



# Criminal Justice Act 1988

CHAPTER 33

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# Criminal Justice Act 1988

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# 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]

**B**E 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:—

## PART I

### EXTRADITION

#### *Preliminary*

Scope of Part I.

1.—(1) Where extradition procedures under this Part of this Act are available as between the United Kingdom and a foreign state, a person in the United Kingdom who—

- (a) is accused in that state of the commission of an extradition crime; or
- (b) is alleged to be unlawfully at large after conviction of an extradition crime by a court in that state,

may be arrested and returned to that state in accordance with those procedures.

(2) In this Part of this Act—

“extradition procedures” means the procedures set out in sections 3 to 10 and 12 to 17 below; and

“extradition arrangements” means arrangements made with a foreign state under which extradition procedures will be available as between the United Kingdom and that state.

(3) Extradition arrangements may be—

- (a) arrangements of a general nature made with one or more states and relating to the operation of this Part of this Act (in this Part of this Act referred to as “general extradition arrangements”); or
- (b) arrangements relating to the operation of this Part of this Act in particular cases (in this Part of this Act referred to as “special extradition arrangements”) made with a state with which there are no general extradition arrangements.

(4) In this Part of this Act “foreign state” means any state other than—

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



(d) the Republic of Ireland,

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

(5) In this Part of this Act “extradition crime” means—

- (a) conduct in the territory of a foreign state which, if it occurred in the United Kingdom, would constitute an offence punishable with imprisonment for a term of 12 months, or any greater punishment, and which, however described in the law of the foreign state, is so punishable under that law; or
- (b) any conduct which by virtue of subsection (8)(b) below is treated as conduct in the territory of a foreign state and which satisfies the conditions in paragraph (a) above; or
- (c) an extra-territorial offence against the law of a foreign state which is punishable under that law with imprisonment for a term of 12 months, or any greater punishment, and which satisfies—
  - (i) the condition specified in subsection (6) below; or
  - (ii) all the conditions specified in subsection (7) below.

(6) The condition mentioned in subsection (5)(c)(i) above is that in corresponding circumstances equivalent conduct would constitute an extra-territorial offence against the law of the United Kingdom punishable with imprisonment for a term of 12 months, or any greater punishment.

(7) The conditions mentioned in subsection (5)(c)(ii) above are—

- (a) that the foreign state bases its jurisdiction on the nationality of the offender;
- (b) that the conduct constituting the offence occurred outside the United Kingdom; and
- (c) that, if it occurred in the United Kingdom, it would constitute an offence under the law of the United Kingdom punishable with imprisonment for a term of 12 months, or any greater punishment.

(8) For the purposes of this Part of this Act—

- (a) the law of a foreign state includes the law of any part of that state and the law of the United Kingdom includes the law of any part of the United Kingdom; and
- (b) conduct in a colony or dependency of a foreign state, or a vessel, aircraft or hovercraft of a foreign state, shall be treated as if it were conduct in the territory of that state.

(9) The amendments of the Extradition Act 1870, the Backing of Warrants (Republic of Ireland) Act 1965 and the Fugitive Offenders Act 1967 contained respectively in Parts I, II and III of Schedule 1 to this Act (which introduce into those Acts provisions corresponding to certain provisions of this Part of this Act) shall have effect.

1870 c. 52.

1965 c. 45.

1967 c. 68.

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Orders in Council  
as to  
arrangements for  
extradition.

2.—(1) Where general extradition arrangements have been made, Her Majesty may, by Order in Council reciting or embodying their terms, direct that extradition procedures shall be available as between the United Kingdom and the foreign state, or any foreign state, with whom they have been made, subject to the limitations, restrictions, exceptions and qualifications, if any, contained in the Order.

(2) An Order in Council under this section shall not be made unless the general extradition arrangements to which it relates—

- (a) provide for their determination after the expiration of a notice given by a party to them and not exceeding one year or for their denunciation by means of such a notice; and
- (b) are in conformity with the provisions of this Part of this Act, and in particular with the restrictions on return contained in this Part of this Act.

(3) An Order in Council under this section shall be conclusive evidence that the arrangements therein referred to comply with this Part of this Act and that this Part of this Act applies in the case of the foreign state, or any foreign state, mentioned in the Order.

