section 72AA above, that statement shall also set out all such information available to the prosecutor as may be relevant for the purposes of subsections (4) and (5)(b) or (c) of that section.

(1B) Where a statement is tendered to the court under this section—

(a) the prosecutor may at any time tender to the court a further statement as to the matters mentioned in subsection (1A) above; and

(b) the court may at any time require the prosecutor to tender a further such statement within such period as it may direct.

(1C) Where—

(a) any statement has been tendered to any court by the prosecutor under this section, and

(b) the defendant accepts to any extent any allegation in the statement,

the court may, for the purpose of determining whether the defendant has benefited from any relevant criminal conduct or of assessing the value of the defendant's benefit from such conduct, treat his acceptance as conclusive of the matters to which it relates.**]**

(2) Where—

(a) a statement is tendered **[**[F63]by the prosecutor under this section**]**, and

(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.

[F64](4) . . . . . .

(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.

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(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 **[**[F65]any relevant criminal conduct.**]**

[[F66](7) Where the court has given a direction under this section, it may at any time vary the direction by giving a further direction.**]**

Textual Amendments

F62 S. 73(1)(1A)-(1C) substituted (1.11.1995) by 1995 c. 11, **s. 3(1)**; S.I. 1995/2650, **art.2**
F63 Words in s. 73(2)(a) substituted (1.11.1995) by 1995 c. 11, **s. 3(2)**; S.I. 1995/2650, **art.2**
F64 S. 73(4) repealed (1.11.1995) by 1995 c. 11, s. 15(4), **Sch.2**; S.I. 1995/2650, **art.2**
F65 Words in s. 73(6) substituted (1.11.1995) by 1995 c. 11, **s. 3(3)**; S.I. 1995/2650, **art.2**
F66 S. 73(7) inserted (1.11.1995) by 1995 c. 11, **s. 3(4)**; S.I. 1995/2650, **art.2**

[73A [F67]**Provision of information by defendant.**

(1) This section applies in a case where a person has been convicted of an offence of a relevant description if—

(a) the prosecutor has given written notice to the court for the purposes of subsection (1)(a) of section 71 above; or

(b) the court is proceeding in pursuance of subsection (1)(b) of that section or is considering whether so to proceed.

(2) For the purpose of obtaining information to assist it in carrying out its functions under this Part of this Act, the court may at any time order the defendant to give it such information as may be specified in the order.

(3) An order under subsection (2) above may require all, or any specified part, of the required information to be given to the court in such manner, and before such date, as may be specified in the order.

(4) Rules of court may make provision as to the maximum or minimum period that may be allowed under subsection (3) above.

(5) If the defendant fails, without reasonable excuse, to comply with any order under this section, the court may draw such inference from that failure as it considers appropriate.

(6) Where the prosecutor accepts to any extent any allegation made by the defendant—

(a) in giving to the court information required by an order under this section, or

(b) in any other statement tendered to the court for the purposes of this Part of this Act,

the court may treat that acceptance as conclusive of the matters to which it relates.

(7) For the purposes of this section an allegation may be accepted in such manner as may be prescribed by rules of court or as the court may direct.**]**

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Textual Amendments

F67 S. 73A inserted (1.11.1995) by 1995 c. 11, **s.4**; S.I. 1995/2650, **art.2**

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 [M73]Powers of Criminal Courts Act 1973 (deprivation orders);

(b) an order under section 27 of the [M74]Misuse of Drugs Act 1971 (forfeiture orders); [F68]

(c) an order under section 223 or 436 of the [M75]Criminal Procedure (Scotland) Act 1975 (forfeiture of property) **[**[F69]or **[**[F70]Part II of the Proceeds of Crime (Scotland) Act 1995**]**(suspended forfeiture orders)**][**[F71]; or

(d) an order under section 13(2), (3) or (4) of the Prevention of Terrorism (Temporary Provisions) Act 1989 (forfeiture orders).**]**

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.

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(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 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 [M76]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

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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.

Textual Amendments

F68 Word repealed by Prevention of Terrorism (Temporary Provisions) Act 1989 (c. 4, SIF 39:2), s. 25(1), **Sch. 8 para. 10(3)**

F69 Words in s. 74(2)(c) inserted (31.3.1996) by 1995 c. 20, **s. 117(1)**, SCh. 6 Pt. II para. 186(2); S.I. 1996/517, **art. 3**

F70 Words in s. 74(2)(c) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 69(2)**

F71 S. 74(2)(d) and the word "; or" immediately preceding it inserted by Prevention of Terrorism (Temporary Provisions) Act 1989 (c. 4, SIF 39:2), s. 25(1), **Sch. 8 para. 10(3)**

Marginal Citations

M73 1973 c. 62.

M74 1971 c. 38.

M75 1975 c. 21.

M76 1986 c. 45.

[F72 Review and revision of certain questions and determinations]

Textual Amendments

F72 S. 74A (and the heading immediately preceding it) inserted (1.11.1995) by 1995 c. 11, **s. 5**; S.I. 1995/2650, **art.2**

[F73 74A Review of cases where proceeds of crime not assessed.

(1) This section applies in any case where—

(a) a person has been convicted, in any proceedings before the Crown Court or a magistrates' court, of an offence of a relevant description;

(b) the prosecutor did not give written notice for the purposes of subsection (1)(a) of section 71 above; and

(c) a determination was made for the purposes of subsection (1)(b) of that section not to proceed under that section or no determination was made for those purposes.

(2) If the prosecutor has evidence—

(a) which, at the date of conviction or, if later, when any determination not to proceed under section 71 above was made, was not available to the prosecutor (and, accordingly, was not considered by the court); but

(b) which the prosecutor believes would have led the court to determine, if—

(i) the prosecutor had given written notice for the purposes of subsection (1)(a) of that section, and

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(ii) the evidence had been considered by the court,

that the defendant had benefited from relevant criminal conduct,

the prosecutor may apply to the relevant court for it to consider the evidence.

(3) If, having considered the evidence, the relevant court is satisfied that it is appropriate to do so, it shall proceed under section 71 above as if it were doing so before sentencing or otherwise dealing with the defendant in respect of any relevant criminal conduct, and section 72A above shall apply accordingly.

(4) In considering whether it is appropriate to proceed under section 71 above in accordance with subsection (3) above, the court shall have regard to all the circumstances of the case.

(5) Where, having decided in pursuance of subsection (3) above to proceed under section 71 above, the relevant court determines that the defendant did benefit from relevant criminal conduct—

(a) subsection (1B)(b) of that section shall not apply and subsection (6) of that section shall not apply for determining the amount to be recovered in that case;

(b) that court shall have a power, instead of a duty, to make a confiscation order; and

(c) if the court makes an order in exercise of that power, the sum required to be paid by that order shall be of such amount, not exceeding the amount which (but for paragraph (a) above) would apply by virtue of subsection (6) of that section, as the court thinks fit.

(6) In considering the circumstances of any case either under subsection (4) above or for the purposes of subsection (5)(b) and (c) above, the relevant court shall have regard, in particular, to—

(a) any fine imposed on the defendant in respect of any relevant criminal conduct; and

(b) any order made in connection with any such conduct under section 35 of the [M77]Powers of Criminal Courts Act 1973 (compensation orders).

(7) In making any determination under or for the purposes of this section the relevant court may take into account, to the extent that they represent respects in which the defendant has benefited from any relevant criminal conduct, any payments or other rewards which were not received by him until after the time when he was sentenced or otherwise dealt with in the case in question.

(8) Where an application under this section contains such a declaration as is mentioned in paragraph (b) of subsection (1) of section 72AA above, that section shall apply (subject to subsection (9) below) in the case of any determination on the application as if it were a determination in a case in which the requirements of paragraphs (a) and (b) of that subsection had been satisfied.

(9) For the purposes of any determination to which section 72AA above applies by virtue of subsection (8) above, none of the assumptions specified in subsection (4) of that section shall be made in relation to any property unless it is property held by or transferred to the defendant before the time when he was sentenced or otherwise dealt with in the case in question.

(10) No application shall be entertained by the court under this section if it is made after the end of the period of six years beginning with the date of conviction.

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(11) Sections 73 and 73A above shall apply where the prosecutor makes an application under this section as they apply in a case where the prosecutor has given written notice to the court for the purposes of subsection (1)(a) of section 71 above, but as if the reference in section 73(1A) to a declaration made for the purposes of subsection (1)(b) of section 72AA above were a reference to a declaration for the purposes of subsection (8) above.

(12) In this section—

"the date of conviction" means—

(a) in a case not falling within paragraph (b) below, the date on which the defendant was convicted of the offence in question, or

(b) where he was convicted of that offence and one or more other offences in the same proceedings and those convictions were not all on the same date, the date of the latest of those convictions;

and

"the relevant court" means—

(a) where the defendant was convicted in proceedings before the Crown Court, that Court; and

(b) where he was convicted in proceedings before a magistrates' court, any magistrates' court for the same area.**]**

Textual Amendments

F73 S. 74A (and the heading immediately preceding it) inserted (1.11.1995) by 1995 c. 11, **s.5**; S.I. 1995/2650, **art.2**

Marginal Citations

M77 1973 c. 62.

[74B [F74]Revision of assessment of proceeds of crime.

(1) This section applies where in any case there has been a determination under subsection (1A) of section 71 above ("the original determination") that the defendant in that case had not benefited from any relevant criminal conduct.

(2) If the prosecutor has evidence—

(a) which was not considered by the court which made the original determination, but

(b) which the prosecutor believes would have led that court (if it had been considered) to determine that the defendant had benefited from relevant criminal conduct,

the prosecutor may apply to the relevant court for it to consider that evidence.

(3) If, having considered the evidence, the relevant court is satisfied that (if that evidence had been available to it) it would have determined that the defendant had benefited from relevant criminal conduct, that court—

(a) shall proceed, as if it were proceeding under section 71 above before sentencing or otherwise dealing with the defendant in respect of any relevant criminal conduct—

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(i) to make a fresh determination of whether the defendant has benefited from any relevant criminal conduct; and

(ii) then to make such a determination as is mentioned in subsection (1B)(a) of that section;

and

(b) subject to subsection (4) below, shall have a power, after making those determinations, to make an order requiring the payment of such sum as it thinks fit;

and an order under paragraph (b) above shall be deemed for all purposes to be a confiscation order.

(4) The court shall not, in exercise of the power conferred by paragraph (b) of subsection (3) above, make any order for the payment of a sum which is more than the amount determined in pursuance of paragraph (a)(ii) of that subsection.

(5) In making any determination under or for the purposes of subsection (3) above the relevant court may take into account, to the extent that they represent respects in which the defendant has benefited from any relevant criminal conduct, any payments or other rewards which were not received by him until after the making of the original determination.

(6) Where, in a case in which section 72AA above does not otherwise apply, an application under this section contains such a declaration as is mentioned in paragraph (b) of subsection (1) of that section, that section shall apply (subject to subsection (7) below) in the case of any determination on the application as if it were a determination in a case in which the requirements of paragraphs (a) and (b) of that subsection had been satisfied.

(7) For the purposes of any determination under or for the purposes of subsection (3) above to which section 72AA above applies, none of the assumptions specified in subsection (4) of that section shall be made in relation to any property unless it is property held by or transferred to the defendant before the time when he was sentenced or otherwise dealt with in the case in question.

(8) No application shall be entertained by the court under this section if it is made after the end of the period of six years beginning with the date of conviction.

(9) Section 72A above shall apply where the court is acting under this section as it applies where the court is acting under section 71 above.

(10) Sections 73 and 73A above shall apply where the prosecutor makes an application under this section as they apply in a case where the prosecutor has given written notice to the court for the purposes of subsection (1)(a) of section 71 above but—

(a) as if the reference in section 73(1A) to a declaration made for the purposes of subsection (1)(b) of section 72AA above included a reference to a declaration for the purposes of subsection (6) above; and

(b) as if any reference in section 73(6) to the time the confiscation order is made were a reference to the time the order is made on that application.

(11) In this section—

"the date of conviction" has the same meaning as in section 74A above; and

"the relevant court" means—

(a) where the conviction by reference to which the original determination was made was in proceedings before the Crown Court, that Court; and

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(b) where that conviction was in proceedings before a magistrates' court, any magistrates' court for the same area.**]**

Textual Amendments

F74 S. 74B inserted (1.11.1995) by 1995 c. 11, **s.6**; S.I. 1995/2650, **art.2**

[74C F75Revision of assessment of amount to be recovered.

(1) This section applies where, in the case of a person convicted of any offence, there has been a determination under this Part of this Act ("the current determination") of any sum required to be paid in his case under any confiscation order.

(2) Where the prosecutor is of the opinion that the value of any benefit to the defendant from any relevant criminal conduct was greater than the value at which that benefit was assessed by the court on the current determination, the prosecutor may apply to the relevant court for the evidence on which the prosecutor has formed his opinion to be considered by the court.

(3) If, having considered the evidence, the relevant court is satisfied that the value of the benefit from any relevant criminal conduct is greater than the value so assessed by the court (whether because its real value was higher at the time of the current determination than was thought or because the value of the benefit in question has subsequently increased), the relevant court—

(a) subject to subsection (4) below, shall make a fresh determination, as if it were proceeding under section 71 above before sentencing or otherwise dealing with the defendant in respect of any relevant criminal conduct, of the following amounts, that is to say—

(i) the amount by which the defendant has benefited from such conduct; and

(ii) the amount appearing to be the amount that might be realised at the time of the fresh determination;

and

(b) subject to subsection (5) below, shall have a power to increase, to such extent as it thinks just in all the circumstances of the case, the amount to be recovered by virtue of that section and to vary accordingly any confiscation order made by reference to the current determination.

(4) Where—

(a) the court is under a duty to make a fresh determination for the purposes of subsection (3)(a) above in any case, and

(b) that case is a case to which section 72AA above applies,

the court shall not have power, in determining any amounts for those purposes, to make any of the assumptions specified in subsection (4) of that section in relation to any property unless it is property held by or transferred to the defendant before the time when he was sentenced or otherwise dealt with in the case in question.

(5) The court shall not, in exercise of the power conferred by paragraph (b) of subsection (3) above, vary any order so as to make it an order requiring the payment of any sum which is more than the lesser of the two amounts determined in pursuance of paragraph (a) of that subsection.

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(6) In making any determination under or for the purposes of subsection (3) above the relevant court may take into account, to the extent that they represent respects in which the defendant has benefited from any relevant criminal conduct, any payments or other rewards which were not received by him until after the making of the original determination.

(7) Where the Crown Court varies a confiscation order under subsection (3) above, it shall substitute for the term of imprisonment or of detention fixed under subsection (2) of section 31 of the [M78]Powers of Criminal Courts Act 1973 in respect of the amount to be recovered under the order a longer term determined in accordance with that section (as it has effect by virtue of section 75 below) in respect of any greater amount substituted under subsection (3) above.

(8) Subsection (7) above shall apply only if the effect of the substitution is to increase the maximum period applicable in relation to the order under section 31(3A) of that Act of 1973.

(9) No application shall be entertained by a court under this section if it is made after the end of the period of six years beginning with the date of conviction.

(10) Section 72A above shall apply where the court is acting under this section as it applies where the court is acting under section 71 above.

(11) Sections 73 and 73A above shall apply where the prosecutor makes an application under this section as they apply in a case where the prosecutor has given written notice to the court for the purposes of subsection (1)(a) of section 71 above, but as if any reference in section 73(6) to the time the confiscation order is made were a reference to the time of the determination to be made on that application.

(12) In this section—

"the date of conviction" has the same meaning as in section 74A above; and

"the relevant court" means—

(a) where the court which made the current determination is the Crown Court, that Court; and

(b) where the court which made that determination is a magistrates' court, any magistrates' court for the same area.**]**

Textual Amendments

F75 S. 74C inserted (1.11.1995) by 1995 c. 11, **s.7**; S.I. 1995/2650, **art.2**

Marginal Citations

M78 1973 c. 62.

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 [M79]Powers of Criminal Courts Act 1973 (powers of Crown Court in relation to fines and enforcement of Crown Court

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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 [M80]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—

(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 [M81]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 [M82]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 [M83]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 [M84]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.

[[F76](5A) Where the defendant serves a term of imprisonment or detention in default of paying any amount due under a confiscation order, his serving that term does not prevent the confiscation order from continuing to have effect, so far as any other method of enforcement is concerned.**]**

(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.

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Textual Amendments

F76 S. 75(5A) inserted (1.11.1995) by 1995 c. 11, **s. 8(1)**, (with s. 16(6)); S.I. 1995/2650, **art.2**

Marginal Citations

M79 1973 c. 62.
M80 1980 c. 43.
M81 1982 c. 48.
M82 1973 c. 62.
M83 1977 c. 45.
M84 1980 c. 43.

[75A F77 Interest on sums unpaid under confiscation orders.

(1) If any sum required to be paid by a person under a confiscation order is not paid when it is required to be paid (whether forthwith on the making of the order or at a time specified under section 31(1) of the Powers of Criminal Courts Act 1973 or for the M85 purposes of section 75(1) or (2) of the M86 Magistrates' Courts Act 1980)—

(a) that person shall be liable to pay interest on that sum for the period for which it remains unpaid, and

(b) the amount of the interest shall, for the purposes of enforcement, be treated as part of the amount to be recovered from him under the confiscation order.

(2) The Crown Court may, on the application of the prosecutor, increase the term of imprisonment or detention fixed in respect of the confiscation order under section 31(2) of that Act of 1973 (as it has effect by virtue of section 75 above) if the effect of subsection (1) above is to increase the maximum period applicable in relation to the order under section 31(3A) of that Act of 1973.

(3) The rate of interest under subsection (1) above shall be that for the time being applying to a civil judgment debt under section 17 of the M87 Judgments Act 1838.**]**

Textual Amendments

F77 S. 75A inserted (1.11.1995) by 1995 c. 11, **s.9** (with s. 16(6)); S.I. 1995/2650, **art.2**

Marginal Citations

M85 1973 c. 62.
M86 1980 c. 43.
M87 1838 c.110.

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

[F78(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 any person for an offence to which this Part of this Act applies;

(b) the proceedings have not been concluded or (if they have) an application that has not been concluded has been made under section 74A, 74B or 74C above in respect of the defendant in those proceedings; and

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(c) the court is satisfied that there is reasonable cause to believe—

(i) in a case where there is an application under section 74C above, that the court will be satisfied as mentioned in subsection (3) of that section;

(ii) in any other case, that the proceedings may result or have resulted in, or that the application is made by reference to, a conviction of the defendant for an offence of a relevant description from which he may be, or has been, shown to have benefited.

(1A) The court shall not exercise those powers by virtue of subsection (1) above if it is satisfied—

(a) that there has been undue delay in continuing the proceedings or application in question; or

(b) that the person who appears to the court to be the person who has or will have the conduct of the prosecution or, as the case may be, who made that application does not intend to proceed with it.

(2) The powers conferred on the High Court by sections 77(1) and 78(1) below are also exercisable where—

(a) the court is satisfied that a person is to be charged (whether by the laying of an information or otherwise) with an offence to which this Part of this Act applies or that an application of a kind mentioned in subsection (1)(b) above is to be made; and

(b) the court is satisfied that the making or variation of a confiscation order may result from proceedings for that offence or, as the case may be, from the application.**]**

(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) **[**F79, or (as the case may be) no application is made,**]**within such time as the court considers reasonable **[**F79or if the court is satisfied that the case has become a case in which, in pursuance of subsection (1A) above, it would be unable to exercise the powers conferred by virtue of subsection (1) above.**]**

Textual Amendments

F78 S. 76(1)(1A)(2) substituted for s. 76(1)(2) (1.11.1995) by 1995 c. 11, **s. 8(2)**; S.I. 1995/2650, **art.2**

F79 Words in s. 76(4) inserted (1.11.1995) by 1995 c. 11, **s. 8(3)(a)(b)** (with s. 16(6)); S.I. 1995/2650, **art.2**

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77 Restraint orders. E+W

(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

[F80(b) shall be discharged on the conclusion of the proceedings or application in question.**]**

(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 **[**F81a restraint order has been made**]**, a constable may for the purpose of preventing any realisable property being removed from Great Britain, seize the property. **[**F82In this subsection, the reference to a restraint order includes a reference to a restraint order within the meaning of **[**F83the Proceeds of Crime (Scotland) Act 1995**]** and, in relation to such an order, "realisable property" has the same meaning as in that Part**]**

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(11) Property seized under subsection (10) above shall be dealt with in accordance with the **[**[F84]directions of the court which made the order**]**.

(12) The [M88]Land Charges Act 1972 and the [M89]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.

Extent Information

E1 S. 77: for extent of s. 77 see s. 172

E2 This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

Textual Amendments

F80 S. 77(6)(b) substituted (1.11.1995) by 1995 c. 11, **s. 8(4)**; S.I. 1995/2650, **art. 2**

F81 Words in s. 77(10) substituted (31.3.1996) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. II para. 186(3)(a)**; S.I. 1996/517, **art. 3** (which substitution fell (S.) (1.4.1996) by reason of the repeal (S.) (1.4.1996) of s. 117(1), Sch. 6 Pt. II para. 186(3)(a) by 1995 c. 40, s. 6, **Sch. 5**)

F82 Words in s. 77(10) added (31.3.1996) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. II para. 186(3)(a)**; S.I. 1996/517, **art. 3** (which addition fell (S.) (1.4.1996) by reason of the repeal (S.) (1.4.1996) of s. 117(1), Sch. 6 Pt. II para. 186(3)(a) by 1995 c. 40, s. 6, **Sch. 5**)

F83 Words in s. 77(10) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 69(3)**

F84 Words in s. 77(11) substituted (31.3.1996) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. II para. 186(3)(b)**; S.I. 1996/517, **art. 3** (which substitution fell (S.) (1.4.1996) by reason of the repeal (S.) (1.4.1996) of s. 117(1), Sch. 6 Pt. II para. 186(3)(b) by 1995 c. 40, s. 6, **Sch. 5**)

Marginal Citations

M88 1972 c. 61.

M89 1925 c. 21.

77 Restraint orders. S

(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.

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(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

[[F213](b) shall be discharged on the conclusion of the proceedings or application in question.**]**

(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 [M271]Land Charges Act 1972 and the [M272]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.

Extent Information

E9 S. 77: for extent of s. 77 see s. 172

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E10 This version of this provision extends to Scotland only; a separate version has been created for England and Wales only.

Textual Amendments

F213 S. 77(6)(b) substituted (1.11.1995) by 1995 c. 11, **s. 8(4)**; S.I. 1995/2650, **art. 2**

Modifications etc. (not altering text)

C29 S. 77 extended (S.) (1.4.1996) by 1995 c. 43, ss. 35(2)(4), 44, 50, **Sch. 2 para. 2(2)**

Marginal Citations

M271 1972 c. 61.
M272 1925 c. 21.

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

(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;

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(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.

[F85(7) In relation to a charging order, the court—

(a) may at any time make an order discharging or varying it; and

(b) shall make an order discharging it on the occurrence of whichever of the following first occurs, that is to say—

(i) the conclusion of the proceedings or application in question; and

(ii) the payment into court of the amount payment of which is secured by the charge.**]**

(8) An application for the discharge or variation of a charging order may be made by any person affected by it.

Textual Amendments

F85 S. 78(7) substituted for s. 78(7) (1.11.1995) by 1995 c. 11, **s. 8(5)**; S.I. 1995/2650, **art.2**

79 Charging orders: supplementary provisions.

(1) The M90Land Charges Act 1972 and the M91Land 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 M92Land Charges Act 1972 or the M93Land 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.

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(6) In this section and section 78 above, "building society", "dividend", "government stock", "stock" and "unit trust" have the same meanings as in the [M94]Charging Orders Act 1979.

Marginal Citations

M90 1972 c. 61.
M91 1925 c. 21.
M92 1972 c. 61.
M93 1925 c. 21.
M94 1979 c. 53.

80 Realisation of property.

(1) Where—

[[F86](a) a confiscation order is made in proceedings instituted for an offence to which this Part of this Act applies or an order is made or varied on an application under section 74A, 74B or 74C above;

(b) the proceedings in question have not, or the application in question has not, been concluded; and

(c) the order or variation is not subject to appeal;**]**

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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Extent Information

E3 S. 80: for extent of s. 80 see s. 172 and 1995 c. 20, **s. 101** (which s. 101 was repealed (S.) (1.4.1996) by 1995 c. 40, **s. 6 Sch. 5**)

Textual Amendments

F86 S. 80(1)(a)-(c) substituted (1.11.1995) by 1995 c. 11, **s. 8(6)**; S.I. 1995/2650, **art.2**

Modifications etc. (not altering text)

C12 S. 80 extended (S.): (31.3.1996, see S.I. 1996/517, art.3)) by 1995 c. 20, **s. 101(2)(4)** (which s. 101 was repealed (S.) (1.4.1996) by 1995 c. 40, s. 6, **Sch. 5**); and (1.4.1996) by 1995 c. 43, ss. 35(2)(4), 44, 50, **Sch. 2 para. 2(2)**

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

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(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 [M95]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 **[**[F87]Lord Chancellor**]** such an amount as bears to the remuneration or expenses the same proportion as the amount payable in accordance with the direction under 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.

Extent Information

E4 S. 81: for extent of s. 81 see s. 172 and 1995 c. 20, **s. 101** (which s. 101 was repealed (S.) (1.4.1996) by 1995 c. 40, **s. 6 Sch. 5**)

Textual Amendments

F87 Words in s. 81(9) substituted (1.4.1992) by S.I. 1992/709, art. 2(3), **Sch. 1**.

Modifications etc. (not altering text)

C13 S. 81 extended (S.): (31.3.1996, see S.I. 1996/517, art.3) by 1995 c. 20, **s. 101(2)(4)** (which s. 101 was repealed (S.) (1.4.1996) by 1995 c. 40, s. 6, **Sch. 5**); and (1.4.1996) by 1995 c. 43 ss. 35(2)(4), 44, 50(2), Sch. 2 para. 2(2)

C14 S. 81(8)(9): functions of the Secretary of State transferred to the Lord Chancellor (1.4.1992) by S.I. 1992/709, art. 2(1), **Sch. 1**.

Marginal Citations

M95 1979 c. 55.

Status: *Point in time view as at 01/09/1996. This version of this Act contains provisions that are not valid for this point in time.*
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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 **[**F88made in respect of a confiscation order—

(a) by the defendant, or

(b) by a receiver appointed under section 77 or 80 above, or in pursuance of a charging 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 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 **[**F89person who applied for it**]** 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—

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(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 [M96]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.

[[F90](6) Rules of court may make provision—

(a) for the giving of notice of any application under this section; and

(b) for any person appearing to the court to be likely to be affected by any exercise of its powers under this section to be given an opportunity to make representations to the court.**]**

Textual Amendments

F88 S. 83(1)(a)(b) and preceding words substituted (1.11.1995) by 1995 c. 11, **s. 10(2)**; S.I. 1995/2650, **art.2**

F89 Words in s. 83(3) substituted (1.11.1995) by 1995 c. 11, **s. 10(3)**; S.I. 1995/2650, **art.2**

F90 s. 83(6) inserted (1.11.1995) by 1995 c. 11, **s. 10(4)**; S.I. 1995/2650, **art.2**

Marginal Citations

M96 1973 c. 62.

84 Bankruptcy of defendant etc. E+W

(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 [M97]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 **[**[F91]308 or 308A**]** of that Act (after-acquired property and tools, clothes, etc. exceeding value of reasonable replacement) **[**[F92]and certain tenancies**]**; 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.

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(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—

[[F93](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—

(i) proceedings for an offence to which this Part of this Act applies have been instituted against him and have not been concluded;

(ii) an application has been made under section 74A, 74B or 74C above in respect of the defendant in any such proceedings and has not been concluded; or

(iii) 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 section 339 or 423 of that Act after the conclusion of the proceedings or application 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 [M98]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 [M99]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.

Extent Information

E5 This version of this provision extends to England and Wales only; a separate version has been created for Scotland only.

Textual Amendments

F91 Words substituted by Housing Act 1988 (c. 50, SIF 61), s. 140, **Sch. 17 para. 83**

F92 Words inserted by Housing Act 1988 (c. 50, SIF 61), s. 140, **Sch. 17 para. 83**

Status: *Point in time view as at 01/09/1996. This version of this Act contains provisions that are not valid for this point in time.*
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F93 S. 84(6)(a)(i)(ii)(iii)(b) substituted (E.W.) (1.11.1995) for s. 84(a)(b) by 1995 c. 11, **s. 8(7)**; S.I. 1995/2650, **art.2**

Marginal Citations

M97 1986 c. 45.
M98 1986 c. 45.
M99 1914 c. 59.

84 Bankruptcy of defendant etc. S

(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 [M273]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 **[**[F214]308 or 308A**]** of that Act (after-acquired property and tools, clothes, etc. exceeding value of reasonable replacement) **[**[F215]and certain tenancies**]**; 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

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(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 [M274]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 [M275]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.

Extent Information

E11 This version of this provision extends to Scotland only; a separate version has been created for England and Wales only.

Textual Amendments

F214 Words substituted by Housing Act 1988 (c. 50, SIF 61), s. 140, **Sch. 17 para. 83**

F215 Words inserted by Housing Act 1988 (c. 50, SIF 61), s. 140, **Sch. 17 para. 83**

Marginal Citations

M273 1986 c. 45.

M274 1986 c. 45.

M275 1914 c. 59.

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 [M100]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

(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,

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[F94under subsection (10) of section 31 of that Act or subsection (6) of the said section 32 of that Act**]** , 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 M101Bankruptcy (Scotland) Act 1985, the M102Bankruptcy (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.

Textual Amendments

F94 Words substituted by Housing Act 1988 (c. 50, SIF 61), s. 140, **Sch. 17 para. 83**

Marginal Citations

M100 1985 c. 66.

M101 1985 c. 66.

M102 1913 c. 20.

Status: *Point in time view as at 01/09/1996. This version of this Act contains provisions that are not valid for this point in time.*
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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 [M103]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 [M104]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 [M105]Companies Act 1985.

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Marginal Citations

M103 1986 c. 45.
M104 1986 c. 45.
M105 1985 c. 6.

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—

(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 [F95]. . . shall be disregarded; and the expression shall also comprehend the official receiver acting as receiver or manager of the property.

Textual Amendments

F95 Words in s. 87(3) repealed (1.4.1993 subject to savings in arts. 4, 5 of S.I. 1993/438) by 1993 c. 6, s. 11(4), **Sch.2**; S.I. 1993/438, **art.3**

Status: *Point in time view as at 01/09/1996. This version of this Act contains provisions that are not valid for this point in time.*
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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

[F96(i) an order under this Part of this Act; or

F97(ii) an order of the Court of Session under section 32, 33, 34 or 35 of the Proceeds of Crime (Scotland) Act 1995.**]**

(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;

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(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 [M106]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.

Textual Amendments

F96 S. 89(2)(b)(i)(ii) substituted (31.3.1996) by 1995 c. 20, s. 117(1), **Sch. 6 Pt.II para. 186(4)**; S.I. 1996/517, **art. 3**

F97 S. 89(2)(b)(ii) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 69(4)**

Marginal Citations

M106 1979 c. 2.

Enforcement in Scotland

[F98]90 . . . . . .

Textual Amendments

F98 S. 90 repealed (31.3.1996) by 1995 c. 20, s. 117, Sch. 6 Pt. II para. 186(5), **Sch.7 Pt. II**; S.I. 1996/517, **art. 3**; s. 90 expressed to be repealed (*prosp.*) by 2002 c. 29, ss. 456, 457, 458, Sch. 11 para. 17(2)(a), **Sch. 12**

[F99]91 . . . . . .

Textual Amendments

F99 S. 91 repealed (31.3.1996) by 1995 c. 20, s. 117, Sch. 6 Pt. II para. 186(5), **Sch.7 Pt. II**; S.I. 1996/517, **art.3**; s. 91 expressed to be repealed (*prosp.*) by 2002 c. 29, ss. 456, 457, 458, Sch. 11 para. 17(2)(a), **Sch. 12**

[F100]92 . . . . . .

Textual Amendments

F100 S. 92 repealed (31.3.1996) by 1995 c. 20, s. 117, Sch. 6 Pt. II para. 186(5), **Sch.7 Pt. II**; S.I. 1996/517, **art.3**; s. 92 expressed to be repealed (*prosp.*) by 2002 c. 29, ss. 456, 457, 458, Sch. 11 para. 17(2)(a), **Sch. 12**

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F101 93 . . . . . .

Textual Amendments

F101 S. 93 repealed (31.3.1996) by 1995 c. 20, s. 117, Sch. 6 Pt. II para. 186(5), **Sch.7 Pt. II**; S.I. 1996/517, **art.3**; s. 93 expressed to be repealed (*prosp.*) by 2002 c. 29, ss. 456, 457, 458, Sch. 11 para. 17(2)(a), **Sch. 12**

[F102 Money laundering and other offences]

Textual Amendments

F102 S. 93A and cross heading inserted (E.W.S.) (15.2.1994) by 1993 c. 36, **s. 29(1)**; S.I. 1994/71, art. 2, **Sch.**

[F103 93A Assisting another to retain the benefit of criminal conduct.

(1) Subject to subsection (3) below, if a person enters into or is otherwise concerned in an arrangement whereby—

(a) the retention or control by or on behalf of another ("A") of A's proceeds of criminal conduct is facilitated (whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise); or

(b) A's proceeds of criminal conduct—

(i) are used to secure that funds are placed at A's disposal; or

(ii) are used for A's benefit to acquire property by way of investment,

knowing or suspecting that A is a person who is or has been engaged in criminal conduct or has benefited from criminal conduct, he is guilty of an offence.

(2) In this section, references to any person's proceeds of criminal conduct include a reference to any property which in whole or in part directly or indirectly represented in his hands his proceeds of criminal conduct.

(3) Where a person discloses to a constable a suspicion or belief that any funds or investments are derived from or used in connection with criminal conduct or discloses to a constable any matter on which such a suspicion or belief is based—

(a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise; and

(b) if he does any act in contravention of subsection (1) above and the disclosure relates to the arrangement concerned, he does not commit an offence under this section if—

(i) the disclosure is made before he does the act concerned and the act is done with the consent of the constable; or

(ii) the disclosure is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it.

(4) In proceedings against a person for an offence under this section, it is a defence to prove—

(a) that he did not know or suspect that the arrangement related to any person's proceeds of criminal conduct; or

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(b) that he did not know or suspect that by the arrangement the retention or control by or on behalf of A of any property was facilitated or, as the case may be, that by the arrangement any property was used, as mentioned in subsection (1) above; or

(c) that—

(i) he intended to disclose to a constable such a suspicion, belief or matter as is mentioned in subsection (3) above in relation to the arrangement; but

(ii) there is reasonable excuse for his failure to make disclosure in accordance with subsection (3)(b) above.

(5) In the case of a person who was in employment at the relevant time, subsections (3) and (4) above shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to a constable.

(6) A person guilty of an offence under this section shall be liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or to both; or

(b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or a fine or to both.

(7) In this Part of this Act "criminal conduct" means conduct which constitutes an offence to which this Part of this Act applies or would constitute such an offence if it had occurred in England and Wales or (as the case may be) Scotland.**]**

Textual Amendments

F103 S. 93A and cross heading inserted (E.W.S.) (*15.2.1994*) by 1993 c. 36, **s. 29(1)**; S.I. 1994/71, **art. 2**,Sch.

[93B F104Acquisition, possession or use of proceeds of criminal conduct.

(1) A person is guilty of an offence if, knowing that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct, he acquires or uses that property or has possession of it.

(2) It is a defence to a charge of committing an offence under this section that the person charged acquired or used the property or had possession of it for adequate consideration.

(3) For the purposes of subsection (2) above—

(a) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property; and

(b) a person uses or has possession of property for inadequate consideration if the value of the consideration is significantly less than the value of his use or possession of the property.

(4) The provision for any person of services or goods which are of assistance to him in criminal conduct shall not be treated as consideration for the purposes of subsection (2) above.

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(5) Where a person discloses to a constable a suspicion or belief that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct or discloses to a constable any matter on which such a suspicion or belief is based—

(a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise; and

(b) if he does any act in relation to that property in contravention of subsection (1) above, he does not commit an offence under this section if—

(i) the disclosure is made before he does the act concerned and the act is done with the consent of the constable; or

(ii) the disclosure is made after he does the act, but on his initiative and as soon as it is reasonable for him to make it.

(6) For the purposes of this section, having possession of any property shall be taken to be doing an act in relation to it.

(7) In proceedings against a person for an offence under this section, it is a defence to prove that—

(a) he intended to disclose to a constable such a suspicion, belief or matter as is mentioned in subsection (5) above; but

(b) there is reasonable excuse for his failure to make the disclosure in accordance with paragraph (b) of that subsection.

(8) In the case of a person who was in employment at the relevant time, subsections (5) and (7) above shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to a constable.

(9) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or to both; or

(b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or a fine or to both.

(10) No constable or other person shall be guilty of an offence under this section in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Act or of any other enactment relating to criminal conduct or the proceeds of such conduct.**]**

Textual Amendments

F104 S. 93B inserted (E.W.S.) (*15.2.1994*) by 1993 c. 36, **s.30**; S.I. 1994/71, art. 2, **Sch.**

[93C F105Concealing or transferring proceeds of criminal conduct.

(1) A person is guilty of an offence if he—

(a) conceals or disguises any property which is, or in whole or in part directly or indirectly represents, his proceeds of criminal conduct; or

(b) converts or transfers that property or removes it from the jurisdiction,

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for the purpose of avoiding prosecution for an offence to which this Part of this Act applies or the making or enforcement in his case of a confiscation order.

(2) A person is guilty of an offence if, knowing or having reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct, he—

(a) conceals or disguises that property; or

(b) converts or transfers that property or removes it from the jurisdiction,

for the purpose of assisting any person to avoid prosecution for an offence to which this Part of this Act applies or the making or enforcement in his case of a confiscation order.

(3) In subsections (1) and (2) above, the references to concealing or disguising any property include references to concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.

(4) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or to both; or

(b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or a fine or to both.**]**

Textual Amendments

F105 S. 93C inserted (E.W.S.) (*15.2.1994*) by 1993 c. 36, **s.31**; S.I. 1994/71, **art. 2**,Sch.

[F106 93D Tipping-off.

(1) A person is guilty of an offence if—

(a) he knows or suspects that a constable is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted into money laundering; and

(b) he discloses to any other person information or any other matter which is likely to prejudice that investigation, or proposed investigation.

(2) A person is guilty of an offence if—

(a) he knows or suspects that a disclosure ("the disclosure") has been made to a constable under section 93A or 93B above; and

(b) he discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure.

(3) A person is guilty of an offence if—

(a) he knows or suspects that a disclosure of a kind mentioned in section 93A(5) or 93B(8) above ("the disclosure") has been made; and

(b) he discloses to any person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure.

(4) Nothing in subsections (1) to (3) above makes it an offence for a professional legal adviser to disclose any information or other matter—

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(a) to, or to a representative of, a client of his in connection with the giving by the adviser of legal advice to the client; or

(b) to any person—

(i) in contemplation of, or in connection with, legal proceedings; and

(ii) for the purpose of those proceedings.

(5) Subsection (4) above does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.

(6) In proceedings against a person for an offence under subsection (1), (2) or (3) above, it is a defence to prove that he did not know or suspect that the disclosure was likely to be prejudicial in the way mentioned in that subsection.

(7) In this section "money laundering" means doing any act which constitutes an offence under section 93A, 93B or 93C above or, in the case of an act done otherwise than in England and Wales or Scotland, would constitute such an offence if done in England and Wales or (as the case may be) Scotland.

(8) For the purposes of subsection (7) above, having possession of any property shall be taken to be doing an act in relation to it.

(9) A person guilty of an offence under this section shall be liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or to both; or

(b) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine or to both.

(10) No constable or other person shall be guilty of an offence under this section in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Act or of any other enactment relating to an offence to which this Part of this Act applies.**]**

Textual Amendments

F106 S. 93D inserted (1.4.1994) by 1993 s. 36, s.32(with s. 78(6)); S.I. 1994/700, **art. 2**,Sch.

[F107 93E Application of sections 93A to 93D to Scotland.

In the application of sections 93A to 93D above to Scotland—

"offence to which this Part of this Act applies" means an offence triable on indictment (whether or not such offence is also triable summarily) **[**F108 or an offence punishable on summary conviction by a fine of an amount greater than the amount corresponding to level 5 on the standard scale or by imprisonment for a period exceeding 3 months or by both such fine and imprisonment**]** other than—

(a) an offence to which section 1 of the M107 Criminal Justice (Scotland) Act 1987 (confiscation of proceeds of drug trafficking) relates; or

(b) an offence under Part III of the M108 Prevention of Terrorism (Temporary Provisions) Act 1989; and

"proceeds of criminal conduct" does not include—

(a) proceeds of drug trafficking ("drug trafficking" having the meaning assigned by section 1(6) of the said Act of 1987); or

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(b) terrorist funds within the meaning of section 11 of the said Act of 1989.**]**

Textual Amendments

F107 S. 93E inserted (S.)(15.2.1994) by 1993 c. 36, **s. 33**; S.I. 1994/71, art. 2, **Sch.**

F108 Words in s. 93E inserted (31.3.1996) by 1995 c. 20, **s. 117(1)**, SCh. 6 para. 186(6); S.I. 1996/517, **art. 3**

Marginal Citations

M107 1987 c. 41.

M108 1989 c. 4.

[93F F109Prosecution by order of the Commissioners of Customs and Excise.

(1) Proceedings for an offence to which this section applies ("a specified offence") may be instituted by order of the Commissioners.

(2) Any proceedings for a specified offence which are so instituted shall be commenced in the name of an officer.

(3) In the case of the death, removal, discharge or absence of the officer in whose name any proceedings for a specified offence were commenced, those proceedings may be continued by another officer.

(4) Where the Commissioners investigate, or propose to investigate, any matter with a view to determining—

(a) whether there are grounds for believing that a specified offence has been committed; or

(b) whether a person should be prosecuted for a specified offence;

that matter shall be treated as an assigned matter within the meaning of the M109Customs and Excise Management Act 1979.

(5) Nothing in this section shall be taken—

(a) to prevent any person (including any officer) who has power to arrest, detain or prosecute any person for a specified offence from doing so; or

(b) to prevent a court from proceeding to deal with a person brought before it following his arrest by an officer for a specified offence, even though the proceedings have not been instituted by an order made under subsection (1) above.

(6) In this section—

"the Commissioners" means the Commissioners of Customs and Excise;

"officer" means a person commissioned by the Commissioners;

"proceedings", as respects Scotland, means summary proceedings; and

"specified offence" means—

(a) any offence under sections 93A to 93D above;

(b) attempting to commit, conspiracy to commit or incitement to commit any such offence; or

(c) any other offence of a kind prescribed in regulations made by the Secretary of State for the purposes of this section.

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(7) The power to make regulations under subsection (6) above shall be exercisable by statutory instrument.

(8) Any such instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.**]**

Textual Amendments

F109 S. 93F inserted (E.W.S.) (1.12.1993) by 1993 c. 36, **s.35**; S.I. 1993/2734, **art. 2**,Sch.

Marginal Citations

M109 1979 c. 2.

[93G F110Extension of certain offences to Crown servants and exemptions for regulators etc.

(1) The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, sections 93A, 93B, 93C(2) and 93D above shall apply to such persons in the public service of the Crown, or such categories of person in that service, as may be prescribed.

(5) In this section—

"the Crown" includes the Crown in right of Her Majesty's Government in Northern Ireland; and

"prescribed" means prescribed by regulations made by the Secretary of State.

(6) The power to make regulations under this section shall be exercisable by statutory instrument.

(7) Any such instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.**]**

Textual Amendments

F110 S. 93G inserted (E.W.S.) (1.4.1994) by 1993 c. 36, s. 77, Sch. 4 paras 1, **3**; S.I. 1994/700, art. 2, **Sch.**

[F111Investigations into the proceeds of criminal conduct]

Textual Amendments

F111 S. 93H (and the heading immediately preceding it) inserted (1.11.1995) by 1995 c. 11, **s.11**; S.I. 1995/2650, **art.2**

F112 93H Order to make material available.

(1) A constable may, for the purposes of an investigation into whether any person has benefited from any criminal conduct or into the extent or whereabouts of the proceeds of any criminal conduct, apply to a Circuit judge for an order under subsection (2) below in relation to particular material or material of a particular description.

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(2) If, on such an application, the judge is satisfied that the conditions in subsection (4) below are fulfilled, he may make an order that the person who appears to him to be in possession of the material to which the application relates shall—

(a) produce it to a constable for him to take away, or

(b) give a constable access to it,

within such period as the order may specify.

This subsection has effect subject to section 93J(11) below.

(3) The period to be specified in an order under subsection (2) above shall be seven days unless it appears to the judge that a longer or shorter period would be appropriate in the particular circumstances of the application.

(4) The conditions referred to in subsection (2) above are—

(a) that there are reasonable grounds for suspecting that a specified person has benefited from any criminal conduct;

(b) that there are reasonable grounds for suspecting that the material to which the application relates—

(i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the application is made; and

(ii) does not consist of or include items subject to legal privilege or excluded material;

and

(c) that there are reasonable grounds for believing that it is in the public interest, having regard—

(i) to the benefit likely to accrue to the investigation if the material is obtained, and

(ii) to the circumstances under which the person in possession of the material holds it,

that the material should be produced or that access to it should be given.

(5) Where the judge makes an order under subsection (2)(b) above in relation to material on any premises he may, on the application of a constable, order any person who appears to him to be entitled to grant entry to the premises to allow a constable to enter the premises to obtain access to the material.

(6) An application under subsection (1) or (5) above may be made ex parte to a judge in chambers.

(7) Provision may be made by Crown Court Rules as to—

(a) the discharge and variation of orders under this section; and

(b) proceedings relating to such orders.

(8) An order of a Circuit judge under this section shall have effect as if it were an order of the Crown Court.

(9) Where the material to which an application under subsection (1) above relates consists of information contained in a computer—

(a) an order under subsection (2)(a) above shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible; and

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(b) an order under subsection (2)(b) above shall have effect as an order to give access to the material in a form in which it is visible and legible.

(10) An order under subsection (2) above—

(a) shall not confer any right to production of, or access to, items subject to legal privilege or excluded material;

(b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise; and

(c) may be made in relation to material in the possession of an authorised government department;

and in this subsection "authorised government department" means a government department which is an authorised department for the purposes of the [M110]Crown Proceedings Act 1947.

(11) For the purposes of sections 21 and 22 of the [M111]Police and Criminal Evidence Act 1984 (access to, and copying and retention of, seized material) material produced in pursuance of an order under subsection (2)(a) above shall be treated as if it were material seized by a constable.

(12) In this section—

(a) "excluded material", "items subject to legal privilege" and "premises" have the same meanings as in the [M112]Police and Criminal Evidence Act 1984; and

(b) references to a person benefiting from any criminal conduct, in relation to conduct which is not an offence to which this Part of this Act applies but would be if it had occurred in England and Wales, shall be construed in accordance with section 71(4) and (5) above as if it had so occurred.

Textual Amendments

F112 S. 93(H) (and the heading immediately preceding it) inserted (1.11.1995) by 1995 c.11, **s. 11**; S.I. 1995/2650, **art.2**

Modifications etc. (not altering text)

C15 S. 93H restricted (28.7.1998) by 1998 c. 35, **s. 14(3)(b)**; S.I. 1998/1858, **art.2**

Marginal Citations

M110 1947 c. 44.
M111 1984 c. 60.
M112 1984 c. 60.

[93I [F113]Authority for search.

(1) A constable may, for the purposes of an investigation into whether any person has benefited from any criminal conduct or into the extent or whereabouts of the proceeds of any criminal conduct apply to a Circuit judge for a warrant under this section in relation to specified premises.

(2) On such application the judge may issue a warrant authorising a constable to enter and search the premises if the judge is satisfied—

(a) that an order made under section 93H above in relation to material on the premises has not been complied with;

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(b) that the conditions in subsection (3) below are fulfilled; or

(c) that the conditions in subsection (4) below are fulfilled.

(3) The conditions referred to in subsection (2)(b) above are—

(a) that there are reasonable grounds for suspecting that a specified person has benefited from criminal conduct;

(b) that the conditions in subsection (4)(b) and (c) of section 93H above are fulfilled in relation to any material on the premises; and

(c) that it would not be appropriate to make an order under that section in relation to the material because—

(i) it is not practicable to communicate with any person entitled to produce the material;

(ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated; or

(iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless a constable could secure immediate access to the material.