(4) An Order in Council under this section shall be laid before Parliament after being made.

(5) An Order in Council under this section which does not provide that a person may only be returned to the foreign state requesting his return if the court before which he is brought under section 6 below is satisfied that the evidence would be sufficient to warrant his trial if the extradition crime had taken place within the jurisdiction of the court shall be subject to annulment in pursuance of a resolution of either House of Parliament.

1870 c. 52.

(6) On the commencement of this Part of this Act the power conferred by section 2 of the Extradition Act 1870 to direct that that Act shall apply in the case of a foreign state shall cease to be exercisable, but nothing in this Part of this Act affects any Order in Council made under that section or the operation of any enactment in relation to a foreign state in whose case an Order in Council under that section is in force.

General  
restrictions on  
return.

3.—(1) A person shall not be returned to a foreign state under this Part of this Act, or committed to or kept in custody for the purposes of such return, if it appears to an appropriate authority—

- (a) that the offence of which that person is accused or was convicted is an offence of a political character;
- (b) that it is an offence under military law which is not also an offence under the general criminal law;
- (c) that the request for his return (though purporting to be made on account of an extradition crime) is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions; or
- (d) that he might, if returned, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions.

(2) A person who is alleged to be unlawfully at large after conviction of an extradition crime by a court in a foreign state shall not be returned to that state, or committed to or kept in custody for the purposes of such return, if it appears to an appropriate authority—

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- (a) that the conviction was obtained in his absence; and
- (b) that it would not be in the interests of justice to return him to the foreign state on the ground of that conviction.

(3) A person accused of an offence shall not be returned to a foreign state, or committed to or kept in custody for the purposes of such return, if it appears to an appropriate authority that if charged with that offence in the United Kingdom he would be entitled to be discharged under any rule of law relating to previous acquittal or conviction.

(4) A person shall not be returned to a foreign state, or committed to or kept in custody for the purposes of such return, unless provision is made by the law of that state, or by an arrangement made with that state, for securing that he will not, unless he has first had an opportunity to leave that state, be dealt with in that state for or in respect of any offence committed before his return to it other than—

- (a) the offence in respect of which his return is ordered;
- (b) an offence, other than an offence excluded by subsection (5) below, which is disclosed by the particulars furnished under section 4(2)(b) below; or
- (c) subject to subsection (6) below, any other offence being an extradition crime in respect of which the Secretary of State may consent to his being dealt with.

(5) The offences excluded from paragraph (b) of subsection (4) above are offences in relation to which an order for the return of the person concerned could not lawfully be made in accordance with the provisions of this Part of this Act.

(6) The Secretary of State may not give consent under paragraph (c) of that subsection in respect of an offence in relation to which it appears to him that an order for the return of the person concerned could not lawfully be made, or would not in fact be made, in accordance with the provisions of this Part of this Act.

(7) In this Part of this Act “appropriate authority” means—

- (a) the Secretary of State;
- (b) the court of committal;
- (c) the High Court or High Court of Justiciary on an application for habeas corpus or for review of the order of committal.

### *Procedure*

4.—(1) Subject to the provisions of this Part of this Act relating to provisional warrants, a person shall not be dealt with under this Part of this Act except in pursuance of an order of the Secretary of State (in this Part of this Act referred to as an “authority to proceed”) issued in pursuance of a request (in this Part of this Act referred to as an “extradition request”) for the surrender of a person under this Part of this Act made by some person recognised by the Secretary of State as a diplomatic representative of a foreign state.

Extradition request and authority to proceed.

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- (2) There shall be furnished with any such request—
- (a) particulars of the person whose return is requested;
  - (b) particulars of the offence of which he is accused or was convicted (including information sufficient to justify the issue of a warrant for his arrest under this Part of this Act);
  - (c) in the case of a person accused of an offence, a warrant for his arrest issued in the foreign state; and
  - (d) in the case of a person unlawfully at large after conviction of an offence, a certificate of the conviction and sentence,

and copies of them shall be served on the person whose return is requested before he is brought before a court under section 6 below.

1980 c. 43.

(3) Rules under section 144 of the Magistrates' Courts Act 1980 may make provision as to the procedure for service under subsection (2) above in England and Wales.

(4) The High Court of Justiciary may, by Act of Adjournal, make rules as to the procedure for service under subsection (2) above in Scotland.