(4) The conditions referred to in subsection (2)(c) above are—

(a) that there are reasonable grounds for suspecting that a specified person has benefited from any criminal conduct;

(b) that there are reasonable grounds for suspecting that there is on the premises any such material relating—

(i) to the specified person, or

(ii) to the question whether that person has benefited from any criminal conduct or to any question as to the extent or whereabouts of the proceeds of any criminal conduct,

as is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the application is made, but that the material cannot at the time of the application be particularised; and

(c) that—

(i) it is not practicable to communicate with any person entitled to grant entry to the premises;

(ii) entry to the premises will not be granted unless a warrant is produced; or

(iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless a constable arriving at the premises could secure immediate entry to them.

(5) Where a constable has entered premises in the execution of a warrant issued under this section, he may seize and retain any material, other than items subject to legal privilege and excluded material, which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the warrant was issued.

(6) Subsection (12) of section 93H above shall apply for the purposes of this section as it applies for the purposes of that section.**]**

Status: *Point in time view as at 01/09/1996. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Criminal Justice Act 1988 is up to date with all changes known to be in force on or before 21 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F113 S. 93I inserted (1.11.1995) by 1995 c. 11, **s.12**; S.I. 1995/2650, **art.2**

Modifications etc. (not altering text)

C16 S. 93I restricted (28.7.1998) by 1998 c. 35, **s. 14(3)(b)**; S.I. 1998/1858, **art.2**

C17 S. 93I(5): power of seizure extended (1.4.2003) by 2001 c. 16, ss. 50, 52-54, 68, 138(2), Sch. 1 Pt. 1 para. 47; S.I. 2003/708, **art. 2(j)**
S. 93I(5): power of seizure modified (1.4.2003) by 2001 c. 16, ss. 57(3), 55, 68, 138(2), Sch. 1 Pt. 3 para. 105; S.I. 2003/708, **art. 2(j)**

[93J F114Disclosure of information held by government departments.

(1) Subject to subsection (4) below, the High Court may, on an application by the person appearing to the court to have the conduct of any prosecution, order any material mentioned in subsection (3) below which is in the possession of an authorised government department to be produced to the court within such period as the court may specify.

(2) The power to make an order under subsection (1) above is exercisable if—

(a) the powers conferred on the court by sections 77(1) and 78(1) above are exercisable by virtue of subsection (1) of section 76 above; or

(b) those powers are exercisable by virtue of subsection (2) of that section and the court has made a restraint order or a charging order which (in either case) has not been discharged;

but where the power to make an order under subsection (1) above is exercisable by virtue only of paragraph (b) above, subsection (3) of section 76 above shall apply for the purposes of this section as it applies for the purposes of sections 77 and 78 above.

(3) The material referred to in subsection (1) above is any material which—

(a) has been submitted to an officer of an authorised government department by the defendant or by a person who has at any time held property which was realisable property;

(b) has been made by an officer of an authorised government department in relation to the defendant or such a person; or

(c) is correspondence which passed between an officer of an authorised government department and the defendant or such a person;

and an order under that subsection may require the production of all such material or of a particular description of such material, being material in the possession of the department concerned.

(4) An order under subsection (1) above shall not require the production of any material unless it appears to the High Court that the material is likely to contain information that would facilitate the exercise of the powers conferred either—

(a) on the court by sections 77 to 80 above; or

(b) on a receiver appointed under section 77 or 80 above or in pursuance of a charging order.

(5) The court may by order authorise the disclosure to such a receiver of any material produced under subsection (1) above or any part of such material; but the court shall

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not make an order under this subsection unless a reasonable opportunity has been given for an officer of the department to make representations to the court.

(6) Material disclosed in pursuance of an order under subsection (5) above may, subject to any conditions contained in the order, be further disclosed for the purposes of the functions by virtue of any provision of this Part of this Act of the receiver, of the Crown Court or of any magistrates' court.

(7) The court may by order authorise the disclosure to a person mentioned in subsection (8) below of any material produced under subsection (1) above or any part of such material; but the court shall not make an order under this subsection unless—

(a) a reasonable opportunity has been given for an officer of the department to make representations to the court; and

(b) it appears to the court that the material is likely to be of substantial value in exercising functions relating to the investigation of crime.

(8) The persons referred to in subsection (7) above are—

(a) any member of a police force;

(b) any member of the Crown Prosecution Service; and

(c) any officer within the meaning of the [M113]Customs and Excise Management Act 1979.

(9) Material disclosed in pursuance of an order under subsection (7) above may, subject to any conditions contained in the order, be further disclosed for the purposes of functions relating to the investigation of crime, of whether any person has benefited from any criminal conduct or of the extent or whereabouts of the proceeds of any such conduct.

(10) Material may be produced or disclosed in pursuance of this section notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise.

(11) An order under subsection (1) above and, in the case of material in the possession of an authorised government department, an order under section 93H above may require any officer of the department (whether named in the order or not) who may for the time being be in possession of the material concerned to comply with it; and an order containing any requirement by virtue of this subsection shall be served as if the proceedings were civil proceedings against the department.

(12) Where any requirement is included in any order by virtue of subsection (11) above, the person on whom the order is served—

(a) shall take all reasonable steps to bring it to the attention of the officer concerned; and

(b) if the order is not brought to that officer's attention within the period referred to in subsection (1) above, shall report the reasons for the failure to the court;

and it shall also be the duty of any other officer of the department in receipt of the order to take such steps as are mentioned in paragraph (a) above.

(13) In this section "authorised government department" means a government department which is an authorised department for the purposes of the [M114]Crown Proceedings Act 1947; and subsection (12)(b) of section 93H above shall apply for the purposes of this section as it applies for the purposes of that section.**]**

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Textual Amendments

F114 S. 93J inserted (1.11.1995) by 1995 c. 11, **s.13**; S.I. 1995/2650, **art.2**

Modifications etc. (not altering text)

C18 S. 93J restricted (28.7.1998) by 1998 c. 35, **s. 14(3)(c)**; S.I. 1998/1858, **art. 2**

Marginal Citations

M113 1979 c. 2.

M114 1947 c. 44.

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 **[**F115**88]** 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 M115Magistrates' 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.

[F116(3A) An Order in Council under this section may, in particular, provide for section 18 of the M116Civil Jurisdiction and Judgments Act 1982 (enforcement of United Kingdom judgments in other parts of the United Kingdom) not to apply in relation to such orders as may be prescribed by the Order.**]**

[F117(4) An Order in Council under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.**]**

Textual Amendments

F115 Words in s. 94(1) substituted (1.12.1993) by 1993 c. 36, **s. 34(1)**; S.I. 1993/2734, **art. 2**,Sch.

F116 S. 94(3A) inserted (1.12.1993) by 1993 c. 36, **s. 34(1)**; S.I. 1993/2734, **art. 2**,Sch.

F117 S. 94(4) substituted (1.12.1993) by 1993 c. 36, **ss. 21(2)(3)(e)**; S.I. 1993/2734, **art. 2**,Sch.

Marginal Citations

M115 S.I. 1981/1675 (N.I. 26).

Status: *Point in time view as at 01/09/1996. This version of this Act contains provisions that are not valid for this point in time.*
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M116 1982 c. 27.

F118 95 . . . . . .

Textual Amendments

F118 S. 95 repealed (31.3.1996) by 1995 c. 20, s. 117, Sch. 6 Pt. II para. 186(5), **Sch. 7 Pt. II**; S.I. 1996/517, **art. 3**

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.

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[F119(5) An Order in Council under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.**]**

Textual Amendments

F119 S. 96(5) substituted (1.12.1993) by 1993 c. 36, **s. 21(3)(g)**; S.I. 1993/2734, **art. 2**,Sch.

Modifications etc. (not altering text)

C19 S. 96 modified (29.12.1991) by S.I. 1991/2873, **arts. 4(1)**, 5(1)

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.

(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.

Modifications etc. (not altering text)

C20 S. 97 modified (29.12.1991) by S.I. 1991/2873, **arts. 4(1)**, 5(1)

Miscellaneous and supplemental

F120 98 . . . . . .

Textual Amendments

F120 S. 98 repealed (15.2.1994) by 1993 c. 36, s. 79(13)(14), Sch. 5 Pt. I para. 14(1), **Sch. 6 Pt. I**; S.I. 1994/71, art. 2, Sch. Appendix

99 Authorisation of delay in notifying arrest etc.

(1) The M117Police and Criminal Evidence Act 1984 shall be amended as follows.

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(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 [M118]Interpretation Act 1978, the [M119]Police and Criminal Evidence Act 1984 (Application to Customs and Excise) Order 1985 shall apply to sections 56 and 58 of the [M120]Police and Criminal Evidence Act 1984 as those sections have effect by virtue of this section.

Marginal Citations

M117 1984 c. 60.
M118 1978 c. 30.
M119 S.I. 1985/1800.
M120 1984 c. 60.

Status: *Point in time view as at 01/09/1996. This version of this Act contains provisions that are not valid for this point in time.*
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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 [M121]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 [M122]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—

(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 [M123]Land Registration Act 1988 for the coming into force of that Act.

Marginal Citations

M121 1925 c. 21.

M122 1987 c. 38.

Status: *Point in time view as at 01/09/1996. This version of this Act contains provisions that are not valid for this point in time.*
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M123 1988 c. 3.

101 Abolition of power to make criminal bankruptcy order.

(1) The power to make a criminal bankruptcy order which section 39 of the [M124]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.

Marginal Citations
M124 1973 c. 62.

102 Part VI— Interpretation. E+W

(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;

[[F121]"proceeds of criminal conduct", in relation to any person who has benefited from criminal conduct, means that benefit;**]**

"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.

Expression	Relevant provision
Benefited from an offence	Section 71(4)
Charging order	Section 78(2)
Confiscation order	Section 71(9)(a)
[[F122]Criminal conduct	Section 93A(7)**]**
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)
[[F123]Offence of a relevant description	Section 71(1E)**]**
Offence to which this Part of this Act applies	Section 71(9)(c)
Realisable property	Section 74(1)

Status: *Point in time view as at 01/09/1996. This version of this Act contains provisions that are not valid for this point in time.*
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[[F123]Relevant criminal conduct	Section 71(1D)**]**
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 [M125]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—

(a) when a justice of the peace issues a summons or warrant under section 1 of the [M126]Magistrates' Courts Act 1980 in respect of that offence;

(b) when a person is charged with the offence after being taken into custody without a warrant;

(c) when a bill of indictment is preferred under section 2 of the [M127]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.

[[F124](12) Proceedings for an offence are concluded—

(a) when the defendant is acquitted on all counts or, as the case may be, every charge against him is dismissed;

(b) if he is convicted on one or more counts or charges but the court decides not to make a confiscation order against him, when the court makes that decision;

(c) if he is sentenced without the court having considered whether or not to proceed under section 71 above in his case, when he is sentenced; and

(d) if a confiscation order is made against him in those proceedings, when the order is satisfied.

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(12A) An application under section 74A, 74B or 74C above is concluded—

(a) if the court decides not to make or, as the case may be, not to vary any order against the defendant on that application, when it makes that decision;

(b) if an order against the defendant is made or varied on that application, when the order is satisfied; and

(c) if the application is withdrawn, when the prosecutor notifies the withdrawal of the application to the court to which it was made.

(12B) For the purposes of this Part of this Act, a confiscation order is satisfied when no amount is due under it.

(12C) For the purposes only of section 84 above, a confiscation order shall be treated as satisfied when the defendant in respect of whom it was made has served a term of imprisonment or detention in default of payment of the amount due under the order.**]**

(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.

Extent Information

E6 This version of this provision extends to England and Wales only; a separate version has been created for Scotland only.

Textual Amendments

F121 Definition in s. 102(1) inserted (15.2.1994) by 1993 c. 36, **s. 29(2)**; S.I. 1994/71, **art. 2**

F122 Entry in s. 102(2) Table inserted (15.2.1994) by 1993 c. 36, **s. 29(3)**; S.I. 1994/71, **art. 2**

F123 Entries in s. 102(2) inserted (E.W.) (1.11.1995) by 1995 c. 11, s. 15(1), **Sch. 1 para.3**; S.I. 1995/2650, **art.2**

F124 S. 102(12)(12A)-(12C) substituted (E.W.) (1.11.1995) for s. 102(12) by 1995 c. 11, **s. 8(8)**; S.I. 1995/2650, **art.2**

Marginal Citations

M125 1985 c. 66.

M126 1980 c. 43.

M127 1933 c. 36.

102 Part VI— Interpretation. S

(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;

[F216"proceeds of criminal conduct", in relation to any person who has benefited from criminal conduct, means that benefit;**]**

"property" includes money and all other property, real or personal, heritable or moveable, including things in action and other intangible or incorporeal property.

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(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.

Expression	Relevant provision
Benefited from an offence	Section 71(4)
Charging order	Section 78(2)
Confiscation order	Section 71(9)(a)
[[F217]Criminal conduct	Section 93A(7)**]**
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)
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 [M276]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—

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(a) when a justice of the peace issues a summons or warrant under section 1 of the [M277]Magistrates' Courts Act 1980 in respect of that offence;

(b) when a person is charged with the offence after being taken into custody without a warrant;

(c) when a bill of indictment is preferred under section 2 of the [M278]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—

(a) 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;

(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.

Extent Information

E12 This version of this provision extends to Scotland only; a separate version has been created for England and Wales only.

Textual Amendments

F216 Definition in s. 102(1) inserted (15.2.1994) by 1993 c. 36, **s. 29(2)**; S.I. 1994/71, **art. 2**

F217 Entry in s. 102(2) Table inserted (15.2.1994) by 1993 c. 36, **s. 29(3)**; S.I. 1994/71, **art. 2**

Marginal Citations

M276 1985 c. 66.

M277 1980 c. 43.

M278 1933 c. 36.

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

[F125](1) . . . . . .

(2) The amendments of the [M128]Criminal Justice (Scotland) Act 1987 specified in Part II of that Schedule shall also have effect.

Extent Information

E7 For extent of s. 103 see s. 172

Textual Amendments

F125 S. 103(1) repealed (3.2.1995) by 1994 c. 37, ss. 67, 69(2), **Sch. 3**

Status: *Point in time view as at 01/09/1996. This version of this Act contains provisions that are not valid for this point in time.*
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Marginal Citations
M128 1987 c. 41.

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 [M129]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 l968; 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 l976.".

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Marginal Citations
M129 1973 c. 62.

105 Enforcement of compensation orders.

The following sections shall be substituted for sections 36 to 38 of the [M130]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 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

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(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."

Marginal Citations
M130 1973 c. 62.

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 [M131]Administration of Justice Act 1970—

"(8) Subject to subsection (8A) below, where in thecase 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 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

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(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.".

Marginal Citations
M131 1970 c. 31.

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 [M132]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.".

Marginal Citations
M132 1973 c. 62.

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PROSPECTIVE

The Criminal Injuries Compensation Scheme

F126 108 . . . . . .

Textual Amendments
F126 Ss. 108-117 repealed (8.11.1995) by 1995 c. 53, **s. 12(1)(7)**,Sch.

F127 109 . . . . . .

Textual Amendments
F127 Ss. 108-117 repealed (8.11.1995) by 1995 c. 53, **s. 12(1)(7)**,Sch.

F128 110 . . . . . .

Textual Amendments
F128 Ss. 108-117 repealed (8.11.1995) by 1995 c. 53, **s. 12(1)(7)**,Sch.

F129 111 . . . . . .

Textual Amendments
F129 Ss. 108-117 repealed (8.11.1995) by 1995 c. 53, **s. 12(1)(7)**,Sch.

F130 112 . . . . . .

Textual Amendments
F130 Ss. 108-117 repealed (8.11.1995) by 1995 c. 53, **s. 12(1)(7)**,Sch.

F131 113 . . . . . .

Textual Amendments
F131 Ss. 108-117 repealed (8.11.1995) by 1995 c. 53, **s. 12(1)(7)**,Sch.

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F132 114 . . . . . .

Textual Amendments
F132 Ss. 108-117 repealed (8.11.1995) by 1995 c. 53, **s. 12(1)(7)**,Sch.

F133 115 . . . . . .

Textual Amendments
F133 Ss. 108-117 repealed (8.11.1995) by 1995 c. 53, **s. 12(1)(7)**,Sch.

F134 116 . . . . . .

Textual Amendments
F134 Ss. 108-117 repealed (8.11.1995) by 1995 c. 53, **s. 12(1)(7)**,Sch.

F135 117 . . . . . .

Textual Amendments
F135 Ss. 108-117 repealed (8.11.1995) by 1995 c. 53, **s. 12(1)(7)**,Sch.

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 **M133**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)—

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" General Persons more than sixty-five years of age."

Marginal Citations
M133 1974 c. 23.

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 [M134]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.

Marginal Citations
M134 1974 c. 23.

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.

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PART IX

YOUNG OFFENDERS

123 Custodial sentences for young offenders.

(1) Part I of the [M135]Criminal Justice Act 1982 shall be amended as mentioned in subsections (2) to (5) below.

[F136](2) . . . . . .

[F136](3) . . . . . .

.

(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 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

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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.

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(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.

Textual Amendments

F136 S. 123(2)(3) repealed (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), s. 101(2), **Sch. 13**; S.I. 1992/333, art. 2(2), **Sch. 2**.

Marginal Citations

M135 1982 c. 48.

124 Detention of young offenders in Scotland.

(1) In each of sections 207 and 415 of the [M136]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 [M137]Firearms Act 1968;

(b) to Part I of Schedule I to the [M138]Law Reform (Miscellaneous Provisions) (Scotland) Act 1980;

(c) to section 41(2) of the [M139]Criminal Justice (Scotland) Act 1980.

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

Status: *Point in time view as at 01/09/1996. This version of this Act contains provisions that are not valid for this point in time.*
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Marginal Citations

M136 1975 c. 21.
M137 1968 c. 27.
M138 1980 c. 55.
M139 1980 c. 62.

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.

F137 126 . . . . . .

Textual Amendments

F137 S. 126 repealed (9.1.1995) by 1994 c. 33, s. 168(3), **Sch.11**; S.I. 1994/3192, **art. 2**,Sch.

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 l969 (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 l973 (breach of requirements of community service order),

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.

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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 [M140]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.".

[F138](2) . . . . . .

Textual Amendments

F138 S. 131(2) repealed (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), s. 101(2), **Sch.13**; S.I. 1992/333, art. 2(2), **Sch. 2**.

Marginal Citations

M140 1976 c. 63.

[F139]132 . . . . . .

Textual Amendments

F139 S. 132 repealed (5.2.1994) by 1993 c. 47, ss. 32, 33(3), **Sch.4**

Status: *Point in time view as at 01/09/1996. This version of this Act contains provisions that are not valid for this point in time.*
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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.

[[F140](4A) In assessing so much of any compensation payable under this section to or in respect of a person as is attributable to suffering, harm to reputation or similar damage, the assessor shall have regard in particular to—

(a) the seriousness of the offence of which the person was convicted and the severity of the punishment resulting from the conviction;

(b) the conduct of the investigation and prosecution of the offence; and

(c) any other convictions of the person and any punishment resulting from them.**]**

(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 [M141]Criminal Appeal Act 1968;

(ii) under section 263 of the [M142]Criminal Procedure (Scotland) Act 1975;

[F141] . . .

[F141](iii) . . . . . .

(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.

Textual Amendments

F140 S. 133(4A) inserted (1.1.1996) by 1995 c. 35, **s.28**; S.I. 1995/3061, **art. 3(c)**

Status: *Point in time view as at 01/09/1996. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Criminal Justice Act 1988 is up to date with all changes known to be in force on or before 21 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

F141 S. 133(5)(b)(iii) and the word immediately preceeding it repealed (1.1.1996) by 1995 c. 35, s. 29(2), **Sch.3**; S.I. 1995/3061, **art. 3(i)(vii)**

Marginal Citations
M141 1968 c. 19.
M142 1975 c. 21.

VALID FROM 01/12/2008

[F142 133A Miscarriages of justice: amount of compensation

(1) This section applies where an assessor is required to assess the amount of compensation payable to or in respect of a person under section 133 for a miscarriage of justice.

(2) In assessing so much of any compensation payable under section 133 as is attributable to suffering, harm to reputation or similar damage, the assessor must have regard in particular to—

(a) the seriousness of the offence of which the person was convicted and the severity of the punishment suffered as a result of the conviction, and

(b) the conduct of the investigation and prosecution of the offence.

(3) The assessor may make from the total amount of compensation that the assessor would otherwise have assessed as payable under section 133 any deduction or deductions that the assessor considers appropriate by reason of either or both of the following—

(a) any conduct of the person appearing to the assessor to have directly or indirectly caused, or contributed to, the conviction concerned; and

(b) any other convictions of the person and any punishment suffered as a result of them.

(4) If, having had regard to any matters falling within subsection (3)(a) or (b), the assessor considers that there are exceptional circumstances which justify doing so, the assessor may determine that the amount of compensation payable under section 133 is to be a nominal amount only.

(5) The total amount of compensation payable to or in respect of a person under section 133 for a particular miscarriage of justice must not exceed the overall compensation limit. That limit is—

(a) £1 million in a case to which section 133B applies, and

(b) £500,000 in any other case.

(6) The total amount of compensation payable under section 133 for a person's loss of earnings or earnings capacity in respect of any one year must not exceed the earnings compensation limit.

That limit is an amount equal to 1.5 times the median annual gross earnings according to the latest figures published by the Office of National Statistics at the time of the assessment.

Status: *Point in time view as at 01/09/1996. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Criminal Justice Act 1988 is up to date with all changes known to be in force on or before 21 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(7) The Secretary of State may by order made by statutory instrument amend subsection (5) or (6) so as to alter any amount for the time being specified as the overall compensation limit or the earnings compensation limit.

(8) No order may be made under subsection (7) unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.

Textual Amendments

F142 Ss. 133A, 133B inserted (E.W.N.I) (1.12.2008) by Criminal Justice and Immigration Act 2008 (c. 4), **ss. 61(7)** , 153 (with Sch. 27 para. 22); S.I. 2008/2993, **art. 2(1)(a)**

VALID FROM 01/12/2008

133B Cases where person has been detained for at least 10 years

(1) For the purposes of section 133A(5) this section applies to any case where the person concerned ("P") has been in qualifying detention for a period (or total period) of at least 10 years by the time when—

(a) the conviction is reversed, or

(b) the pardon is given,

as mentioned in section 133(1).

(2) P was "in qualifying detention" at any time when P was detained in a prison, a hospital or at any other place, if P was so detained—

(a) by virtue of a sentence passed in respect of the relevant offence,

(b) under mental health legislation by reason of P's conviction of that offence (disregarding any conditions other than the fact of the conviction that had to be fulfilled in order for P to be so detained), or

(c) as a result of P's having been remanded in custody in connection with the relevant offence or with any other offence the charge for which was founded on the same facts or evidence as that for the relevant offence.

(3) In calculating the period (or total period) during which P has been in qualifying detention as mentioned in subsection (1), no account is to be taken of any period of time during which P was both—

(a) in qualifying detention, and

(b) in excluded concurrent detention.

(4) P was "in excluded concurrent detention" at any time when P was detained in a prison, a hospital or at any other place, if P was so detained—

(a) during the term of a sentence passed in respect of an offence other than the relevant offence,

(b) under mental health legislation by reason of P's conviction of any such other offence (disregarding any conditions other than the fact of the conviction that had to be fulfilled in order for P to be so detained), or

(c) as a result of P's having been remanded in custody in connection with an offence for which P was subsequently convicted other than—

(i) the relevant offence, or

Status: *Point in time view as at 01/09/1996. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Criminal Justice Act 1988 is up to date with all changes known to be in force on or before 21 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(ii) any other offence the charge for which was founded on the same facts or evidence as that for the relevant offence.

(5) But P was not "in excluded concurrent detention" at any time by virtue of subsection (4)(a), (b) or (c) if P's conviction of the other offence mentioned in that provision was quashed on appeal, or a pardon was given in respect of it.

(6) In this section—

"mental health legislation" means—

(a) Part 3 of the Mental Health Act 1983,

(b) Part 3 of the Mental Health (Northern Ireland) Order 1986, or

(c) the provisions of any earlier enactment corresponding to Part 3 of that Act or Part 3 of that Order;

"the relevant offence" means the offence in respect of which the conviction is quashed or the pardon is given (but see subsection (7));

"remanded in custody" is to be read in accordance with subsections (8) and (9);

"reversed" has the same meaning as in section 133 of this Act.

(7) If, as a result of the miscarriage of justice—

(a) two or more convictions are reversed, or

(b) a pardon is given in respect of two or more offences,

"the relevant offence" means any of the offences concerned.