(5) On receipt of any such request the Secretary of State may issue an authority to proceed unless it appears to him that an order for the return of the person concerned could not lawfully be made, or would not in fact be made, in accordance with the provisions of this Part of this Act.

(6) An authority to proceed shall specify the offence or offences under the law of the United Kingdom which it appears to the Secretary of State would be constituted by equivalent conduct in the United Kingdom.

(7) In this Part of this Act "warrant", in the case of any foreign state, includes any judicial document authorising the arrest of a person accused or convicted of a crime.

Arrest for  
purposes of  
committal.

5.—(1) For the purposes of this Part of this Act a warrant for the arrest of a person accused in a foreign state of an extradition crime, or alleged to be unlawfully at large after conviction in a foreign state of an extradition crime, may be issued—

- (a) on the receipt of an authority to proceed, by—
  - (i) the chief metropolitan stipendiary magistrate or metropolitan stipendiary magistrate designated for the purposes of this Part of this Act by the Lord Chancellor; or
  - (ii) the sheriff of Lothian and Borders;
- (b) without such an authority—
  - (i) by a metropolitan stipendiary magistrate;
  - (ii) by a justice of the peace in any part of the United Kingdom; and
  - (iii) in Scotland, by a sheriff,

upon information that the said person is or is believed to be in or on his way to the United Kingdom;

and any warrant issued by virtue of paragraph (b) above is in this Part of this Act referred to as a "provisional warrant".

(2) A person empowered to issue warrants of arrest under this section may issue such a warrant if he is supplied with such information as would in his opinion authorise the issue of a warrant for the arrest of a person accused of conduct which would constitute an offence punishable under

the law of the United Kingdom with imprisonment for a period of not less than 12 months or, as the case may be, of a person alleged to be unlawfully at large after conviction of such an offence within his jurisdiction.

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(3) Where a provisional warrant is issued under this section, the authority by whom it is issued shall forthwith give notice to the Secretary of State, and transmit to him the information, or certified copies of the information, upon which it was issued; and the Secretary of State may in any case, and shall, if he decides not to issue an authority to proceed in respect of the person to whom the warrant relates, by order cancel the warrant and, if that person has been arrested under it, discharge him from custody.

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

6.—(1) A person arrested in pursuance of a warrant under section 5 above shall (unless previously discharged under subsection (3) of that section) be brought as soon as practicable before a court (in this Part of this Act referred to as “the court of committal”) consisting of the chief metropolitan stipendiary magistrate or a metropolitan stipendiary magistrate designated as mentioned in section 5(1)(a) above or the sheriff of Lothian and Borders, as may be directed by the warrant.

Proceedings for committal.

(2) For the purposes of proceedings under this section the court of committal shall have the like jurisdiction and powers, as nearly as may be, including power to remand in custody or on bail, as a magistrates’ court acting as examining justices.

(3) For the purposes of proceedings under this section a court of committal in Scotland shall have the like powers, including power to adjourn the case and meanwhile to remand the person arrested under the warrant either in custody or on bail, and the proceedings shall be conducted as nearly as may be in the like manner, as if the proceedings were summary proceedings in respect of an offence alleged to have been committed by that person; and the provisions of the Legal Aid (Scotland) Act 1986 relating to such proceedings or any appellate proceedings following thereon shall apply accordingly to that person.

1986 c. 47.

(4) Where an Order in Council such as is mentioned in subsection (8) below is in force in relation to the foreign state, there is no need to furnish the court of committal with evidence sufficient to warrant the trial of the arrested person if the extradition crime had taken place within the jurisdiction of the court.

(5) Where the person arrested is in custody by virtue of a provisional warrant and no authority to proceed has been received in respect of him, the court of committal may fix a period (of which the court shall give notice to the Secretary of State) after which he will be discharged from custody unless such an authority has been received.

(6) In exercising the power conferred by subsection (5) above in a case when the extradition request is made under general extradition arrangements the court shall have regard to any period specified for the purpose in the Order in Council relating to the arrangements.

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## (7) Where—

(a) the extradition request is made under general extradition arrangements but no period is so specified; or

(b) the application is made under special extradition arrangements, the court of committal may fix a reasonable period.