(8) In relation to England and Wales, "remanded in custody" has the meaning given by section 242(2) of the Criminal Justice Act 2003, but that subsection applies for the purposes of this section as if any reference there to a provision of the Mental Health Act 1983 included a reference to any corresponding provision of any earlier enactment.

(9) In relation to Northern Ireland, "remanded in custody" means—

(a) remanded in or committed to custody by an order of a court, or

(b) remanded, admitted or removed to hospital under Article 42, 43, 45 or 54 of the Mental Health (Northern Ireland) Order 1986 or under any corresponding provision of any earlier enactment.**]**

Textual Amendments

F142 Ss. 133A, 133B inserted (E.W.N.I) (1.12.2008) by Criminal Justice and Immigration Act 2008 (c. 4), **ss. 61(7)** , 153 (with Sch. 27 para. 22); S.I. 2008/2993, **art. 2(1)(a)**

Torture

134 Torture.

(1) A public official or person acting in an official capacity, whatever his nationality, commits the offence of torture if in theUnited Kingdom or elsewhere he intentionally inflicts severe pain or suffering on another in the performance or purported performance of his official duties.

Status: *Point in time view as at 01/09/1996. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Criminal Justice Act 1988 is up to date with all changes known to be in force on or before 21 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(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, 137. . . . . F143

Textual Amendments

F143 Ss. 136, 137, 138(2)(3) repealed by Extradition Act 1989 (c. 33, SIF 48), s. 37, **Sch. 2**

Status: *Point in time view as at 01/09/1996. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Criminal Justice Act 1988 is up to date with all changes known to be in force on or before 21 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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) F144

Textual Amendments

F144 Ss. 136, 137, 138(2)(3) repealed by Extradition Act 1989 (c. 33, SIF 48), s. 37, **Sch. 2**

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-

[F145(a) on summary conviction, to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine, or both.**]**

(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.

Textual Amendments

F145 S. 139(6)(a)(b) substituted (4.7.1996) for words by 1996 c. 26, **s.3(1)** (with s. 3(2))

Status: *Point in time view as at 01/09/1996. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Criminal Justice Act 1988 is up to date with all changes known to be in force on or before 21 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[139A [F146]Offence of having article with blade or point (or offensive weapon) on school premises.

(1) Any person who has an article to which section 139 of this Act applies with him on school premises shall be guilty of an offence.

(2) Any person who has an offensive weapon within the meaning of section 1 of the [M143]Prevention of Crime Act 1953 with him on school premises shall be guilty of an offence.

(3) It shall be a defence for a person charged with an offence under subsection (1) or (2) above to prove that he had good reason or lawful authority for having the article or weapon with him on the premises in question.

(4) Without prejudice to the generality of subsection (3) above, it shall be a defence for a person charged with an offence under subsection (1) or (2) above to prove that he had the article or weapon in question with him—

(a) for use at work,

(b) for educational purposes,

(c) for religious reasons, or

(d) as part of any national costume.

(5) A person guilty of an offence—

(a) under subsection (1) above shall be liable—

(i) on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both;

(ii) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine, or both;

(b) under subsection (2) above shall be liable—

(i) on summary conviction, to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both;

(ii) on conviction on indictment, to imprisonment for a term not exceeding four years, or a fine, or both.

(6) In this section and section 139B, "school premises" means land used for the purposes of a school excluding any land occupied solely as a dwelling by a person employed at the school; and "school" has the meaning given by section 14(5) of the [M144]Further and Higher Education Act 1992.

(7) In the application of this section to Northern Ireland—

(a) the reference in subsection (2) above to section 1 of the [M145]Prevention of Crime Act 1953 is to be construed as a reference to Article 22 of the [M146]Public Order (Northern Ireland) Order 1987; and

(b) the reference in subsection (6) above to section 14(5) of the Further and Higher Education Act 1992 is to be construed as a reference to Article 2(2) of the [M147]Education and Libraries (Northern Ireland) Order 1986.**]**

Textual Amendments

F146 S. 139A inserted (1.9.1996) by 1996 c. 26, **s. 4(1)(4)**; S.I. 1996/2071, **art.2**

Marginal Citations

M143 1953 c. 14.

Status: *Point in time view as at 01/09/1996. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Criminal Justice Act 1988 is up to date with all changes known to be in force on or before 21 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

M144 1992 c. 13.
M145 1953 c. 14.
M146 S.I. 1987/463 (N.I. 7).
M147 S.I. 1986/594 (N.I. 3).

139B [F147]Power of entry to search for articles with a blade or point and offensive weapons.

(1) A constable may enter school premises and search those premises and any person on those premises for—

(a) any article to which section 139 of this Act applies, or

(b) any offensive weapon within the meaning of section 1 of the Prevention of Crime Act 1953,

if he has reasonable grounds for believing that an offence under section 139A of this Act is being, or has been, committed.

(2) If in the course of a search under this section a constable discovers an article or weapon which he has reasonable grounds for suspecting to be an article or weapon of a kind described in subsection (1) above, he may seize and retain it.

(3) The constable may use reasonable force, if necessary, in the exercise of the power of entry conferred by this section.

(4) In the application of this section to Northern Ireland the reference in subsection (1)(b) above to section 1 of the Prevention of Crime Act 1953 is to be construed as a reference to Article 22 of the Public Order (Northern Ireland) Order 1987.

Textual Amendments
F147 S. 139B inserted (1.9.1996) by 1996 c. 26, **s. 4(1)(4)**; S.I. 1996/2071, **art.2**

140 Extension of constable's power to stop and search.

(1) In section 1 of the [M148]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".

Status: *Point in time view as at 01/09/1996. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Criminal Justice Act 1988 is up to date with all changes known to be in force on or before 21 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Marginal Citations
M148 1984 c. 60.

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 [M149]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 [M150]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 [M151]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 [M152]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,

Status: *Point in time view as at 01/09/1996. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Criminal Justice Act 1988 is up to date with all changes known to be in force on or before 21 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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 [M153]Firearms Act 1968 shall be construed as a reference to the [M154]Firearms (Northern Ireland) Order 1981.

Marginal Citations

M149 1968 c. 27.
M150 1979 c. 2.
M151 1952 c. 67.
M152 1964 c. 29.
M153 1968 c. 27.
M154 S.I. 1981/155 (N.I. 2).

VALID FROM 01/11/2007

[F148 141ZA Application of section 141 to swords: further provision

(1) This section applies where the Scottish Ministers make an order under subsection (2) of section 141 directing that the section shall apply to swords.

(2) The Scottish Ministers may include in the order provision for or in connection with modifying section 141 in its application to swords.

(3) The Scottish Ministers may in particular—

(a) provide for defences (including in particular defences relating to religious, cultural or sporting purposes) to offences;

(b) increase the penalties specified in subsection (1) of section 141 (or that subsection as modified) so as to make a person liable—

(i) on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine or both;

(ii) on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or both;

Status: *Point in time view as at 01/09/1996. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Criminal Justice Act 1988 is up to date with all changes known to be in force on or before 21 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(c) create an offence (punishable on summary conviction only and subject to a penalty which is no greater than that mentioned in subsection (6)) relating to the provision, without reasonable excuse, of false information by a person acquiring a sword in circumstances specified in the order.

(4) In making provision under subsection (3)(a) the Scottish Ministers may make provision for or in connection with—

(a) the granting, and revocation, by them of authorisations in relation to the acquisition of swords;

(b) enabling them to specify conditions in such authorisations;

(c) requiring persons to whom authorisations are granted to comply with such conditions;

(d) making it an offence (punishable on summary conviction only and subject to a penalty which is no greater than that mentioned in subsection (6)) to fail to comply with any such conditions.

(5) Defences specified under subsection (3)(a) may relate to swords in general or to a class, or classes, of sword specified in the order.

(6) The penalty is—

(a) imprisonment for a term not exceeding 12 months; or

(b) a fine not exceeding level 5 on the standard scale,

or both.

(7) The power conferred by subsection (2) is without prejudice to the generality of the power conferred by section 141(11G).**]**

Textual Amendments

F148 S. 141ZA inserted (S.) (1.11.2007) by Custodial Sentences and Weapons (Scotland) Act 2007 (asp 17), **ss. 61(2)**, 67; S.S.I. 2007/431, **art. 3**, Sch.

PROSPECTIVE

[[F149[F149 [F150, F151]

F152141ZB Importation of offensive weapons: prohibition

(1) The importation of an offensive weapon is prohibited, subject to section 141ZC.

(2) In this section " offensive weapon " means a weapon of a description specified in an order made by the Secretary of State for the purposes of this subsection.

(3) The Secretary of State may not specify any of the following under subsection (2)—

(a) a weapon subject to the Firearms Act 1968;

(b) a crossbow.

(4) Orders under this section are to be made by statutory instrument.

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

Status: *Point in time view as at 01/09/1996. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Criminal Justice Act 1988 is up to date with all changes known to be in force on or before 21 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(6) In the application of this section to Northern Ireland the reference in subsection (3) to the Firearms Act 1968 is to be construed as a reference to the Firearms (Northern Ireland) Order 2004.

Textual Amendments

F149 S. 139A(5)(6) substituted (5.5.2011) by Justice Act (Northern Ireland) 2011 (c. 24), **ss. 52**, 111(1) (with Sch. 6 para. 4(2))

F150 S. 139A(7)(b) repealed (N.I.) (5.5.2011) by Justice Act (Northern Ireland) 2011 (c. 24), s. 111(1), **Sch. 8 Pt. 5**

F151 Words in s. 139A(6)(7) substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), **Sch. 37 Pt. I para.69** (with ss. 1(4), 582(3), Sch. 39)

F152 Ss. 141ZB-141ZD inserted (prosp.) by Policing and Crime Act 2009 (c. 26), **ss. 102**, 116

PROSPECTIVE

141ZC Prohibition on importation of offensive weapons: exceptions

(1) The importation of a weapon is not prohibited by section 141ZB if one of the following exceptions applies.

(2) Exception 1 is that the weapon is imported for the purposes only of functions carried out on behalf of—

(a) the Crown, or

(b) a visiting force.

(3) Exception 2 is that the weapon is imported for the purposes only of making it available to a museum or gallery which does not distribute profits.

(4) Exception 3 is that the weapon is imported for the purposes only of making it available for one or more of the following—

(a) theatrical performances;

(b) rehearsals of theatrical performances;

(c) the production of films;

(d) the production of television programmes.

(5) In subsection (4)—

" films " has the meaning given by section 5B of the Copyright, Designs and Patents Act 1988;

" television programmes " has the meaning given by section 405 of the Communications Act 2003.

(6) The Secretary of State may by order provide for further exceptions from the prohibition on importation of weapons under section 141ZB.

(7) Orders under this section are to be made by statutory instrument.

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

Status: *Point in time view as at 01/09/1996. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Criminal Justice Act 1988 is up to date with all changes known to be in force on or before 21 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(9) Expressions used in this section and in section 141 have the same meaning in this section as in that section.

Textual Amendments

F149 S. 139A(5)(6) substituted (5.5.2011) by Justice Act (Northern Ireland) 2011 (c. 24), **ss. 52**, 111(1) (with Sch. 6 para. 4(2))

F150 S. 139A(7)(b) repealed (N.I.) (5.5.2011) by Justice Act (Northern Ireland) 2011 (c. 24), s. 111(1), **Sch. 8 Pt. 5**

F151 Words in s. 139A(6)(7) substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), **Sch. 37 Pt. I para.69** (with ss. 1(4), 582(3), Sch. 39)

F152 Ss. 141ZB-141ZD inserted (prosp.) by Policing and Crime Act 2009 (c. 26), **ss. 102**, 116

PROSPECTIVE

141ZD Prohibition on importation of offensive weapons: burdens of proof

(1) This section applies for the purposes of proceedings for an offence under the Customs and Excise Management Act 1979 relating to a weapon the importation of which is prohibited by section 141ZB above.

(2) An exception conferred by or under section 141ZC is to be taken not to apply unless sufficient evidence is adduced to raise an issue with respect to the exception.

(3) Where sufficient evidence is adduced to raise an issue with respect to an exception, it is to be taken to apply unless the contrary is proved beyond a reasonable doubt.**]]]]]]**

Textual Amendments

F149 S. 139A(5)(6) substituted (5.5.2011) by Justice Act (Northern Ireland) 2011 (c. 24), **ss. 52**, 111(1) (with Sch. 6 para. 4(2))

F150 S. 139A(7)(b) repealed (N.I.) (5.5.2011) by Justice Act (Northern Ireland) 2011 (c. 24), s. 111(1), **Sch. 8 Pt. 5**

F151 Words in s. 139A(6)(7) substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), **Sch. 37 Pt. I para.69** (with ss. 1(4), 582(3), Sch. 39)

F152 Ss. 141ZB-141ZD inserted (prosp.) by Policing and Crime Act 2009 (c. 26), **ss. 102**, 116

VALID FROM 01/01/1997

[141A F153Sale of knives and certain articles with blade or point to persons under sixteen.

(1) Any person who sells to a person under the age of sixteen years an article 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 a fine not exceeding level 5 on the standard scale, or both.

(2) Subject to subsection (3) below, this section applies to—

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Changes to legislation: *Criminal Justice Act 1988 is up to date with all changes known to be in force on or before 21 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) any knife, knife blade or razor blade,
(b) any axe, and
(c) any other article which has a blade or which is sharply pointed and which is made or adapted for use for causing injury to the person.

(3) This section does not apply to any article described in—
(a) section 1 of the [M155]Restriction of Offensive Weapons Act 1959,
(b) an order made under section 141(2) of this Act, or
(c) an order made by the Secretary of State under this section.

(4) It shall be a defence for a person charged with an offence under subsection (1) above to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(5) The power to make an order under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.**]**

Textual Amendments
F153 S. 141A inserted (1.1.1997) by 1996 c. 26, **s. 6(1)(3)**; S.I. 1996/3063, **art.2**

Modifications etc. (not altering text)
C21 S. 141A(1) excluded (1.1.1997) by S.I. 1996/3064, **art.2**

Marginal Citations
M155 1959 c. 37.

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 [M156]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;

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(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.

Marginal Citations
M156 1959 c. 37.

Serious fraud

143 Assistance to Isle of Man and Channel Islands.

In subsection (1) of section 2 of the [M157]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,".

Marginal Citations
M157 1987 c. 38.

144 Transferred charges.

(1) The [M158]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

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(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".

(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

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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.".

Marginal Citations

M158 1987 c. 38.

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—

[F154(a) in section 440 of the M159Companies Act 1985, after the words "that Act";**]**

(b) in section 8(1) of the M160Company Directors Disqualification Act 1986, after the words "the Financial Services Act 1986", in the second place where they occur; and

F155(c) . . . . . .

Textual Amendments

F154 S. 145(a) repealed (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 212, 215, **Sch. 24**

F155 S. 145(c) repealed (1. 10. 1991) by S.I. 1990/1504 (N.I. 10), art. 113, **Sch. 6**; S.R. 1991/438, **art. 5(d)**.

Marginal Citations

M159 1985 c. 6.

M160 1986 c. 46.

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 M161Naval Discipline Act 1957, the Courts-Martial Appeal Court and Standing Civilian Courts.

Marginal Citations

M161 1957 c. 53.

Status: *Point in time view as at 01/09/1996. This version of this Act contains provisions that are not valid for this point in time.*
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Amendments of Police and Criminal Evidence Act 1984 etc.

147 Searches of detained persons.

In section 54 of the [M162]Police and Criminal Evidence Act l984 (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.".

Marginal Citations
M162 1984 c. 60.

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

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"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 . . . . . [F156]

Textual Amendments

F156 S. 149 repealed by S.I. 1989/1341 (N.I. 12), art. 90(2), **Sch. 7**

Provisions relating to Customs and Excise

PROSPECTIVE

150 Bail for persons in customs detention.

At the end of section 114(2)(b) of the [M163]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.".

Marginal Citations

M163 1984 c. 60.

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 [M164]Misuse of Drugs Act 1971 (possession of controlled drugs); and

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(b) a drug trafficking offence.

(5) In this section and section 152 below "drug trafficking offence" means a drug trafficking offence as defined by **[**F157section 1(3) of the Drug Trafficking Act 1994 other than an offence under section 50**]** of that Act (assisting another to retain the benefit of drug trafficking).

Textual Amendments

F157 Words in s. 151(5) substituted (3.2.1995) by 1994 c. 37, ss. 65, 69(2), **Sch. 1 para.22**

Commencement Information

I2 S. 151 partly in force; s. 151 not in force at Royal Assent, see s. 171; s. 151(5) in force at 3.4.1989 by S.I. 1989/264, art. 2, **Sch. Pt. II**

Marginal Citations

M164 1971 c. 38.

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,".

[F158(4) In the application of this section to Northern Ireland, "drug trafficking offence" means a drug trafficking offence as defined by 88 Article 2(2) of the Proceeds of Crime (Northern Ireland) Order 1996 (other than offences under Article 46 of that Order (assisting another to retain the benefit of criminal conduct)).**]**

Textual Amendments

F158 S. 152(4) substituted (25.8.1996) by S.I. 1996/1299 (N.I.9), art. 57(1), **Sch. 3 para.7**

Status: *Point in time view as at 01/09/1996. This version of this Act contains provisions that are not valid for this point in time.*
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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 [M165]Bail Act 1976—

"9A (1) If—

(a) the defendant is charged with an offence to which this paragraph applies; and

(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.".

Marginal Citations
M165 1976 c. 63.

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).

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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 [M166]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—

(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 [M167]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.".

Marginal Citations

M166 1980 c. 43.

Status: *Point in time view as at 01/09/1996. This version of this Act contains provisions that are not valid for this point in time.*
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M167 1976 c. 63.

Appeals

156 Appeals to Crown Court.

In paragraph (a) of section 48(2) of the [M168]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".

Marginal Citations
M168 1981 c. 54.

157 Groundless appeals and applications for leave to appeal.

The following section shall be substituted for section 20 of the [M169]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.".

Marginal Citations
M169 1968 c. 19.

Reports of criminal proceedings

158 Anonymity in rape etc. cases.

(1) The [M170]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—

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(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".

Marginal Citations

M170 1976 c. 82.

Status: *Point in time view as at 01/09/1996. This version of this Act contains provisions that are not valid for this point in time.*
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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 [M171]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 [M172]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

(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 [M173]Judicature (Northern Ireland) Act 1978.

Modifications etc. (not altering text)

C22 S. 159(4) excluded by S.R.&O. 1968/218, rule 22B(9) (as inserted by S.R. 1989/295, **rule 4**)

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Marginal Citations

M171 1981 c. 49.
M172 1981 c. 54.
M173 1978 c. 23.

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 **[**F159or pseudo-photograph**]** of a child F160. . . 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 **[**F161or pseudo-photograph**]** in his possession; or

(b) that he had not himself seen the photograph **[**F161or pseudo-photograph**]** and did not know, nor had any cause to suspect, it to be indecent; or

(c) that the photograph **[**F161or pseudo-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 **[**F162imprisonment for a term not exceeding six months or**]** a fine not exceeding level 5 on the standard scale **[**F162, or both**]**.

(4) Sections 1(3), 2(3), 3 and 7 of the M174Protection of Children Act 1978 shall have effect as if any reference in them to that Act included a reference to this section.

F163(5) . . . . . .

Textual Amendments

F159 Words in s. 160(1) inserted (3.2.1995) by 1994 c. 33, **s. 84(4)(a)**; S.I. 1995/127, art. 2(1), **Sch. 1**
F160 Words in s. 160(1) omitted (3.2.1995) by virtue of 1994 c. 33, **s. 84(4)(a)**; S.I. 1995/127, art. 2(1), **Sch. 1** (and expressed to be repealed (4.9.1995) by 1994 c. 33, s. 168(3), **Sch.11**; S.I. 1995/1957, **art.6**)
F161 Words in s. 160(2)(a)-(c) inserted (3.2.1995) by 1994 c. 33, **s. 84(4)(b)**; S.I. 1995/127, art. 2(1), **Sch. 1**
F162 Words in s. 160(3) inserted (3.2.1995) by 1994 c. 33, **s. 86(1)**; S.I. 1995/127, art. 2(1), **Sch. 1**
F163 S. 160(5) repealed (4.9.1995) by 1994 c. 33, s. 168(3), **Sch.11**; S.I. 1995/1957, **art.6**

Marginal Citations

M174 1978 c. 37.

VALID FROM 01/05/2004

[F164160A Marriage and other relationships

(1) This section applies where, in proceedings for an offence under section 160 relating to an indecent photograph of a child, the defendant proves that the photograph was

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of the child aged 16 or over, and that at the time of the offence charged the child and he—

(a) were married, or

(b) lived together as partners in an enduring family relationship.

(2) This section also applies where, in proceedings for an offence under section 160 relating to an indecent photograph of a child, the defendant proves that the photograph was of the child aged 16 or over, and that at the time when he obtained it the child and he—

(a) were married, or

(b) lived together as partners in an enduring family relationship.

(3) This section applies whether the photograph showed the child alone or with the defendant, but not if it showed any other person.

(4) If sufficient evidence is adduced to raise an issue as to whether the child consented to the photograph being in the defendant's possession, or as to whether the defendant reasonably believed that the child so consented, the defendant is not guilty of the offence unless it is proved that the child did not so consent and that the defendant did not reasonably believe that the child so consented.**]**

Textual Amendments

F164 S. 160A inserted (1.5.2004) by Sexual Offences Act 2003 (c. 42), **ss. 45(4)**, 141; S.I. 2004/874, **art. 2**

161 Possession of indecent photographs of children: Scotland.

(1) The following section shall be inserted after section 52 of the [M175]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.".

Status: *Point in time view as at 01/09/1996. This version of this Act contains provisions that are not valid for this point in time.*
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(2) Section 52A of that Act shall not have effect in relation to anything done before it comes into force.

Marginal Citations
M175 1982 c. 45.

Video recordings

162 Enforcement of Video Recordings Act 1984.

The following section shall be inserted after section 16 of the [M176]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.".

Marginal Citations
M176 1984 c. 39.

Status: *Point in time view as at 01/09/1996. This version of this Act contains provisions that are not valid for this point in time.*
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Restitution orders

163 Application of restitution orders to the Crown.

The following subsection shall be added at the end of section 28 of the [M177]Theft Act 1968 —

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

Marginal Citations
M177 1968 c. 60.

Magistrates' courts areas and officers

164 Alteration of names of petty sessions areas.

(1) The Justices of the [M178]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.

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(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 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.".

F165(3) . . . . . .

Textual Amendments

F165 S. 164(3) repealed (1.4.1995) by 1994 c. 29, s. 93, **Sch. 9 Pt.II**; S.I. 1995/685, **arts. 4(n)**, 8(r)

Marginal Citations

M178 1979 c. 55.

F166165 . . . . . .

Textual Amendments

F166 S. 165 repealed (1.4.1995) by 1994 c. 29, s. 93, **Sch. 9 Pt.II**; S.I. 1995/685, **arts. 4(n)**, 8(r)

Costs and expenses

166 Costs and expenses of prosecution witnesses and other persons.

(1) Section 14 of the M179Prosecution 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—

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"(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)—

"(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 core 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 [M180]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."

Marginal Citations

M179 1985 c. 23.

M180 1987 c. 38.

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 [M181]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.

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Marginal Citations
M181 1952 c. 52.

PART XII

GENERAL AND SUPPLEMENTARY

168 Northern Ireland.

(1) An Order in Council under paragraph 1(1)(b) of Schedule 1 to the [M182]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(3) and (4);
section 47;
section 144;
section 160.

Marginal Citations
M182 1974 c. 28.

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.

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Commencement Information

I3 S. 170 partly in force; s. 170 in force at Royal Assent so far as relating to specified provisions of Sch. 15 and specified repeals in Sch. 16 see s. 171(5); s. 170 in force so far as relating to further specified provisions of Sch. 15 and further specified repeals in Sch. 16 at 29.9.1988 see s. 171(6); s. 170 in force so far as relating to further specified provisions of Sch. 15 and further specified repeals in Sch. 16: at 1.10.1988 by S.I. 1988/1408; at 12.10.1988 by S.I. 1988/1676; at 1.11.1988 by S.I. 1988/1817; at 5.1.1989 by S.I. 1988/2073; at 23.1.1989 by S.I. 1989/50; at 1.2.1989 by S.I. 1989/1; at 3.4.1989 by S.I. 1989/264; at 31.7.1989 by S.I. 1989/1085; at 1.1.2000 by S.I. 1999/3425.

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 [F167]. . ..

[[F168][F168](3) . . ..]

[[F168](4) . . ..]

(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 [M183]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;

section 129;

section 132, so far as it relates to the [M184]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 [M185]Land Registration Act 1925;

the extension of references in the [M186]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 [M187]Child Abduction Act 1984;

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the [M188]Visiting Forces Act 1952;
section 67(6) of the [M189]Criminal Justice Act 1967;
section 29 of the [M190]Children and Young Persons Act 1969;
section 6(1) of the [M191]Juries Act 1974;
sections 171 and 368 of and Schedule 1 to the [M192]Criminal Procedure (Scotland) Act 1975;
the [M193]Child Care Act 1980;
sections 37 and 133 of the [M194]Magistrates' Courts Act 1980;
section 52(7) of the [M195]Civic Government (Scotland) Act 1982;
the [M196]Criminal Justice Act 1982;
the [M197]Police and Criminal Evidence Act 1984;
the [M198]Prosecution of Offences Act 1985;
the [M199]Criminal Justice Act 1987;
the [M200]Criminal Justice (Scotland) Act 1987;

subsection (2) of that section, so far as relating to the following—
section 49 of the [M201]Criminal Justice Act 1967;
section 29 of the [M202]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;
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 [M203]Sexual Offences (Amendment) Act [M204]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 [M205]Prevention of Corruption Act 1916;
Schedule 3 to the [M206]Criminal Justice Act 1967;

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section 28(3) of the [M207]Criminal Justice Act 1972;
the [M208]Sexual Offences (Amendment) Act 1976;
the [M209]Protection of Children Act 1978;
the [M210]Cable and Broadcasting Act 1984;
section 24(2)(e) of the [M211]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 [M212]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.

Subordinate Legislation Made

P1 Power of appointment conferred by section 171(1) partly exercised: S.I. 1988/1408, 1676, 1817, 2073; 1989/1, 50, 264, 1085, 1595; 1990/220, 1145, 2084; 1999/3425; 1.9.2004 appointed for specified provisions by {S.I. 2004/2167}, art. 2 (subject to art. 3)

Textual Amendments

F167 Words in s. 171(2) repealed (E.W.S.)(8.11.1995) by 1995 c. 53, **s. 12(7)**,Sch.

F168 S. 171(3)(4) repealed (E.W.S.)(8.11.1995) by 1995 c. 53, **s. 12(7)**,Sch.

Marginal Citations

M183 1986 c. 32.
M184 1982 c. 32.
M185 1925 c. 21.
M186 1933 c. 12.
M187 1984 c. 37.
M188 1952 c. 67.
M189 1967 c. 80.
M190 1969 c. 54.
M191 1974 c. 23.
M192 1975 c. 21.
M193 1980 c. 5.
M194 1980 c. 43.
M195 1982 c. 45.
M196 1982 c. 48.
M197 1984 c. 60.
M198 1985 c. 23.
M199 1987 c. 38.
M200 1987 c. 41.
M201 1967 c. 86.
M202 1969 c. 54.
M203 1976 c. 82.
M204 1978 c. 37.
M205 1916 c. 64.
M206 1967 c. 80.
M207 1972 c. 71.

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M208 1976 c. 82.
M209 1978 c. 37.
M210 1984 c. 46.
M211 1984 c. 60.
M212 1984 c. 39.

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;**[**[F169]sections 93A to 93D; sections 93F and 93G**]**
section 94;
section 102, so far as relating to other provisions of this Act extending to Scotland;
[[F170]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;

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section 137;
[[F171]sections 139 to 139B**]**;
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;**[**[F172]section 93E**]**
section 103(2);
[[F170]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 [M213]Army Act 1955;
(b) the [M214]Air Force Act 1955;
(c) the [M215]Naval Discipline Act 1957;
(d) the [M216]Courts-Martial (Appeals) Act 1968; and
(e) the [M217]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 [M218]Sexual Offences (Amendment) Act 1976 as adapted by section 5(1)(b) of that Act.

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(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 [M219]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.

Textual Amendments

F169 Words in s. 172(2) inserted (15.2.1994 so far as it relates to E.W.S. and otherwise*prosp.*) by 1993 c. 36, ss. 78(3), 79(13), **Sch. 5**, Pt. I para. 14(2)(a); S.I. 1994/71, art. 2, **Sch.**

F170 Words in s. 172(2)(4)repealed (E.W.S.)(8.11.1995) by 1995 c. 53, s. 12(7), **Sch.**

F171 Words in s. 172(3) substituted (1.9.1996) by 1996 c. 26, **s. 4(2)(4)**; S.I. 1996/2071, **art.2**

F172 Words in s. 172(4) inserted (15.2.1994 so far as it relates to Scotland and otherwise*prosp.*) by 1993 c. 36, ss. 78(3), 79(13), **Sch. 5 Pt. I para. 14(2)(b)**; S.I. 1994/71, art. 2, **Sch.**

Marginal Citations

M213 1955 c. 18.
M214 1955 c. 19.
M215 1957 c. 53.
M216 1968 c. 20.
M217 1976 c. 52.
M218 1976 c. 82.
M219 1861 c. 100.

173 Citation.

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

Status: *Point in time view as at 01/09/1996. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Criminal Justice Act 1988 is up to date with all changes known to be in force on or before 21 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

SCHEDULES

SCHEDULE 1

. . . F173

Textual Amendments

F173 Sch. 1, Sch. 15 paras. 95, 96 repealed by Extradition Act 1989 (c. 33, SIF 48), s. 37, **Sch. 2**

SCHEDULE 2

Section 28.

DOCUMENTARY EVIDENCE—SUPPLEMENTARY

1 Where a statement is admitted as evidence in criminal proceedings by virtue of Part II of this Act—

(a) any evidence which, if the person making the statement had been called as a witness, would have been admissible as relevant to his credibility as a witness shall be admissible for that purpose in those proceedings;

(b) evidence may, with the leave of the court, be given of any matter which, if that person had been called as a witness, could have been put to him in cross-examination as relevant to his credibility as a witness but of which evidence could not have been adduced by the cross-examining party; and

(c) evidence tending to prove that that person, whether before or after making the statement, made (whether orally or not) some other statement which is inconsistent with it shall be admissible for the purpose of showing that he has contradicted himself.

2 A statement which is given in evidence by virtue of Part II of this Act shall not be capable of corroborating evidence given by the person making it.

3 In estimating the weight, if any, to be attached to such a statement regard shall be had to all the circumstances from which any inference can reasonably be drawn as to its accuracy or otherwise.

4 Without prejudice to the generality of any enactment conferring power to make them—

(a) Crown Court Rules;

(b) Criminal Appeal Rules; and

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(c) rules under section 144 of the [M220]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 Part II of this Act.

Marginal Citations
M220 1980 c. 43.

5 Expressions used in Part II of this Act and in Part I of the [M221]Civil Evidence Act 1968 are to be construed in Part II of this Act in accordance with section 10 of that Act.

Marginal Citations
M221 1968 c. 64.

6 In Part II of this Act "confession has the meaning assigned to it by section 82 of the [M222]Police and Criminal Evidence Act 1984.

Marginal Citations
M222 1984 c. 60.

SCHEDULE 3

Section 36.

REVIEWS OF SENTENCING—SUPPLEMENTARY

1 Notice of an application for leave to refer a case to the Court of Appeal under section 36 above shall be given within 28 days from the day on which the sentence, or the last of the sentences, in the case was passed.

Modifications etc. (not altering text)
C23 Sch. 3 para. 1 modified (25.8.2000) by 2000 c. 6, ss. 155(6)(b)(8), 168(1), Sch. 10 paras. 11, **19**
Sch. 3 para. 1 modified (E.W) (24.3.2003) by 2002 c. 29, **ss. 15(5)(b)**, 458(1)
Sch. 3 para. 1 modified (N.I.) (24.3.2003) by 2002 c. 29, **ss. 165(5)(b)**, 458(1)

2 If the registrar of criminal appeals is given notice of a reference or application to the Court of Appeal under section 36 above, he shall—

(a) take all necessary steps for obtaining a hearing of the reference or application; and

(b) obtain and lay before the Court in proper form all documents, exhibits and other things which appear necessary for the proper determination of the reference or application.

3 Rules of court may enable a person to whose sentencing such a reference or application relates to obtain from the registrar any documents or things, including

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copies or reproductions of documents, required for the reference or application and may authorise the registrar to make charges for them in accordance with scales and rates fixed from time to time by the Treasury.

4 An application to the Court of Appeal for leave to refer a case to the House of Lords under section 36(5) above shall be made within the period of 14 days beginning with the date on which the Court of Appeal conclude their review of the case; and an application to the House of Lords for leave shall be made within the period of 14 days beginning with the date on which the Court of Appeal conclude their review or refuse leave to refer the case to the House of Lords.

5 The time during which a person whose case has been referred for review under section 36 above is in custody pending its review and pending any reference to the House of Lords under subsection (5) of that section shall be reckoned as part of the term of any sentence to which he is for the time being subject.

6 Except as provided by paragraphs 7 and 8 below, a person whose sentencing is the subject of a reference to the Court of Appeal under section 36 above shall be entitled to be present, if he wishes it, on the hearing of the reference, although he may be in custody.

7 A person in custody shall not be entitled to be present—

(a) on an application by the Attorney General for leave to refer a case; or

(b) on any proceedings preliminary or incidental to a reference,

unless the Court of Appeal give him leave to be present.

8 The power of the Court of Appeal to pass sentence on a person may be exercised although he is not present.

9 A person whose sentencing is the subject of a reference to the House of Lords under section 36(5) above and who is detained pending the hearing of that reference shall not be entitled to be present on the hearing of the reference or of any proceeding preliminary or incidental thereto except where an order of the House authorises him to be present, or where the House or the Court of Appeal, as the case may be, give him leave to be present.

10 The term of any sentence passed by the Court of Appeal or House of Lords under section 36 above shall, unless they otherwise direct, begin to run from the time when it would have begun to run if passed in the proceeding in relation to which the reference was made.

11 Where on a reference to the Court of Appeal under section 36 above or a reference to the House of Lords under subsection (5) of that section the person whose sentencing is the subject of the reference appears by counsel for the purpose of presenting any argument to the Court or the House, he shall be entitled to his costs, that is to say to the payment out of central funds of such funds as are reasonably sufficient to compensate him for expenses properly incurred by him for the purpose of being represented on the reference; and any amount recoverable under this paragraph shall be ascertained,

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as soon as practicable, by the registrar of criminal appeals or, as the case may be, such officer as may be prescribed by order of the House of Lords.

12 In the application of this Schedule to Northern Ireland—

(a) any reference to the Attorney General shall be construed as a reference to the Attorney General for Northern Ireland;

(b) any reference (except in paragraph 11) to the registrar of criminal appeals shall be construed as a reference to the Master (Queen's Bench and Appeals);

(c) the reference in paragraph 11 to central funds shall be construed as a reference to money provided by Parliament;

(d) the reference in paragraph 11 to the registrar of criminal appeals shall be construed as a reference to the Master (Taxing Office).

SCHEDULE 4

Section 71.

CONFISCATION ORDERS

PART I

OFFENCES IN RESPECT OF WHICH MAGISTRATES' COURTS MAY MAKE CONFISCATION ORDERS

Modifications etc. (not altering text)
C24 Sch. 4 Pt. I amended by S.I. 1990/1570, **art. 2**
Sch. 4 Pt. I amended (1.1.1996) by S.I. 1995/3145, **art. 2**
Sch. 4 Pt. I amended (1.8.1996) by S.I. 1996/1716, **arts.2**, 4

[F174 Enactment]	*Description of offence*
LONDON GOVERNMENT ACT 1963 (c. 33)	
Schedule 12—paragraph 10(1) and (2), in relation only to an offence to which sub-paragraph (3A) of paragraph 10 applies.	Offences relating to the use of places in Greater London for public dancing or music or other public entertainment of the like kind.
PRIVATE PLACES OF ENTERTAINMENT (LICENSING) ACT 1967 (c.19)	
Section 4(1)	Offences relating to the use of places for dancing, music or other entertainment of the like kind which is not a public entertainment but is provided for private gain.
Section 4(2), in relation only to an offence referred to in sub-section (3A)(b) of section 4.	

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LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982 (c. 30)	
Schedule 1—paragraph 12(1) and (2), in relation only to an offence to which sub-paragraph (2B) of paragraph 12 applies.	Offences relating to the use of places outside Greater London for public dancing or music or other public entertainment of the like kind (not being in the open air) or for public musical entertainment held wholly or mainly in the open air on private land.
Schedule 3—paragraphs 20 and 21.	Offences relating to sex establishments.
VIDEO RECORDINGS ACT 1984 (c. 39)	
Section 9	Supplying video recording of unclassified work.
Section 10	Possession of video recording of unclassified work for the purposes of supply.
CINEMAS ACT 1985 (c. 13)	
Section 10(1)(a)	Use of unlicensed premises for exhibition which requires a licence.

Textual Amendments

F174 Sch. 4 Pt. I: Table substituted by S.I. 1990/1570, **art. 3**

[[F175]COPYRIGHT, DESIGNS AND PATENTS ACT 1988 (c.48)	
Section 107(1), (2) and (3)	Criminal liability for making or dealing with infringing articles &c.
Section 198(1) and (2)	Criminal liability for making, dealing with or using illicit recordings.

Textual Amendments

F175 Entries in Sch. 4 Pt. I added (1.1.1996) by S.I. 1995/3145, **arts. 3**, 4

[F176SOCIAL SECURITY ADMINISTRATION ACT 1992 (c. 5)	
Section 114(1)	Offences relating to contributions.**]**

Textual Amendments

F176 Entries in Sch. 4 Pt. I added (1.8.1996) by S.I. 1996/1716, **arts.3**, 4

TRADE MARKS ACT 1994 (c.26)	

Status: *Point in time view as at 01/09/1996. This version of this Act contains provisions that are not valid for this point in time.*
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Section 92(1), (2) and (3)	Offences relating to the unaurhorised use of trade marks, &c. in relation to goods.

PART II

ORDERS VARYING LIST OF OFFENCES

1 The Secretary of State may by order made by statutory instrument amend Part I of this Schedule by removing any offence from or adding any offence to the offences listed in it.

2 A statutory instrument containing an order under paragraph 1 above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

SCHEDULE 5

Section 103.

DRUG TRAFFICKING AMENDMENTS

[F177PART I]

Textual Amendments
F177 Sch. 5 Pt. I repealed (3.2.1995) by 1994 c. 37, ss. 67, 69(2), **Sch.3**.

. . . . . .

1 The Drug Trafficking Offences Act 1986 shall be amended as follows.

. . . . . .

2 In section 7 (cases in which restraint orders and charging orders may be made)—

(a) in subsection (2)(a) for the words from “an" to “committed" there shall be substituted the words “whether by the laying of an information or otherwise, a person is to be charged with"; and

(b) in subsection (4), for the words “the proposed proceedings are not instituted" there shall be substituted the words “proceedings in respect of the offence are not instituted (whether by the laying of an information or otherwise)".

. . . . . .

3 (1) The following subsection shall be inserted after subsection (5) of section 8 (restraint orders)—

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"(5A) An application for the discharge or variation of a restraint order may be made by any person affected by it.".

(2) The following subsections shall be added at the end of that section—

"(10) 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.

(11) 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.".

. . . . . .

4 (1) The following paragraphs shall be substituted for subsection (3)(a) and (b) of section 9 (charging orders in respect of land, securities etc.)—

"(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

(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".

(2) The following subsection shall be added at the end of that section—

"(8) An application for the discharge or variation of a charging order may be made by any person affected by it.".

. . . . . .

5 Subsection (1) of section 10 of that Act (charging orders: supplementary provisions) shall cease to have effect.

. . . . . .

6 (1) Section 12 (application of proceeds of realisation and other sums) shall be amended as follows.

(2) In subsection (1), after the word "shall" there shall be inserted the words "first be applied in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under section 17A(2) of this Act and then shall,".

(3) In subsection (3), for the words from "sum", in the second place where it occurs, to "balance" there shall be substituted the words "justices' clerk shall apply the money received for the purposes specified in this section and in the order so specified.

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(4) The justices' clerk shall first pay any expenses incurred by a person acting as an insolvency practitioner and payable under section 17A(2) of this Act but not already paid under subsection (1) above.

(5) If the money was paid to the justices' clerk by a receiver appointed under section 8 or 11 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 18(2) of this Act.

(7) Any balance in the hands of the justices' clerk after he has made all payments required by the foregoing provisions of this section".

. . . . . .

7 In section 15 (bankruptcy of defendant etc.)—

(a) subsection (5)(b) and (c) shall cease to have effect; and

(b) the following paragraph shall be substituted for subsection (7)(d)—

"(d) subsection (2)(b) is omitted.".

. . . . . .

8 (1) Section 16 (sequestration in Scotland of defendant etc.) shall be amended as follows.

(2) At the end of subsection (2) there shall be inserted the words "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) The following subsection shall be substituted for subsection (5)—

"(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.".

. . . . . .

9 In subsection (1) of section 17 (winding up of company holding realisable property) the words from "but" to the end shall cease to have effect.

. . . . . .

10 The following section shall be inserted after that section—

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"**17A 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—

(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 12(1) or (3)(za) of this Act.

(3) In 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 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.".

. . . . . .

11 In subsection (2) of section 18 (receivers: supplementary provisions) for "(3)(a)" there shall be substituted "(3B)".

. . . . . .

12 In section 19 (compensation)—

(a) in paragraph (b)(i) of subsection (1), the words "(and no conviction for any drug trafficking offence is substituted)" shall cease to have effect;

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(b) at the end of that subsection there shall be added the words "if, having regard to all the circumstances, it considers it appropriate to make such an order";

(c) in subsection (2)—

(i) the words "and that, but for that default, the proceedings would not have been instituted or continued,"; and

(ii) in paragraph (b), the word "substantial",

shall cease to have effect; and

(d) the following subsection shall be inserted after that subsection—

"(2A) 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 if the serious default had not occurred.".

. . . . . .

13

. . . . . .

14 (1) The following paragraph shall be substituted for subsection (1)(d) of section 25 (enforcement of Northern Ireland orders)—

"(d) the references to the laying of an information in section 7(2) and (4) of this Act included references to making a complaint under Article 20 of the Magistrates' Courts (Northern Ireland) Order 1981.".

(2) In subsection (3) of that section the words "varying or revoking a previous Order in Council" shall cease to have effect.

. . . . . .

15 The following sections shall be substituted for section 26—

"**26 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 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; and

(ii) such provision as to evidence or proof of any matter for the purposes of this section and section 26A below; and

(iii) such incidental, consequential and transitional provision,

as appears to Her Majesty to be expedient; and

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(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 Act—

"external confiscation order" means an order made by a court in a designated country for the purpose of recovering payments or other rewards received in connection with drug trafficking or their value; 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 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.

26A 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.

(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.".

. . . . . .

16 The following subsections shall be substituted for subsections (12) and (13) of section 38 (general interpretation)—

"(12) Proceedings for an offence are concluded—

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(a) 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;

(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."

. . . . . .

17 In section 40(4) (effect of Act in Scotland), in paragraph (b), for "17" there shall be substituted "17A".

PART II

AMENDMENTS OF CRIMINAL JUSTICE (SCOTLAND) ACT 1987

18 The [M224]Criminal Justice (Scotland) Act 1987 shall be amended as follows.

Marginal Citations
M224 1987 c. 41.

19 In section 1 (confiscation orders) in paragraph (b) of subsection (2) after the words "restriction on importation" there shall be inserted the words "and exportation".

20 In subsection (6)(a) of section 11 (which applies the provisions of that section to restraint orders under the [M225]Drug Trafficking Offences Act 1986 registered in Scotland) after the word "information" there shall be inserted the words "in respect of the charge".

Marginal Citations
M225 1986 c. 22.

21 In subsection (3) of section 16 (application of proceeds of realisation and other sums) for the words from "sum", in the second place where it occurs, to "applied", in the third place where it occurs, there shall be substituted the words "sheriff clerk shall apply the money received—

(a) first, in payment of any expenses to payment of which a person is entitled under section 37(2) of this Act but which were not paid to him under subsection (1) above;

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(b) next, in payment of the administrator's remuneration and expenses;
(c) next,".

22 In section 34(6)(d) (bankruptcy in England and Wales of person holding realisable property) for the words "subsections (2)(b) and (4) are" there shall be substituted the words "subsection (2)(b) is".

23 In subsection (5) of section 38 (order to permit entry to premises) after the word "constable" there shall be inserted the words "or person commissioned as aforesaid".

[F179SCHEDULE 6]

Textual Amendments
F179 Sch. 6 repealed (8.11.1995) by 1995 c. 53, s. 12(1)(7), **Sch.**

[F180SCHEDULE 7]

Textual Amendments
F180 Sch. 7 repealed (8.11.1995) by 1995 c. 53, **s. 12(1)(7)**,Sch.

SCHEDULE 8

Section 123.

CUSTODIAL SENTENCES FOR YOUNG OFFENDERS

PART I

AMENDMENTS

General

1 In any enactment for a reference to a detention centre or to a youth custody centre or to both there shall be substituted a reference to a young offender institution.

2 In any enactment except—
(a) section 21 of the M226Firearms Act 1968;
(b) Schedule 1 to the M227Juries Act 1974;
(c) section 5 of the M228Rehabilitation of Offenders Act 1974; and

Status: *Point in time view as at 01/09/1996. This version of this Act contains provisions that are not valid for this point in time.*
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(d) section 17(3) of the [M229]Criminal Justice Act 1982,

for a reference (however expressed) to a detention centre order or to a sentence of youth custody or to both there shall be substituted a reference to a sentence of detention in a young offender institution.

Marginal Citations

M226 1968 c. 27.
M227 1974 c. 23.
M228 1974 c. 53.
M229 1982 c. 48.

3 (1) In any enactment except—

(a) Part II of Schedule 1 to the [M230]Juries Act 1974;

(b) section 5 of the [M231]Rehabilitation of Offenders Act 1974; and

(c) sections [F181]. . . 17(3) of the [M232]Criminal Justice Act 1982,

for a reference to a sentence of Borstal training there shall be substituted a reference to a sentence of detention in a young offender institution.

(2) In any enactment for a reference to a Borstal institution there shall be substituted a reference to a young offender institution.

Textual Amendments

F181 Words in Sch. 8 para. 3(1)(c) repealed (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), s. 101(2), **Sch. 13**; S.I. 1992/333, art. 2(2), **Sch. 2**.

Marginal Citations

M230 1974 c. 23.
M231 1974 c. 53.
M232 1982 c. 48.

Army Act 1955 (c. 18)

Air Force Act 1955 (c. 19)

Naval Discipline Act 1957 (c. 53)

4 In subsection (6) –

(a) of section 71AA of the Army Act 1955 and the Air Force Act 1955; and

(b) of section 43AA of the Naval Discipline Act 1957,

(each of which is concerned with the making of custodial orders against young Service offenders) the following paragraph shall be substituted for paragraph (a)—

"(a) where the offender is in or removed to England or Wales, any institution in which a person sentenced to detention in a young offender institution could be detained, section 1C of the Criminal Justice Act 1982 having effect in relation to the offender as it has

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effect in relation to an offender sentenced to detention in a young offender institution;"

5 In sub-paragraph (6) of paragraph 10—

(a) of Schedule 5A to the Army Act 1955 and the Air Force Act 1955; and

(b) of Schedule 4A to the Naval Discipline Act 1957,

(each of which is concerned with the making of custodial orders against young civilian offenders) the following paragraph shall be substituted for paragraph (a)—

"(a) where the offender is removed to England or Wales, any institution in which a person sentenced to detention in a young offender institution could be detained, section 1C of the Criminal Justice Act 1982 having effect in relation to the offender as it has effect in relation to an offender sentenced to detention in a young offender institution;"

Firearms Act 1968 (c. 27)

6 In section 21(1) and (2) of the Firearms Act 1968 (possession of firearms by persons previously convicted of crime) after the words "youth custody" there shall be inserted the words "or detention in a young offender institution".

Employment Agencies Act 1973 (c. 35)

7 In section 13(7)(a)(ii) of the [M233] Employment Agencies Act 1973 for the words from "prison" to "institution", in the second place where it occurs, there shall be substituted the words "custodial sentence passed by a criminal court in the United Kingdom, the Channel Islands or the Isle of Man;".

Marginal Citations
M233 1973 c. 35.

Juries Act 1974 (c. 23)

8 In Part I of Schedule 1 to the [M234] Juries Act 1974 (persons ineligible for jury service), in the definition of "penal establishment" in Group B, for the words from "Prison" to the end there shall be substituted the words "establishment regulated by the Prison Act 1952".

Marginal Citations
M234 1974 c. 23.

Rehabilitation of Offenders Act 1974 (c. 53)

9 In section 5 of the [M235] Rehabilitation of Offenders Act 1974 (rehabilitation periods) the words "detention in a young offender institution" shall be inserted—

(a) in subsection (1)(b), after the words "youth custody"; and

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(b) in subsection (2), in Table A, after the word "imprisonment", in both places where it occurs.

Marginal Citations
M235 1974 c. 53.

Criminal Justice Act 1982 (c. 48)

10 The following paragraph shall be inserted after paragraph (b) of section 17(3) of the Criminal Justice Act 1982 (restrictions on making attendance centre orders)—

"(bb) to detention in a young offender institution".

PART II

TRANSITIONAL PROVISIONS

11 (1) Where—

(a) before the date on which section 1A of the [M236] Criminal Justice Act 1982 comes into force an offender has been committed for sentence to the Crown Court under section 37 of the [M237] Magistrates'Courts Act 1980; but

(b) the Crown Court has not dealt with him before that date,

it shall have the same powers of sentencing as if he had been committed on or after that date.

(2) A court to which it falls to determine for the purposes of any enactment how a previous court could or might have dealt with an offender shall if the offender is under 21 years of age make that determination as if Part I of the Criminal Justice Act 1982 had been in force as amended by this Act.

Marginal Citations
M236 1982 c. 48.
M237 1980 c. 43.

12 An offender who was sentenced to youth custody on a date before the commencement of section 1A of the Criminal Justice Act 1982 or who was ordered to be detained in a detention centre before that date shall, if the sentence or order has not expired at the commencement of that section, be treated for all purposes of detention. release and supervision as if he had been sentenced to detention for the like term in a young offender institution.

13 A person who at the commencement of section 1A of the Criminal Justice Act 1982 is detained in a detention centre or youth custody centre by virtue of a custodial order—

(a) under section 71AA of the [M238] Army Act 1955, section 71AA of the [M239] Air Force Act 1955 or section 43AA of the Naval Discipline Act 1957; or

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(b) under paragraph 10 of Schedule 5A to the [M240] Army Act 1955, Schedule 5A to the Air Force Act 1955 or Schedule 4A to the Naval Discipline Act 1957,

shall be detained in such young offender institution as the Secretary of State may direct, and any enactment applying to persons detained in young offender institutions shall apply to a person so detained under this paragraph.

Marginal Citations
M238 1955 c. 18.
M239 1955 c. 19.
M240 1957 c. 53.

14 Rules under section 47 of the [M241] Prison Act 1952 may provide that any awards for an offence against discipline made before the commencement of section 1A of the [M242] Criminal Justice Act 1982 shall continue to have effect, subject to such modifications as the Secretary of State may consider appropriate in relation to any particular description of award.

Marginal Citations
M241 1952 c. 52.
M242 1982 c. 48.

15 Where on the commencement of section 1A of the Criminal Justice Act 1982 a person is subject—

(a) to a licence under section 60 of the [M243] Criminal Justice Act 1967 granted for his release from a youth custody sentence; or

(b) to supervision by virtue of section 15 of the Criminal Justice Act 1982,

he shall be treated thereafter as if the sentence or order by virtue of which he is so subject had been a sentence of detention in a young offender institution.

Marginal Citations
M243 1967 c. 80.

16 Nothing in this Act affects any right of appeal against a sentence of youth custody.

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SCHEDULE 9

Section 124.

DETENTION OF YOUNG OFFENDERS IN SCOTLAND

PART I

AMENDMENTS

1 . . . . . F182

Textual Amendments

F182 Sch. 9 para. 1 repealed by Prisons (Scotland) Act 1989 (c. 45, SIF 39:1), s. 45(2), **Sch. 3**

Army Act 1955 (c. 18)

Air Force Act 1955 (c. 19)

Naval Discipline Act 1957 (c. 53)

2 In subsection (6)—

(a) of section 71AA of the Army Act 1955 and the Air Force Act 1955; and

(b) of section 43AA of the Naval Discipline Act 1957,

(each of which is concerned with the making of custodial orders against young Service offenders) the following paragraph shall be substituted for paragraph (b)—

"(b) where the offender is in or removed to Scotland, a young offenders institution;".

3 In sub-paragraph (6) of paragraph 10—

(a) of Schedule 5A to the Army Act 1955 and the Air Force Act 1955; and

(b) of Schedule 4A to the Naval Discipline Act 1957,

(each of which is concerned with the making of custodial orders against young civilian offenders) the following paragraph shall be substituted for paragraph (b)—

"(b) where the offender is removed to Scotland, a young offenders institution;".

Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55)

4 In paragraph (b) of Part II (Persons Disqualified) of Schedule I to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 in sub-paragraph (i) for the words "or detention" there shall be substituted the words "detention or youth custody".

Criminal Justice (Scotland) Act 1980 (c. 62)

5 In section 41(2)(b)(ii) of the Criminal Justice (Scotland) Act 1980 after the words "detention in a" there shall be inserted the words "young offender institution or.".

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PART II

TRANSITIONAL PROVISIONS

6 An Offender who was ordered to be detained in a detention centre on a date before the commencement of section 124(1) of this Act shall, if the order has not expired at the commencement of that section, be treated for all purposes of detention, release and supervision as if he had been sentenced to detention for the like term in a young offenders institution.

7 A person who at the commencement of section 124 of this Act is detained in a detention centre by virtue of a custodial order—

(a) under section 71 AA of the [M244] Army Act 1955, section 71AA of the [M245] Air Force Act 1955 or section 43AA of the Naval Discipline Act 1957; or

(b) under paragraph 10 of Schedule 5A to the Army Act 1955, Schedule 5A to the Air Force Act 1955 or Schedule 4A to the [M246] Naval Discipline Act 1957,

shall be detained in such young offenders institution as the Secretary of State may direct, and any enactment applying to persons detained in young offenders institutions shall apply to a person so detained under this paragraph.

Marginal Citations
M244 1955 c. 18.
M245 1955 c. 19.
M246 1957 c. 53

8 Section 5 of the [M247] Rehabilitation of Offenders Act 1974 (rehabilitation periods) shall continue to apply as regards any person who, before the commencement of section 124(1) of this Act, had served a sentence of detention in a detention centre as if the said section 124(1) had not been commenced.

Marginal Citations
M247 1974 c. 53.

SCHEDULE 10

Section 128.

SUPERVISION

PART I

SECTIONS SUBSTITUTED FOR SECTION 12 OF [M248] CHILDREN AND YOUNG PERSONS ACT 1969

Marginal Citations
M248 1969 c. 54.

Status: *Point in time view as at 01/09/1996. This version of this Act contains provisions that are not valid for this point in time.*
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Power to include requirements in supervision orders.

12 (1) A supervision order may require the supervised person to reside with an individual named in the order who agrees to the requirement, but a requirement imposed by a supervision order in pursuance of this subsection shall be subject to any such requirement of the order as is authorised by the following provisions of this section or by section 12A, 12B or 12C below.

(2) Subject to section 19(12) of this Act, a supervision order may require the supervised person to comply with any directions given from time to time by the supervisor and requiring him to do all or any of the following things—

(a) to live at a place or places specified in the directions for a period or periods so specified;

(b) to present himself to a person or persons specified in the directions at a place or places and on a day or days so specified;

(c) to participate in activities specified in the directions on a day or days so specified;

but it shall be for the supervisor to decide whether and to what extent he exercises any power to give directions conferred on him by virtue of this subsection and to decide the form of any directions; and a requirement imposed by a supervision order in pursuance of this subsection shall be subject to any such requirement of the order as is authorised by section 12B(1) of this Act.

(3) The total number of days in respect of which a supervised person may be required to comply with directions given by virtue of paragraph (a), (b) or (c) of subsection (2) above in pursuance of a supervision order shall not exceed 90 or such lesser number, if any, as the order may specify for the purposes of this subsection; and for the purpose of calculating the total number of days in respect of which such directions may be given the supervisor shall be entitled to disregard any day in respect of which directions were previously given in pursuance of the order and on which the directions were not complied with.

Young offenders.

12A (1) Subject to subsection (2) of this section, this subsection applies to—

(a) any supervision order made under section 7(7) of this Act in respect of a child or young person found guilty as there mentioned; and

(b) any supervision order made in respect of a person under section 21(2) of this Act by a court on discharging a care order made in respect of him under the said section 7(7).

(2) Subsection (1) of this section does not apply to any supervision order which by virtue of section 12(2) above requires the supervised person to comply with directions given by the supervisor.

(3) Subject to the following provisions of this section and to section 19(13) of this Act, a supervision order to which subsection (1) of this section applies may require a supervised person—

(a) to do anything that by virtue of section 12(2) of this Act a supervisor has power, or would but for section 19(12) of this Act have power, to direct a supervised person to do;

(b) to remain for specified periods between 6 p.m. and 6 a.m.—

(i) at a place specified in the order; or

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(ii) at one of several places so specified;

(c) to refrain from participating in activities specified in the order—

(i) on a specified day or days during the period for which the supervision order is in force; or

(ii) during the whole of that period or a specified portion of it.

(4) Any power to include a requirement in a supervision order which is exercisable in relation to a person by virtue of this section or the following provisions of this Act may be exercised in relation to him whether or not any other such power is exercised.

(5) The total number of days in respect of which a supervised person may be subject to requirements imposed by virtue of subsection (3)(a) or (b) above shall not exceed 90.

(6) The court may not include requirements under subsection (3) above in a supervision order unless—

(a) it has first consulted the supervisor as to-

(i) the offender's circumstances; and

(ii) the feasibility of securing compliance with the requirements,

and is satisfied, having regard to the supervisor's report, that it is feasible to secure compliance with them;

(b) having regard to the circumstances of the case, it considers the requirements necessary for securing the good conduct of the supervised person or for preventing a repetition by him of the same offence or the commission of other offences; and

(c) the supervised person or, if he is a child, his parent or guardian, consents to their inclusion.

(7) The court shall not include in such an order by virtue of subsection (3) above—

(a) any requirement that would involve the co-operation of a person other than the supervisor and the supervised person unless that other person consents to its inclusion; or

(b) any requirement requiring the supervised person to reside with a specified individual; or

(c) any such requirement as is mentioned in section 12B(1) of this Act.

(8) The place, or one of the places, specified in a requirement under subsection (3)(b) above ("a night restriction") shall be the place where the supervised person lives.

(9) A night restriction shall not require the supervised person to remain at a place for longer than 10 hours on any one night.

(10) A night restriction shall not be imposed in respect of any day which falls outside the period of three months beginning with the date when the supervision order is made.

(11) A night restriction shall not be imposed in respect of more than 30 days in all.

(12) A supervised person who is required by a night restriction to remain at a place may leave it if he is accompanied—

(a) by his parent or guardian;

(b) by his supervisor; or

(c) by some other person specified in the supervision order.

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(13) A night restriction imposed in respect of a period of time beginning in the evening and ending in the morning shall be treated as imposed only in respect of the day upon which the period begins.

Requirements as to mental treatment.

12B (1) Where a court which proposes to make a supervision order is satisfied, on the evidence of a medical practitioner approved for the purposes of section 12 of the [M249] Mental Health Act 1983, that the mental condition of a supervised person is such as requires and may be susceptible to treatment but is not such as to warrant his detention in pursuance of a hospital order under Part III of that Act, the court may include in the supervision order a requirement that the supervised person shall, for a period specified in the order, submit to treatment of one of the following descriptions so specified, that is to say—

(a) treatment by or under the direction of a fully registered medical practitioner specified in the order;

(b) treatment as a non-resident patient at a place specified in the order; or

(c) treatment as a resident patient in a hospital or mental nursing home within the meaning of the said Act of 1983, but not a special hospital within the meaning of that Act.

(2) A requirement shall not be included in a supervision order in pursuance of subsection (1) above—

(a) in any case, unless the court is satisfied that arrangements have been or can be made for the treatment in question and, in the case of treatment as a resident patient, for the reception of the patient;

(b) in the case of an order made or to be made in respect of a person who has attained the age of 14, unless he consents to its inclusion;

and a requirement so included shall not in any case continue in force after the supervised person becomes 18.

Marginal Citations
M249 1983 c. 20.

Requirements as to education.

12C (1) Subject to subsection (3) below, a supervision order to which section 12A(1) of this Act applies may require a supervised person, if he is of compulsory school age, to comply, for as long as he is of that age and the order remains in force, with such arrangements for his education as may from time to time be made by his parent, being arrangements for the time being approved by the local education authority.

(2) The court shall not include such a requirement in a supervision order unless it has consulted the local education authority with regard to its proposal to include the requirement and is satisfied that in the view of the local education authority arrangements exist for the child or young person to whom the supervision order will relate to receive efficient full-time education suitable to his age, ability and aptitude and to any special educational need he may have.

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(3) Expressions used in subsection (1) above and in the [M250] Education Act 1944 have the same meaning there as in that Act.

(4) The court may not include a requirement under subsection (1) above unless it has first consulted the supervisor as to the offender's circumstances and, having regard to the circumstances of the case, it considers the requirement necessary for securing the good conduct of the supervised person or for preventing a repetition by him of the same offence or the commission of other offences.

Marginal Citations
M250 1944 c. 31.

Duty of court to state in certain cases that requirement in place of custodial sentence.

12D (1) Where—

(a) in pursuance of section 12A(3)(a) of this Act a court includes a requirement in a supervision order directing the supervised person to participate in specified activities; and

(b) it would have imposed a custodial sentence if it had not made a supervision order including such a requirement,

it shall state in open court—

(i) that it is making the order instead of a custodial sentence;

(ii) that it is satisfied that—

(a) the offender has a history of failure to respond to non-custodial penalties and is unable or unwilling to respond to any non-custodial penalty other than a supervision order including such a requirement; or

(b) only a supervision order including such a requirement or a custodial sentence would be adequate to protect the public from serious harm from him; or

(c) the offence for which he has been convicted or found guilty was so serious that a non-custodial sentence for it other than a supervision order including such a requirement could not be justified; and

(iii) why it is so satisfied.

(2) Where the Crown Court makes such a statement, it shall certify in the supervision order that it has made such a statement.

(3) Where a magistrates' court makes such a statement, it shall certify in the supervision order that it has made such a statement and shall cause the statement to be entered in the register.

PART II

AMENDMENTS CONSEQUENTIAL ON SUBSTITUTION OF SECTIONS SET OUT IN PART 1 FOR SECTION 12

The amendments of the [M251]Children and Young Persons Act 1969 mentioned in section 128(2) above are—

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(a) the substitution of references to section 12A(3) for the references to section 12(3C) in [F183]. . . section 18(4) and section 19(1)(b) and (13);

(b) the substitution of references to section 12B(1) for the references to section 12(4) in [F183]. . . section 16(6)(c) and (7); and

(c) the insertion of ", 12A, 12B or 12C" after "section 12" in [F183]. . . section 16(5)(b) and (c) and (6)(a).

Textual Amendments

F183 Words in Sch. 10 Pt. II repealed (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), s. 101(2), **Sch.13**; S.I. 1992/333, art. 2(2), **Sch. 2**.

Marginal Citations

M251 1969 c. 54.

[F184]PART III

Textual Amendments

F184 Sch. 10 Pt. III repealed (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), s. 101(2), **Sch. 13**; S.I. 1992/333, art. 2(2), **Sch.2**.

. . . . . .

[F185]1

Textual Amendments

F185 Sch. 10 Pt. III repealed (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), s. 101(2), **Sch. 13**; S.I. 1992/333, art. 2(2), **Sch. 2**.

. . . . . .

[F186]2

Textual Amendments

F186 Sch. 10 Pt. III repealed (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), s. 101(2), **Sch. 13**; S.I. 1992/333, art. 2(2), **Sch. 2**.

. . . . . .

[F187]3

Status: *Point in time view as at 01/09/1996. This version of this Act contains provisions that are not valid for this point in time.*
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Textual Amendments

F187 Sch. 10 Pt. III repealed (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), s. 101(2), **Sch. 13**; S.I. 1992/333, art. 2(2), **Sch. 2**.

PART IV

SECTION INSERTED AFTER SECTION 16

Application of sections 17 to 19 of Criminal Justice Act 1982.

"16A(1) The provisions of section 17 of the Criminal Justice Act 1982 (attendance centre orders) shall apply for the purposes of section 15(2A)(b) and (4)(a) of this Act but as if—

(a) in subsection (1), for the words from "has power" to "probation order" there were substituted the words "considers it appropriate to make an attendance centre order in respect of any person in pursuance of 1969 c. 54. section 15(2A) or (4) of the Children and Young Persons Act 1969";

(b) for references to an offender there were substituted references to a supervised person; and

(c) subsection (13) were omitted.

(2) Sections 18 and 19 of the Criminal Justice Act 1982 (discharge and variation of attendance centre order and breach of attendance centre orders or attendance centre rules) shall also apply for the purposes of each of those paragraphs but as if—

(a) for the references to an offender there were substituted references to the person in respect of whom the attendance centre order has been made; and

(b) there were omitted—

(i) from subsections (3) and (5) of section 19, the words " , for the offence in respect of which the order was made," and "for that offence" ; and

(ii) from subsection (6), the words "for an offence"."

[F188]SCHEDULE 11

. . . . . .

Textual Amendments

F188 Sch. 11 repealed (5.2.1994) by 1993 c. 47, ss. 32, 33(3), **Sch.4** (Sch. 11 para. 8 expressed to be repealed (11.9.1998) by 1998 c. 18, ss. 54(3), 55(2), **Sch.5**).

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SCHEDULE 12

Section 133.

ASSESSORS OF COMPENSATION FOR MISCARRIAGES OF JUSTICE

1 A person may only be appointed to be an assessor for the purposes of section 133 above if he is—

[[F189](a) a person who has a 7 year general qualification, within the meaning of section 71 of the Courts and Legal Services Act 1990;

(b) an advocate or solicitor in Scotland;

(c) a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least 7 years' standing;**]**

(d) a person who holds or has held judicial office in any part of the United Kingdom; or

(e) a member (whether the chairman or not) of the Criminal Injuries Compensation Board.

Textual Amendments

F189 Sch. 12 para. 1(a)–(c) substituted by Courts and Legal Services Act 1990 (c. 41, SIF 37), s. 71(2), **Sch. 10**, para. 72(1)

2 A person shall hold and vacate office as an assessor in accordance with the terms of his appointment.

3 A person shall vacate office as an assessor—

(a) if he ceases to be qualified for appointment as an assessor; or

(b) on attaining the age of 72;

unless the Secretary of State considers that it is in the interests of the efficient operation of section 133 above that he should continue to hold office.

4 A person may at any time resign his office as an assessor by giving the Secretary of State notice in writing to that effect.

5 Subject to paragraph 6 below, the Secretary of State may at any time remove a person from office as an assessor if satisfied that—

(a) he has been convicted of a criminal offence;

(b) he has become bankrupt or has had his estate sequestrated or has made an arrangement with, or granted a trust deed for, his creditors;

(c) he is incapacitated by physical or mental illness; or

(d) he is otherwise unable or unfit to perform his duties.

6 The power conferred by paragraph 5 above shall only be exercisable—

[[F190](a) in the case of a person who qualifies for appointment under paragraph 1(a) or (c), or paragraph 1(d) by virtue of holding or having held judicial office in England and Wales or Northern Ireland, with the consent of the Lord Chancellor; and

(b) in the case of a person who qualifies for appointment under paragraph 1(b), or paragraph 1(d) by virtue of holding or having held judicial office in Scotland, with the consent of the Lord President of the Court of Session.**]**

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Changes to legislation: *Criminal Justice Act 1988 is up to date with all changes known to be in force on or before 21 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F190 Sch. 12 para. 6(a)(b) substituted by Courts and Legal Services Act 1990 (c. 41, SIF 37), s. 71(2), **Sch. 10 para. 72(2)**

7 An assessor shall be paid such remuneration and allowances as the Secretary of State may, with the approval of the Treasury, determine.

SCHEDULE 13

Section 146.

EVIDENCE BEFORE COURTS-MARTIAL ETC.

Interpretation

1 In this Schedule—

"procedural instruments" means—

(a) Rules of Procedure under section 103 of the [M254]Army Act 1955 or section 103 of the [M255]Air Force Act 1955;

(b) General Orders under section 58 of the [M256]Naval Discipline Act 1957;

(c) rules under section 49 of the [M257]Courts-Martial (Appeals) Act 1968; and

(d) orders under paragraph 12 of Schedule 3 to the [M258]Armed Forces Act 1976; and

"Service courts" means—

(a) courts-martial constituted under the Army Act 1955 or the Air Force Act 1955;

(b) courts-martial constituted under the Naval Discipline Act 1957 and disciplinary courts constituted under section 50 of that Act;

(c) the Courts-Martial Appeal Court; and

(d) Standing Civilian Courts.

Marginal Citations

M254 1955 c. 18.
M255 1955 c. 19.
M256 1957 c. 53.
M257 1968 c. 20.
M258 1976 c. 52.

First-hand hearsay

2 Sections 23 and 24 above shall have effect in relation to proceedings in the United Kingdom or elsewhere before Service courts with the substitution of the following sub-paragraph for section 23(2)(b)(i)—

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"(i) the person who made the statement is not in the country where the court is sitting; and".

Modifications etc. (not altering text)
C25 Sch. 13 para. 2 applied (2.10.2000) by S.I. 2000/2372, **Rule 27(1)(e)**
Sch. 13 para. 2 applied by S.I. 2000/2370, **Rule 27(1)(f)**

Documentary evidence

3 Section 25 above shall have effect in relation to proceedings in the United Kingdom or elsewhere before Service courts as if such proceedings were mentioned in subsection (1) of that section.

Modifications etc. (not altering text)
C26 Sch. 13 para. 3 applied (2.10.2000) by S.I. 2000/2372, **Rule 27(1)(e)**
Sch. 13 para. 3 applied (2.10.2000) by S.I. 2000/2370, **Rule 27(1)(f)**

4 In section 26 above—

(a) the reference to criminal proceedings in paragraph (a) includes summary proceedings under section 77 of the Army Act 1955, section 77 of the Air Force Act 1955 or section 49 of the Naval Discipline Act 1957; and

(b) in paragraph (b) "criminal investigation" includes any investigation which may lead—

(i) to proceedings before a court-martial or Standing Civilian Court; or

(ii) to summary proceedings such as are mentioned in sub-paragraph (a) above.

5 Without prejudice to the generality of any enactment conferring power to make them, procedural instruments may make such provision as appears to the authority making any of them to be necessary or expedient for the purposes of Part II of this Act.

Modifications etc. (not altering text)
C27 Sch. 13 para. 5 applied (2.10.2000) by S.I. 2000/2372, **Rule 27(1)(e)**
Sch. 13 para. 5 applied (2.10.2000) by S.I. 2000/2370, **Rule 27(1)(f)**

Letters of request etc.

6 (1) **[**[F191]No application shall be made under section 3 of the Criminal Justice (International Co-operation) Act 1990 in relation to any offence which is or is to be

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the subject of proceedings before a Service court**]**, but the Secretary of State may by order make provision as to letters of request or corresponding documents for such proceedings.

(2) An order under this paragraph may make different provision for different classes of case.

(3) The power to make an order under this paragraph shall be exercisable by statutory instrument and a statutory instrument containing any such order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(4) Without prejudice to the generality of any enactment conferring power to make procedural instruments, procedural instruments may make such provision as appears to the authority making them to be necessary or expedient in relation to letters of request or corresponding documents for proceedings before a Service court.

Textual Amendments

F191 Words in Sch. 13 para. 6(1) substituted (10.6.1991) by Criminal Justice (International Co-operation) Act 1990 (c. 5, SIF 39:1), s. 31(1), **Sch. 4 para. 6(3)**; S.I. 1991/1072, art. 2(a), **Sch**edule Pt. I

Modifications etc. (not altering text)

C28 Sch. 13 para. 6 applied (2.10.2000) by S.I. 2000/2372, **Rule 27(1)(e)**
Sch. 13 para. 6 applied (2.10.2000) by S.I. 2000/2370, **Rule 27(1)(f)**

Form of evidence and glossaries

7 For the purpose of helping members—

(a) of courts-martial constituted under the [M259]Army Act 1955 or the [M260]Air Force Act 1955; or

(b) of courts-martial constituted under the [M261]Naval Discipline Act 1957 or disciplinary courts constituted under section 50 of that Act,

to understand complicated issues of fact or technical terms Rules of Procedure under section 103 of either of the first two of those Acts and General Orders under section 58 of the Naval Discipline Act 1957 may make provision—

(i) 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

(ii) 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.

Marginal Citations

M259 1955 c. 18.
M260 1955 c. 19.
M261 1957 c. 53.

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Use of television links

8 (1) The Secretary of State may by order direct that section 32(1) to (3) above shall have effect in relation—

(a) to proceedings before Service courts; or

(b) to proceedings or proceedings of specified descriptions before Service courts in specified places.

(2) If an order is made under this paragraph—

(a) subsection (1) of section 32 above shall have effect in relation to any court to which the order applies with the substitution of the following paragraph for paragraph (a)—

"(a) the witness is not in the country where the court is sitting; or"; and

(b) subsection (2) of that section shall have effect in relation to any such court with the substitution, for each reference to an offence, of a reference to a civil offence under section 70 of the Army or the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957 in relation to which the corresponding civil offence, within the meaning of those sections, is that offence.

(3) An order under this paragraph may provide that section 32(1), (2) or (3) above shall have effect in relation to any court to which the order applies subject to such modifications as may be specified in the order, in addition to the modifications for which sub-paragraph (2) above provides.

(4) The power to make an order conferred by this paragraph shall be exercisable by statutory instrument and a statutory instrument containing any such order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(5) Without prejudice to the generality of any enactment conferring power to make procedural instruments, procedural instruments may make such provision as appears to the authority making them to be necessary or expedient for the purposes of section 32(1) to (3) above in their application to proceedings such as are mentioned in sub-paragraph (1) above by virtue of an order under that sub-paragraph.

(6) In this paragraph "modifications" includes additions, omissions and amendments.

VALID FROM 01/10/1996

[F192 Video recordings of evidence]

Textual Amendments

F192 Sch. 13 paras. 9, 10 added (1.10.1996) by 1996 c. 46, **s.7**; S.I. 1996/2474, **art.2**.

F193 9 (1) The Secretary of State may by order direct that section 32A above shall have effect in relation—

(a) to proceedings before Service courts; or

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(b) to proceedings, or proceedings of specified descriptions, before Service courts in specified places,

subject to such modifications as may be specified in the order.

(2) The power to make an order conferred by this paragraph shall be exercisable by statutory instrument and a statutory instrument containing any such order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) Without prejudice to the generality of any enactment conferring power to make procedural instruments, procedural instruments may make such provision as appears to the authority making them to be necessary or expedient for the purposes of section 32A above in their application to proceedings such as are mentioned in sub-paragraph (1) above by virtue of an order under that sub-paragraph.

(4) In this paragraph "modifications" includes additions, omissions and amendments.

Textual Amendments

F193 Sch. 13 paras. 9,10 added (1.10.1996) by 1996 c. 46, **s.7**; S.I. 1996/2474, **art.2**.

VALID FROM 01/10/1996

F194 Cross -examination of children

Textual Amendments

F194 Sch. 13 paras. 9, 10 added (1.10.1996) by 1996 c. 46, **s.7**; S.I. 1996/2474, **art.2**.

F195 10 (1) The Secretary of State may by order direct that section 34A above shall have effect in relation—

(a) to proceedings before Service courts; or

(b) to proceedings or proceedings of specified descriptions before Service courts in specified places,

subject to such modifications as may be specified in the order.

(2) The power to make an order conferred by this paragraph shall be exercisable by statutory instrument and a statutory instrument containing any such order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) In this paragraph "modifications" includes additions, omissions and amendments.

Textual Amendments

F195 Sch. 13 paras. 9, 10 added (1.10.1996) by 1996 c. 46, **s.7**; S.I. 1996/2474, **art.2**.

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[F196]SCHEDULE 14

Textual Amendments

F196 Sch. 14 repealed by S.I. 1989/1341 (N.I. 12), art. 90(2), **Sch. 7 Pt. I**

SCHEDULE 15

Section 170.

MINOR AND CONSEQUENTIAL AMENDMENTS

Criminal Law Act 1826 (c. 64)

1 Section 30 of the Criminal Law Act 1826 (which enables a court to order payment of compensation to relatives of a man killed in endeavouring to make an arrest) shall cease to have effect.

Offences against the Person Act 1861 (c. 100)

2 The Offences against the Person Act 1861 shall be amended as follows.

3 There shall be omitted from section 44 (certificates as to cases of assault or battery) the word “such", in the first place where it occurs, and the words “under either of the last two preceding sections,".

4 In section 45 (bars to further proceedings) for the words “in either of the last three preceding sections mentioned" there shall be substituted the words “is mentioned in section 44 of this Act".

Bankruptcy Act 1914 (c. 59)

5 Section 28 of the Bankruptcy Act 1914 (effect of order of discharge) shall have effect as if amounts payable under confiscation orders were debts excepted under subsection (1)(a) of that section.

Land Registration Act 1925 (c. 21)

6 In section 49(1)(g) of the Land Registration Act 1925 (protection of certain interests by notice) for the words “or the Drug Trafficking Offences Act 1986" there shall be substituted the words “, the Drug Trafficking Offences Act 1986 or the Criminal Justice Act 1988".

7 In section 112A(1) of that Act (inspection in connection with criminal proceedings), after the word “Prosecutions," there shall be inserted the words “the Director of the Serious Fraud Office".

This paragraph 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.

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Children and Young Persons Act 1933 (c. 12)

8 In Schedule 1 to the Children and Young Persons Act 1933 (offences against children and young persons with respect to which special provisions of the Act apply) after the third paragraph there shall be inserted the following paragraph—

"Common assault, or battery.".

9 References in that Act to the offences mentioned in Schedule 1 to the Act shall include offences under Part I of the [M262]Child Abduction Act 1984.

Marginal Citations
M262 1984 c. 37.

Administration of Justice (Miscellaneous Provisions) Act 1933 (c. 36)

10 The following paragraph shall be substituted for paragraph (iA) of the proviso to subsection (2) of section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933 (procedures for indictment of offenders)—

"(iA) in a case to which paragraph (aa) above applies, the bill of indictment may include, either in substitution for or in addition to any count charging an offence specified in the notice of transfer, any counts founded on material that accompanied the copy of that notice which, in pursuance of regulations under section 5(9) of the Criminal Justice Act 1987, was given to the person charged, being counts which may lawfully be joined in the same indictment;".

Prison Act 1952 (c. 52)

11 The following paragraph shall be inserted after paragraph (a) of subsection (1) of section 43 of the Prison Act 1952—

"(aa) young offender institutions, that is to say places for the detention of offenders sentenced to detention in a young offender institution;".

12 In subsection (3) of that section, for the word "or" there shall be substituted the words "and a person aged 17 years or over may be detained in such a centre".

Visiting Forces Act 1952 (c. 67)

13 In section 5 of the Visiting Forces Act l952 (custody of offenders against United Kingdom law)—

(a) for each of the references in subsections (2) and (4) to section 43 of the Magistrates' [M263]Courts Act l980 there shall be substituted references to Part IV of the Police and Criminal [M264]Evidence Act l984; and

(b) the following subsection shall be substituted for subsection (3)—

"(3) In the application of subsection (2) of this section to Scotland,—

(a) for the first reference to Part IV of the Police and Criminal Evidence Act 1984 there shall be substituted a reference to section 32(3) of the Criminal Procedure (Scotland) Act 1975; and

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(b) for the words “in accordance with the said Part IV, be released on bail or" there shall be substituted the words “if not liberated under section 294(2) of that Act, be".”.

Marginal Citations
M263 1980 c. 43.
M264 1984 c. 60.

14 (1) In subsection (1) of section 12 of that Act, in the definition of “visiting force", after the words “United Kingdom", in the first place where they occur, there shall be inserted the words “(including United Kingdom territorial waters), or in any place to which subsection (1A) below applies,".

(2) The following subsection shall be inserted after that subsection—

“(1A) 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.”.

15 —In paragraphs 1(a) and 2(a) of the Schedule, after the word “rape," there shall be inserted the word “ , torture".

Backing of Warrants (Republic of Ireland) Act 1965 (c. 45)

16 In paragraph 4 of the Schedule to the Backing of Warrants (Republic of Ireland) Act 1965 (powers as to costs and legal aid) for the words from “section 1" to “central funds)" there shall be substituted the words “sections 16(1) and 17(1) of the [M265]Prosecution of Offences Act 1985".

Marginal Citations
M265 1985 c. 23.

Criminal Justice Act 1967 (c. 80)

17 The Criminal Justice Act 1967 shall be amended as follows.

[[F197]18 In section 62—

(a) in subsection (10) (subsequent release of prisoner whose licence has been revoked) for the words “one year" there shall be substituted the words “the specified period"; and

(b) the following subsection shall be inserted after that subsection—

“(10A) In subsection (10) above “the specified period” has the same meaning as in section 60(1) above.”.**]**

Textual Amendments
F197 Sch. 15 para. 18 repealed (S.) by Prisons (Scotland) Act 1989 (c. 45, SIF 39:1), s. 45(2), **Sch. 3**

19 In subsection (6) of section 67 (computation of sentences) for “(1)" there shall be substituted “(1A)".

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Criminal Appeal Act 1968 (c. 19)

20 The Criminal Appeal Act 1968 shall be amended as follows.

21 Section 9 shall be renumbered so as to become section 9(1); and at the end of the resulting subsection (1) there shall be added the following subsection—

"(2) A person who on conviction on indictment has also been convicted of a summary offence under section 41 of the Criminal Justice Act 1988 (power of Crown Court to deal with summary offence where person committed for either way offence) may appeal to the Court of Appeal against any sentence passed on him for the summary offence (whether on his conviction or in subsequent proceedings) under subsection (7) of that section."

22 F198(1) . . . . . .

(2) In subsection (4) of that section, after the word "section" there shall be inserted the words "and section 11 of this Act".

Textual Amendments

F198 Sch. 15 para. 22(1) repealed (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), s. 101(2), **Sch. 13**; S.I. 1992/333, art. 2(2), **Sch. 2**.

23 (1) In subsection (2) of section 11 (supplementary provisions as to appeal against sentence) after "9" there shall be inserted "(1)".

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

"(2A) Where following conviction on indictment a person has been convicted under section 41 of the Criminal Justice Act 1988 of a summary offence an appeal or application for leave to appeal against any sentence for the offence triable either way shall be treated also as an appeal or application in respect of any sentence for the summary offence and an appeal or application for leave to appeal against any sentence for the summary offence shall be treated also as an appeal or application in respect of the offence triable either way.

(2B) If the appellant or applicant was convicted on indictment of two or more offences triable either way, the references to the offence triable either way in subsection (2A) above are to be construed, in relation to any summary offence of which he was convicted under section 41 of the Criminal Justice Act 1988 following the conviction on indictment, as references to the offence triable either way specified in the notice relating to that summary offence which was given under subsection (2) of that section."

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

"(4) The power of the Court of Appeal under subsection (3) of this section to pass a sentence which the court below had power to pass for an offence shall, notwithstanding that the court below made no order under section 23(1) of the Powers of Criminal Courts Act 1973 or section 47(4) of the Criminal Law Act 1977 in respect of a suspended or partly suspended sentence previously passed on the appellant for another offence, include power to deal with him in respect of that sentence where the court below made no order in respect of it.".

25 The following section shall be inserted after section 18—

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"**18A Appeals in cases of contempt of court.**

(1) A person who wishes to appeal under section 13 of the Administration of Justice Act 1960 from any order or decision of the Crown Court in the exercise of jurisdiction to punish for contempt of court shall give notice of appeal in such manner as may be directed by rules of court.

(2) Notice of appeal shall be given within twenty-eight days from the date of the order or decision appealed against.

(3) The time for giving notice under this section may be extended, either before or after its expiry, by the Court of Appeal.".

26 In subsection (1) of section 19 (bail)—

(a) in paragraph (b), the words "or paragraph (a) above" shall be inserted after "1981"; and

(b) in paragraph (c), the words "either of those paragraphs" shall be substituted for the words "that paragraph".

27 In section 29(2)(b) (circumstances in which there may not be a direction that time spent in custody is not to be reckoned as part of any sentence) for the words "under section 1 of this Act" there shall be substituted the words "under—

(i) section 1 or 11(1A) of this Act; or

(ii) section 81(1B) of the Supreme Court Act 1981".

28 The following section shall be substituted for section 30—

"**30 Restitution of property.**

(1) The operation of an order for the restitution of property to a person made by the Crown Court shall, unless the Court direct to the contrary in any case in which, in their opinion, the title to the property is not in dispute, be suspended 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, and provision may be made by rules of court for the custody of any property in the meantime.

(2) The Court of Appeal may by order annul or vary any order made by the court of trial for the restitution of property to any person, although the conviction is not quashed; and the order, if annulled, shall not take effect and, if varied, shall take effect as so varied.

(3) Where the House of Lords restores a conviction, it may make any order for the restitution of property which the court of trial could have made."

29 The following shall be substituted for the words in section 31 from the beginning of subsection (1) to "powers" in subsection (2)—

"(1) There may be exercised by a single judge in the same manner as by the Court of Appeal and subject to the same provisions—

(a) the powers of the Court of Appeal under this Part of this Act specified in subsection (2) below;

(b) the power to give directions under section 4(4) of the Sexual Offences (Amendment) Act 1976; and

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(c) the powers to make orders for the payment of costs under sections 16 to 18 of the Prosecution of Offences Act 1985 in proceedings under this Part of this Act.

(2) The powers mentioned in subsection (1) (a) above".

30 The following subsection shall be inserted after subsection (2A) of that section—

"(2B) The power of the Court of Appeal to grant leave to appeal under section 159 of the Criminal Justice Act 1988 may be exercised by a single judge in the same manner as it may be exercised by the Court".

31 The following shall be substituted in the first subsection of section 44 for the words from the beginning to "judge", in the first place where it occurs—

"(1) There may be exercised by a single judge—

(a) the powers of the Court of Appeal under this Part of this Act—

(i) to extend the time for making an application for leave to appeal;

(ii) to make an order for or in relation to bail; and

(iii) to give leave for a person to be present at the hearing of any proceedings preliminary or incidental to an appeal; and

(b) their powers to make orders for the payment of costs under sections 16 and 17 of the Prosecution of Offences Act 1985 in proceedings under this Part of this Act.".

32 The following paragraph shall be inserted after paragraph 1 of Schedule 2 (orders for retrial)—

"1A Subject to paragraph 1 above, evidence given orally at the original trial must be given orally at the retrial.".

Theft Act 1968 (c. 60)

33 In subsection (5) of section 28 of the Theft Act 1968 (orders for restitution) for the words from "sections" to the end there shall be substituted the words "section 30 of the [M266]Criminal Appeal Act 1968 (which relates to the effect on such orders of appeals)".

Marginal Citations
M266 1968 c. 19.

34 . . . . . [F199]

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Textual Amendments

F199 Sch. 15 paras. 34, 54, 55, 57, 81, 83–88 repealed by Extradition Act 1989 (c. 33, SIF 48), s. 37, **Sch. 2**

Children and Young Persons Act 1969 (c. 54)

35 In subsection (1) of section 20A of the Children and Young Persons Act 1969 (power of court to add condition as to charge and control of offender in care), at the end of the first paragraph (b) there shall be inserted the words "or

(c) by virtue of section 15(1) of this Act in a case where—

(i) the supervision order for which the care order was substituted was made under section 7(7) of this Act; and

(ii) the offence in respect of which the supervision order was made was punishable with imprisonment in the case of a person over 21,".

36 In section 29 of that Act (recognisance on release of arrested child or young person) the words "he or" shall cease to have effect.

Tribunals and Inquiries Act 1971 (c. 62)

F200 37 . . . . . .

Textual Amendments

F200 Sch. 15 para. 37 repealed (1.10.1992) by Tribunals and Inquiries Act 1992 (c. 53), ss. 18(2), 19(2), **Sch. 4 Pt.I**.

Powers of Criminal Courts Act 1973 (c. 62)

38 The Powers of Criminal Courts Act 1973 shall be amended as follows.

39 In subsection (1) of section 34A (power of Crown Court to order search of persons before it)—

(a) in paragraph (c), the words "other than an order under section 35 of this Act;" shall cease to have effect; and

(b) the following paragraph shall be inserted after that paragraph—

"(cc) the Crown Court makes an order against a person under section 35 of this Act;".

40 The following subsection shall be substituted for section 35(4)—

"(4) In determining whether to make a compensation order against any person, and in determining the amount to be paid by any person under such an order, it shall be the duty of the court—

(a) to have regard to his means so far as they appear or are known to the court; and

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(b) in a case where it is proposed to make against him both a compensation order and a confiscation order under Part VI of the Criminal Justice Act 1988, also to have regard to its duty under section 72(7) of that Act (duty where the court considers that the offender's means are insufficient to satisfy both orders in full to order the payment out of sums recovered under the confiscation order of sums due under the compensation order)".

41 In subsection (4)(b) of section 43 (power to deprive offender of property) for the words from "or" to the end there shall be substituted the words "or, where an order is made under subsection (1)(a) above, that he did not know, and had no reason to suspect, that the property was likely to be used for the purpose mentioned in that paragraph".

F201 42 . . . . . .

Textual Amendments

F201 Sch. 15 para. 42 repealed (5.2.1994) by 1993 c. 47, ss. 32, 33(3), **Sch.4**

Legal Aid Act 1974 (c. 4)

43 In section 28(7A) of the Legal Aid Act 1974 for the words "the person charged" there shall be substituted "a person to whom the notice relates".

Juries Act 1974 (c. 23)

44 In subsection (1) of section 3 of the Juries Act 1974 (electoral register as basis of jury selection) for "sixty five" there shall be substituted "seventy".

45 In section 6(1) of that Act (summoning of jury in exceptional circumstances) for the word "refusals" there shall be substituted the word "excusals".

46 In section 20(4) of that Act (offences) after the word "excusal" there shall be inserted the words "or deferral".

Rehabilitation of Offenders Act 1974 (c. 53)

47 In section 1(2)(a) of the Rehabilitation of Offenders Act 1974 (failure to pay fines etc. not to prevent a person from becoming rehabilitated) the reference to a fine or other sum adjudged to be paid by or imposed on a conviction does not include a reference to an amount payable under a confiscation order.

Criminal Procedure (Scotland) Act 1975 (c. 21)

48 In each of sections 171 and 368 of the Criminal Procedure (Scotland) Act 1975 (which make provision as to the presumption and determination of the ages of children) in subsection (3) for the words "and (d)" there shall be substituted the words "(d) and (e)".

49 In section 289G of that Act (which creates the standard scale and amends certain enactments accordingly) in subsection (13) (inserted by section 66 of the M267 Criminal Justice (Scotland) Act 1987)—

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(a) after the word “is" there shall be inserted “(a)";

(b) for the words from “1987" there shall be substituted—

“(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. ”.

Marginal Citations

M267 1987 c. 41.

50 In Schedule 1 to that Act (which lists offences against children under the age of 17 years to which special provisions apply) after paragraph (a) there shall be inserted the following paragraph—

“(aa) any offence under section 80(7) of the Criminal Justice (Scotland) Act 1980 (commission of a homosexual act in certain circumstances).”

51 In the said Schedule 1 after paragraph (d) there shall be inserted the following paragraph—

“(e) any offence involving the use of lewd, indecent or libidinous practice or behaviour towards a child under the age of 17 years.”

Bail Act 1976 (c. 63)

52 In section 2(2) the following definitions shall be inserted before the definition of “child”—

““bail hostel” and “probation hostel” have the same meanings as in the Powers of Criminal Courts Act 1973,”.

Sexual Offences (Amendment) Act 1976 (c. 82)

53 (1) The Sexual Offences (Amendment) Act 1976 shall have effect subject to the following amendments (which relate to Northern Ireland).

(2) In section 5(1)(b), for the word “both" there shall be substituted the word “all".

(3) In section 7(6), for the words from “(including" to “6(4)(b))" there shall be substituted the words “and to such a publication or broadcast or inclusion in a cable programme in Northern Ireland as is mentioned in section 4(1) as adapted by section 5(1)(b)".

54, 55. . . . . F202

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Textual Amendments

F202 Sch. 15 paras. 34, 54, 55, 57, 81, 83–88 repealed by Extradition Act 1989 (c. 33, SIF 48), s. 37, **Sch. 2**

Judicature (Northern Ireland) Act 1978 (c. 23)

56 In section 49(6) of the Judicature (Northern Ireland) Act 1978 (variation of sentences) after the word "appeal)" there shall be inserted the words "and for the purposes of paragraph 1 of Schedule 3 to the Criminal Justice Act 1988 (time limit for notice of an application for leave to refer a case under section 36 of that Act.)".

57 . . . . . F203

Textual Amendments

F203 Sch. 15 paras. 34, 54, 55, 57, 81, 83–88 repealed by Extradition Act 1989 (c. 33, SIF 48), s. 37, **Sch. 2**

Interpretation Act 1978 (c. 30)

58 In Schedule 1 to the Interpretation Act l978—

(a) after the definition of "Sheriff" there shall be inserted—

> ""The standard scale", with reference to a fine or penalty for an offence triable only summarily,—
>
> (a) in relation to England and Wales, has the meaning given by section 37 of the Criminal Justice Act l982;
>
> (b) in relation to Scotland, has the meaning given by section 289G of the Criminal Procedure (Scotland) Act l975;
>
> (c) in relation to Northern Ireland, has the meaning given by Article 5 of the Fines and Penalties (Northern Ireland) Order 1984.";

(b) after the definition of "Statutory declaration" there shall be inserted—

> ""Statutory maximum", with reference to a fine or penalty on summary conviction for an offence,—
>
> (a) in relation to England and Wales, means the prescribed sum within the meaning of section 32 of the Magistrates' Courts Act l980;
>
> (b) in relation to Scotland, means the prescribed sum within the meaning of section 289B(6) of the Criminal Procedure (Scotland) Act l975; and
>
> (c) in relation to Northern Ireland, means the prescribed sum within the meaning of Article 4 of the Fines and Penalties (Northern Ireland) Order l984.".

59 In the definition of "offence triable either way" in that Schedule, after the word "offence", in the second place where it occurs, there shall be inserted the words ",

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other than an offence triable on indictment only by virtue of Part V of the Criminal Justice Act 1988".

Protection of Children Act 1978 (c. 37)

60 The Protection of Children Act 1978 shall be amended as follows.

61 (1) In subsection (1) of section 4 (entry, search and seizure) for the words from "are" to the end there shall be substituted the words "is an indecent photograph of a child".

(2) In subsection (2) of that section the words from "taken" to the end shall cease to have effect.

62 (1) In subsection (2) of section 5 (forfeiture) the words from "taken" to "distributed or shown," shall cease to have effect.

(2) In subsection (6) of that section, after "1(1)" there shall be inserted "or section 160 of the Criminal Justice Act 1988".

Justices of the Peace Act 1979 (c. 55)

63 At the end of subsection (1)(b) of section 61 of the Justices of the Peace Act 1979 (application of fines and fees) there shall be added the words "and sums paid into court in pursuance of orders under section 35 of the [M268]Powers of Criminal Courts Act 1973 (compensation orders)".

Marginal Citations
M268 1973 c. 62.

Child Care Act 1980 (c. 5)

64 In section 73(1)(b) of the Child Care Act 1980 (places of safety etc.) for the words "section 38(7)" there shall be substituted the words "section 38(6)".

Magistrates' Courts Act 1980 (c. 43)

65 The Magistrates' Courts Act 1980 shall be amended as follows.

66 In section 6(5) (display of notice of committal or discharge) for the words from "section" to the end there shall be substituted the words "section 4 of the [M269]Sexual Offences (Amendment) Act 1976 (anonymity of complainant in rape etc. cases)".

Marginal Citations
M269 1976 c. 82.

67 In subsection (1) of section 37 (committal to Crown Court for sentence), for the words "nor more than 16" there shall be substituted the words "but under 17".

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[F204 68 At the end of subsection (8) of section 102 (written statement before examining justices) there shall be added the words "and section 40 of the Criminal Justice Act 1988 (power to join in indictment count for common assault etc.) shall be given a corresponding construction".**]**

Textual Amendments

F204 Sch. 15, para. 68 repealed (4.7.1996 with effect as mentioned in the note at the end of Sch. 5 para. 10 of the repealing Act) by 1996 c. 25, ss. 47, 80, Sch. 1, **Sch. 5 para.10** (with s. 78(1)); S.I. 1997/683, **art. 1(2)**.

69 (1) In subsection (3A) of section 128 (remand in custody without accused being brought before court)—

(a) after the word "custody" there shall be inserted the words "and the remand was not a remand under section 128A below for a period exceeding 8 clear days,"; and

(b) after the word "him" there shall be inserted the words "(otherwise than in the exercise of the power conferred by that section)".

(2) In subsection (6) of that section (which lists the cases in which a magistrates' court may remand a person for a period exceeding 8 clear days) for the word "section", in the first place where it occurs, there shall be substituted the words "sections 128A and".

70 The following subsection shall be inserted after subsection (2) of section 133 (limit on length of imprisonment or youth custody where consecutive terms are imposed) —

"(2A) In relation to the imposition of terms of detention in a young offender institution subsection (2) above shall have effect as if the reference to an offence triable either way were a reference to such an offence or an offence triable only on indictment.".

Criminal Appeal (Northern Ireland) Act 1980 (c. 47)

71 The Criminal Appeal (Northern Ireland) Act 1980 shall be amended as follows.

72 The following subsection shall be substituted for subsection (4) of section 10 (supplementary provisions as to appeals against sentence)—

"(4) The power of the Court under section 4(2) of this Act or subsection (3) above to pass a sentence which the Crown Court has power to pass for an offence shall, notwithstanding that the Crown Court made no order under section 19(1) of the Treatment of Offenders Act (Northern Ireland) 1968 in respect of a suspended sentence or order for detention previously passed or made on or in relation to the appellant for another offence, include power to deal with the appellant in respect of that sentence or order for detention where the Crown Court made no order in respect of it.".

73 The following section shall be inserted after section 16—

"**16A Appeals in cases of contempt of court.**

(1) Subject to subsection (2) below, a person who wishes to appeal under section 44 of the 1978 c. 23.Judicature (Northern Ireland) Act 1978 from any order or decision of the Crown Court in the exercise of jurisdiction to punish

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for contempt of court shall give notice of appeal in the prescribed manner within twenty-eight days from the date of the order or decision appealed against.

(2) The time for giving notice under this section may be extended either before or after its expiry by the Court.".

74 The following section shall be substituted for section 17—

"**17 Bail.**

(1) The Court of Appeal may, if it thinks fit—

(a) grant an appellant bail pending the determination of his appeal; or

(b) vary the conditions of bail granted to an appellant in the exercise of the power conferred by paragraph (a) above; or

(c) revoke bail granted to an appellant under paragraph (a) above.

(2) The powers conferred by subsection (1) above may be exercised—

(a) on the application of the appellant; or

(b) if it appears to the Master that any of them ought to be exercised, on a reference to the court by him.".

75 The following section shall be substituted for section 18—

"**18 Groundless appeals or applications for leave to appeal.**

If it appears to the Master that a notice of appeal or of application for leave to appeal under this Part of this Act does not show any substantial ground of appeal, he may refer the appeal or application for leave to the Court of Appeal for summary determination; and the Court may then, if it considers that the appeal or application for leave is frivolous or vexatious, and can be determined without adjourning the proceedings for a full hearing, dismiss the appeal or application for leave summarily without calling on any one to attend the hearing or to appear for the Crown thereon.".

76 (1) In section 44(1) (constitution of Court of Appeal on appeals or references), after the word "Act" there shall be inserted the words "or section 36 of the Criminal Justice Act 1988".

(2) In section 44(4)(b) (judge of the Court of Appeal not to hear or determine applications relating to reference under section 14 or 15 where he was the trial judge), after the word "Act" there shall be inserted the words "or section 36 of the Criminal Justice Act 1988.".

77 The following paragraph shall be substituted for section 45(2)(d)—

"(d) to exercise the powers conferred by section 17 of this Act;".

78 The following subsection shall be inserted after section 45(3)—

"(3A) The power of the Court of Appeal to grant leave to appeal under section 159 of the Criminal Justice Act 1988 may be exercised by a single judge in the same manner as it may be exercised by the Court.".

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Supreme Court Act 1981 (c. 54)

79 In the proviso to section 47(5) of the Supreme Court Act 1981 (variation of sentences) after the word "appeal)" there shall be inserted the words "and for the purposes of paragraph 1 of Schedule 3 to the Criminal Justice Act 1988 (time limit for notice of an application for leave to refer a case under section 36 of that Act)".

80 The following paragraph shall be inserted after subsection (4)(a) of section 55 of that Act (constitution of criminal division of Court of Appeal)—

"(aa) reviewing sentencing under Part IV of the Criminal Justice Act 1988;".

81 . . . . . F205

Textual Amendments

F205 Sch. 15 paras. 34, 54, 55, 57, 81, 83–88 repealed by Extradition Act 1989 (c. 33, SIF 48), s. 37, **Sch. 2**

Civil Jurisdiction and Judgments Act 1982 (c. 27)

82 In section 18(4A) of the Civil Jurisdiction and Judgments Act 1982 (exception from provisions regulating the enforcement of UK judgments in other parts of the United Kingdom in respect of the enforcement in Scotland of High Court orders made under the [M270]Drug Trafficking Offences Act 1986), after "1986" there shall be inserted the words "or Part VI of the Criminal Justice Act 1988 (confiscation of the proceeds of offences)".

Marginal Citations

M270 1986 c. 32.

83, 84. . . . . F206

Textual Amendments

F206 Sch. 15 paras. 34, 54, 55, 57, 81, 83–88 repealed by Extradition Act 1989 (c. 33, SIF 48), s. 37, **Sch. 2**

85—88. . . . . F207

Textual Amendments

F207 Sch. 15 paras. 34, 54, 55, 57, 81, 83–88 repealed by Extradition Act 1989 (c. 33, SIF 48), s. 37, **Sch. 2**

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Civic Government (Scotland) Act 1982 (c. 45)

89 In subsection (7) of section 52 of the Civic Government (Scotland) Act 1982 after the word “thereof)" there shall be inserted the words “and in Part III of the Social Work (Scotland) Act 1968 (children in need of compulsory measures of care)".

Criminal Justice Act 1982 (c. 48)

90 At the end of section 15(11) of the Criminal Justice Act 1982 (offence of failing to comply with supervision requirements) there shall be added (but not as part of paragraph (b)) the words “but not liable to be dealt with in any other way".

91 At the end of part II of Schedule 1 to that Act there shall be added—

“CRIMINAL JUSTICE ACT 1988 (c. 33)

30 Section 134 (torture).”

92—94. . . . . F208

Textual Amendments

F208 Sch. 15 paras. 92–94 repealed by Road Traffic (Consequential Provisions) Act 1988 (c. 54, SIF 107:1), ss. 3, 5, Sch. 1, Sch. 4 paras. 1, **2**

95, 96. . . . . F209

Textual Amendments

F209 Sch. 1, Sch. 15 paras. 95, 96 repealed by Extradition Act 1989 (c. 33, SIF 48), s. 37, **Sch. 2**

Police and Criminal Evidence Act 1984 (c. 60)

97 The Police and Criminal Evidence Act 1984 shall be amended as follows.

98 At the end of subsection (3)(b) of section 24 (arrest) there shall be added the words “other than an offence under section 12(1) of the Theft Act 1968".

99 In section 55(1) (intimate searches) for the words “such a search" there shall be substituted the words “an intimate search".

100 In section 65, in the definition of “intimate samples", for the word “orifice" there shall be substituted the word “orifices".

101 In section 120 (extent) the second of the two subsections numbered as subsection (9) shall be re-numbered as subsection (9A).

102 At the end of Schedule 5 to that Act there shall be added—

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Criminal Justice Act 1988 (c. 33)

"9 Section 134 (Torture)."

Prosecution of Offences Act 1985 (c. 23)

103 The following paragraph shall be inserted after subsection (4)(a) of section 16 of the Prosecution of Offences Act 1985 (defence costs)—

"(aa) directs under section 8(1B) of the Criminal Appeal Act 1968 the entry of a judgment and verdict of acquittal;".

104 In subsection (11) of section 22 of that Act (power of Secretary of State to set time limits in relation to preliminary steps of criminal proceedings), at the end of paragraph (b) of the definition of "custody of the Crown Court" there shall be added "or

(c) section 5(3)(a) of the Criminal Justice Act 1987 (custody after transfer order in fraud case);"

Local Government Act 1985 (c. 51)

F210 105 . . . . . .

Textual Amendments

F210 Sch. 15 para. 105 repealed (5.2.1994) by 1993 c. 47, ss. 32, 33(3), **Sch.4**

Bankruptcy (Scotland) Act 1985 (c. 66)

106 The Bankruptcy (Scotland) Act 1985 shall be amended as follows.

107 In section 5(4) (interpretation) after "1987" there shall be added the words ", by section 71(9)(a) of the Criminal Justice Act 1988".

108 In section 7(1) (constitution of apparent insolvency)—

(a) after the words "Drug Trafficking Offences Act 1986" there shall be inserted the words "or by section 78(2) of the Criminal Justice Act 1988";

(b) after the words "(Scotland) Act 1987" there shall be inserted the words ", by section 71(9)(a) of the said Act of 1988"; and

(c) after the words "Act of 1987" there shall be inserted the words ", by section 77(1) of the said Act of 1988".

109 Section 55(2) (discharge of debtor not to release him from liabilities in respect of fines etc.) shall have effect as if the reference to a fine included a reference to a confiscation order.

Insolvency Act 1986 (c. 45)

110 Section 281(4) of the Insolvency Act 1986 (discharge of debtor not to release him from liabilities in respect of fines etc.) shall have effect as if the reference to a fine included a reference to a confiscation order.

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Criminal Justice Act 1987 (c. 38)

Criminal Justice (Scotland) Act 1987 (c. 41)

111 The following paragraph shall be substituted for subsection (6)(j) of section 3 of the Criminal Justice Act 1987 and subsection (5)(k) of section 54 of the Criminal Justice (Scotland) Act 1987 (each of which sections relates to disclosure of information)—

"(0) a person appointed by the Bank of England under section 41 of the Banking Act 1987 to carry out an investigation and make a report;".

Criminal Justice Act 1987 (c. 38)

112 The Criminal Justice Act 1987 shall be amended as follows.

113 (1) In subsection (2) of section 2 (Director's investigation powers), for the words from "attend" to the end there shall be substituted the words "answer questions or otherwise furnish information with respect to any matter relevant to the investigation at a specified place and either at a specified time or forthwith".

(2) In subsection (3) of that section—

(a) for the words "a specified time and place" there shall be substituted the words "such place as may be specified in the notice and either forthwith or at such time as may be so specified,"; and

(b) for the word "class" there shall be substituted the word "description".

[F211 114 (1) In subsection (1) of section 11, for the words from "a report" to "containing" there shall be inserted the words "a report of proceedings to which this section applies which contains".

(2) The following subsection shall be inserted after that subsection—

"(1A) This section applies—

(a) to an application under section 6(1) above; and

(b) to a preparatory hearing and any appeal or application for leave to appeal relating to such a hearing."

(3) The following subsection shall be substituted for subsection (2)—

"(2) An order that subsection (1) above shall not apply to reports—

(a) of an application under section 6(1) above;

(b) of a preparatory hearing;

(c) of an appeal to the Court of Appeal under section 9(11) above; or

(d) of an application for leave to appeal under that subsection,

may be made—

(i) in a case falling within paragraph (a), (b) or (d) above, by the judge dealing with the matter; and

(ii) in a case falling within paragraph (c) above, by the Court of Appeal.".

(4) The following subsection shall be inserted after subsection (9)—

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"(9A) In subsection (9) above "engaged" means engaged under a contract of service or a contract for services."

(5) In subsection (15) the following definition shall be added after the definition of "publish"—

""relevant time" means a time when events giving rise to the charges to which the proceedings relate occurred.".**]**

Textual Amendments

F211 Sch. 15, para. 114 repealed (E.W.N.I)(4.7.1996 with effect as mentioned in the note at the end of Sch. 5 para. 12 of the repealing Act) by 1996 c. 25, ss. 72, 80, Sch. 3, **Sch. 5 para.12** (with s. 78(1)); S.I. 1997/1019, **art.2**.

115 In section 13(1), for the words "operates only so as to make for Northern Ireland provision corresponding to" there shall be substituted the words "is made only for purposes corresponding to those of".

116 In paragraph 6(1) of Schedule 1, for "(4)" there shall be substituted "(5)".

Criminal Justice (Scotland) Act 1987 (c. 41)

117 (1) Section 52 of the Criminal Justice (Scotland) Act 1987 (Powers of investigation in relation to serious or complex fraud) shall be amended as follows.

(2) In subsection (1) for the words from "attend" to the end there shall be substituted the words "answer questions or otherwise furnish information with respect to any matter relevant to the investigation at a specified place and either at a specified time or forthwith.":

(3) In subsection (2)—

(a) for the words "a specified time and place" there shall be substituted the words "such place as may be specified in the notice and either forthwith or at such time as may be so specified,"; and

(b) for the word "class" there shall be substituted the word "description".

(4) In subsection (5) after the word "him" there shall be inserted "(a)" and at the end of the subsection there shall be added the words "; or

(b) in a prosecution for some other offence where in giving evidence he makes a statement inconsistent with it.".

The Public Order (Northern Ireland) Order 1987 S.I. 1987 No. 463 (N.I.7)

118 (1) In Article 24(2) of the Public Order (Northern Ireland) Order 1987, for the words "or Part IV" there shall be substituted the words "Part IV or section 139 of the Criminal Justice Act 1988".

(2) In Article 26(1) of that Order, for the words "or 22(1)" there shall be substituted the words "22(1) or section 139 of the Criminal Justice Act 1988".

(3) In Article 26(2) (c) of that Order, after the words "Article 22(1)" there shall be inserted the words "or section 139 of the Criminal Justice Act 1988", and after the word "weapon" there shall be inserted the words "or article, as the case may be,".

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SCHEDULE 16

Section 170.

REPEALS

Extent Information

E8 The extent of any repeal of an enactment in Sch. 16 is the same as that of the enactment repealed, subject to the Notes at the end of the Schedule

Commencement Information

I4 Sch. 16 partly in force; Sch. 16 in force at Royal Assent so far as relating to specified repeals see s. 171(5); Sch. 16 in force so far as relating to further specified repeals at 29.9.1988 see s. 171(6); Sch. 16 in force so far as relating to further specified repeals: at 1.10.1988 by S.I. 1988/1408; at 12.10.1988 by S.I. 1988/1676; at 1.11.1988 by S.I. 1988/1817; at 5.1.1989 by S.I. 1988/2073; at 23.1.1989 by S.I. 1989/50; at 3.4.1989 by S.I. 1989/264; at 31.7.1989 by S.I. 1989/1085; at 1.1.2000 by S.I. 1999/3425

7 Geo. 4. c. 24.	Criminal Law Act 1826.	Section 30.
24 & 25 Vict. c. 100.	Offences against the Person Act 1861.	Sections 42 and 43.
		In section 44, the word “such, in the first place where it occurs, and the words “under either of the last two preceding sections.
		Section 46.
		In section 47, the words from “and to the end.
6 & 7 Geo. 5. c. 64.	Prevention of Corruption Act 1916.	Sections 1 and 3.
15 & 16 Geo. 5. c. 86.	Criminal Justice Act 1925.	Section 39.
23 & 24 Geo. 5. c. 12.	Children and Young Persons Act 1933.	Section 1(5) and (6).
		In section 38(1), the proviso.
		In Schedule 1, in the third paragraph, the words “forty-two, forty-three.
1 Edw. 8. & 1 Geo. 6. c. 37.	Children and Young Persons (Scotland) Act 1937.	Section 12(5) and (6).
15 & 16 Geo. 6. and 1 Eliz. 2. c. 52.	Prison Act 1952.	Section 43(1)(b) and (c).
1952 c. 61.	Prisons (Scotland) Act 1952.	In section 31(1), paragraph (b).
		In section 31(3), the words “detention c entre.

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		In section 31(4), the words "detention centres wherever they occur.
		In section 34, the words "or a detention centre.
		In section 35(1), the words "detentio n centres.
		In section 37(1), the words "or detention centre.
		In section 37(2), the words "or detention centre wherever they occur.
9 & 10 Eliz. 2. c. 39.	Criminal Justice Act 1961.	Section 2.
1967 c. 68.	Fugitive Offenders Act 1967.	In section 8(1) and (2), the words "to custody.
		In section 11(1), the words "in respect of a person in custody thereunder.
		In section 16(1), the words "(except for purposes of the references to the United Kingdom in section 3).
		Schedule 1.
1967 c. 80.	Criminal Justice Act 1967.	Section 49.
		In Schedule 3, Part I, the entry relating to the Prevention of Corruption Act 1906.
1968 c. 19.	Criminal Appeal Act 1968.	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.
		Section 10(3)(d).
		Section 42.
1968 c. 27.	Firearms Act 1968.	In section 21(2), the words "to borstal training, to corrective training for less than three years or.
		In section 52(1)(a), the words "preventive detention, corrective training, borstal training,.

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1969 c. 12.	Genocide Act 1969.	Section 2(1)(b) and the word "and immediately preceding it. In section 3(1), the words "and sections 16 and 17 of the Fugitive Offenders Act 1967.
l969 c. 54.	Children and Young Persons Act l969.	In section 16(10), the words from "and the provisions to the end. Section 22(5). In section 29, the words "he or. Section 34(1)(f) In section 60, subsection (1)(b) and the word "and immediately preceding it, and in subsection (2), the words "or section 16(2) or 17 of the said Act of 1967.
F212	**F212**	**F212**
. . ..	. . .	. . ..
1971 c. 40.	Fire Precautions Act 1971.	In section 40(2)(b), the words "detention centre.
1972 c. 20.	Road Traffic Act 1972.	In section 100, the words "or attempting to drive.
1972 c. 71.	Criminal Justice Act 1972.	Section 28(3). In Schedule 5, the amendment of the Criminal Appeal Act l968.
1973 c. 14.	Costs in Criminal Cases Act 1973.	In Schedule 1, paragraph 3.
1973 c. 62.	Powers of Criminal Courts Act 1973.	Section 22(5). In section 34A(1)(c), the words "other than an order under section 35 of this Act.' Sections 39 and 40. In section 57(3), the definition of "detention centre. In Schedule 3, paragraph 2(4)(b) and the word "and

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		immediately preceding it, and paragraph 7.
		In Schedule 5, paragraph 29.
1974 c. 23.	Juries Act 1974.	In section 12(1)(a), the words "not more than three jurors without cause and.
		In section 16(2), the words "for murde r or.
1976 c. 82.	Sexual Offences (Amendment) Act 1976.	In section 4, in subsection (3), the words "before the Crown Court at which a person is charged with a rape offence and "relating to the complainant, and subsection (7)(a).
		In section 5(6), the words from the beginning to "and, in the second place where it occurs.
		Section 6.
		In section 7, in subsection (4), the words "and 6(4)(b), in subsection (5), the words "and 6 and in subsection (6), the words "and section 6(1) as adapted by section 6(4)(b).
1977 c. 45.	Criminal Law Act 1977.	Section 43.
		In Schedule 5, paragraph 2, so far as relating to section 99(b) of the Road Traffic Act 1972.
		In Schedule 6, the entry relating to the Offences against the Person Act 1861.
		In Schedule 12, in the entry relating to the Children and Young Persons Act 1969, paragraph 4(b) and (c).
1978 c. 26.	Suppression of Terrorism Act 1978.	Section 3(2).
1978 c. 31.	Theft Act 1978.	In section 5(3) the words from "and to the end.
1978 c. 37.	Protection of Children Act 1978.	In section 1(6), paragraph (b) and the word "and immediately preceding it and

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		the words “and sections 16 and 17 of the 1967 Act.
		In section 4(2), the words from “taken to the end.
		In section 5(2), the words from “taken to “distributed or shown,.
1980 c. 9.	Reserve Forces Act 1980.	In Schedule 1, paragraph 5(c)(ii) and the word “or immediately preceding it.
1980 c. 43.	Magistrates’ Courts Act 1980.	Section 22(7).
		Section 32(7).
		Section 134.
		In section 143, subsection (2)(l) to (n), subsections (4) and (5) and in subsection (6) the words “or (4).
		In Schedule 1, in paragraph 5(h), the words “— common assault.
1982 c. 16.	Civil Aviation Act 1982.	Section 93(3).
1982 c. 28.	Taking of Hostages Act 1982.	In section 3, subsection (1)(b) and the word “and immediately preceding it and subsections (3) and (5).
1982 c. 36.	Aviation Security Act 1982.	In section 9, subsection (1)(b) and the word “and immediately preceding it, and subsections (2) and (3).
1982 c. 48.	Criminal Justice Act 1982.	Sections 4 to 7.
		Section 12(1) to (5), (8) and (9).
		Section 14.
		Section 20(1).
		In section 43, the words from “and, in the case to “thereof and the words from “(but to the end of the section.
		Sections 74 and 75.
		In section 80(1), the words “section 74; section 75;.

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		In Schedule 8, paragraphs 3(c) and 7(d).
1983 c. 18.	Nuclear Material (Offences) Act 1983.	In section 5, subsection (1) (b) and the word “and immediately preceding it, and subsections (2) and (4).
1984 c. 39.	Video Recordings Act 1984.	Section 15(2), (4) and (5).
1984 c. 46.	Cable and Broadcasting Act 1984.	In Schedule 5, paragraph 34(6).
1984 c. 47.	Repatriation of Prisoners Act 1984.	In Schedule 1, paragraph 4.
1984 c. 60.	Police and Criminal Evidence Act 1984.	Section 24(2)(e).
		In section 65, the word “and befor e “references.
		Section 68.
		In Schedule 3, paragraphs 1 to 7 and paragraph 13.
1985 c. 13.	Cinemas Act 1985.	In Schedule 2, paragraph 11.
1985 c. 37.	Prohibition of Female Circumcision Act 1985.	Section 3(1)(b) and the word “and immediately preceding it.
1985 c. 51.	Local Government Act 1985.	In section 15(5), the words “or 7.
1985 c. 65.	Insolvency Act 1985.	In Schedule 8, paragraph 24.
1986 c. 32.	Drug Trafficking Offences Act 1986.	In section 6, in subsection (1), paragraph (b) and the word “and immediately preceding it, in subsection (3), the words “or 9 and subsection (5).
		Section 10(1).
		Section 15(5)(b) and (c).
		In section 17(1), the words from “but to the end.
		In section 19, in subsection (1) (b) (i), the words “(and no conviction for any drug trafficking offence is substituted) and in subsection (2), in paragraph (a), the words “and that, but for that default, the proceedings would not have

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		been instituted or continued, and in paragraph (b), the word "substantial.
		In section 25(3), the words "varying or revoking a previous Order in Council.
		In section 38(11), the words "in England and Wales.
1986 c. 45.	Insolvency Act 1986.	Section 264(1)(d) and the word "or immediately preceding it.
		Section 266(4).
		Section 267(3).
		Section 277.
		Section 282(2).
		In section 293(1), the words "does not apply where the bankruptcy order was made on a petition under section 264(1)(d) (criminal bankruptcy); and it.
		Section 297(1).
		Section 327.
		Section 341(4) and (5).
		Section 382(1)(c).
		In section 383(1)(a), the words from "(being, to "question).
		In section 385(1), the definition of "criminal bankruptcy order.
		Section 402.
1987 c. 38.	Criminal Justice Act 1987.	Section 9(3)(a).
		In section 11, in subsection (8)(e), the word "engaged, and subsection (11).
		In Schedule 2, paragraph 1(2).
1987 c. 41.	Criminal Justice (Scotland) Act 1987.	Section 45(7)(c)(ii) and the word "and immediately preceding it.
1988 c. 13.	Coroners Act 1988.	In Schedule 3, paragraph 14.

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Textual Amendments

F212 Sch. 16: Entry relating to s. 41(8) of the Administration of Justice Act 1970 repealed (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), ss. 23(3), 101(2), **Sch. 13**; S.I. 1992/333, art. 2(2), **Sch. 2**.

Notes

1 The repeals in the Offences against the Person Act 1861 and the Prevention of Corruption Act 1916 do not extend to Northern Ireland.

2 The repeal in the Road Traffic Act 1972 does not extend to Scotland.

3 The repeal of sections 74 and 75 of the Criminal Justice Act 1982 and the repeals in sections 80 and 81 of that Act do not affect those sections as they apply—

(a) in any of the Channel Islands; or

(b) in the Isle of Man,

and any Order in Council applying section 74(1) or 75 to any of those Islands shall continue to have effect as if this Act had not been passed.

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