(8) Where an authority to proceed has been issued in respect of the person arrested and the court of committal is satisfied, after hearing any representations made in support of the extradition request or on behalf of that person, that the offence or any of the offences to which the authority relates is an extradition crime, and is further satisfied—

(a) where that person is accused of the offence, unless an Order in Council giving effect to general extradition arrangements otherwise provides, that the evidence would be sufficient to warrant his trial if the extradition crime had taken place within the jurisdiction of the court;

(b) where that person is alleged to be unlawfully at large after conviction of the offence, that he has been so convicted and appears to be so at large,

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

(i) to await the Secretary of State's decision as to his return to the foreign state that made the extradition request; and

(ii) if the Secretary of State decides that he shall be returned to that state, to await his return.

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

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

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

## (12) If—

(a) the court is not satisfied as mentioned in subsection (8) above in relation to the person arrested; or

(b) his committal is prohibited by a provision of this Part of this Act, it shall discharge him.

Statement of case  
by court.

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

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

(3) Rules of Court may specify—

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

(4) Where the court of committal fails to comply with an application under subsection (1) above within the period specified in Rules of Court, the High Court or, in Scotland, the High Court of Justiciary may, on the application of the state that applied for the case to be stated, make an order requiring the court to state a case.

(5) The High Court or High Court of Justiciary shall have power—

- (a) to remit the case to the court of committal to decide it according to the opinion of the High Court or High Court of Justiciary on the question of law; or
- (b) to dismiss the appeal.

(6) Where the court dismisses an appeal relating to an offence, it shall by order declare that that offence is not an offence in respect of which the Secretary of State has power to make an order under section 9 below in respect of the person whose return was requested.

(7) An order made by a metropolitan magistrate under subsection (2) above shall cease to have effect if—

- (a) the court dismisses the appeal in respect of the offence or all the offences to which it relates; and
- (b) the state seeking surrender does not immediately—
  - (i) apply for leave to appeal to the House of Lords; or
  - (ii) inform the court that it intends to apply for leave.

(8) An order made by the sheriff of Lothian and Borders under subsection (2) above shall cease to have effect if the court dismisses the appeal in respect of the offence or all the offences to which it relates.

(9) In relation to a decision of a court on an appeal under this section, section 1 of the Administration of Justice Act 1960 (right of appeal to House of Lords) shall have effect as if so much of subsection (2) as restricts the grant of leave to appeal were omitted.

1960 c. 65.

(10) The House of Lords may exercise any powers of the High Court under subsection (5) above and subsection (6) above shall apply to them as it applies to that Court.

(11) Subject to subsections (7) and (8) above, an order under subsection (2) above shall have effect so long as the case is pending.

(12) For the purposes of this section a case is pending (unless proceedings are discontinued) until (disregarding any power of a court to grant leave to take any step out of time) there is no step that the foreign state can take.

(13) In the application to Scotland of this section, subsections (9) and (10) shall be omitted and, in relation to an appeal under this section in Scotland, the court may make an order providing for the detention of the person to whom it relates or it may grant bail; and section 446(2) of the

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1975 c. 21.

Criminal Procedure (Scotland) Act 1975 shall apply for the purpose of such an appeal as it applies for the purpose of an appeal such as is mentioned in section 444 of that Act.

Application for  
habeas corpus etc.

8.—(1) Where a person is committed under section 6 above, the court shall inform him in ordinary language of his right to make an application for habeas corpus, and shall forthwith give notice of the committal to the Secretary of State.

(2) A person committed under section 6 above shall not be returned under this Part of this Act—

- (a) in any case, until the expiration of the period of 15 days beginning with the day on which the order for his committal is made;
- (b) if an application for habeas corpus is made in his case, so long as proceedings on that application are pending.

(3) Without prejudice to any jurisdiction of the High Court apart from this section, the court shall order the applicant's discharge if it appears to the Court, in relation to the offence, or each of the offences, in respect of which the applicant's return is sought, that—

- (a) by reason of the trivial nature of the offence of which he is accused or was convicted; or
- (b) by reason of the passage of time since he is alleged to have committed it or to have become unlawfully at large, as the case may be; or
- (c) because the accusation against him is not made in good faith in the interests of justice,

it would, having regard to all the circumstances, be unjust or oppressive to return him.

(4) On any such application the court may receive additional evidence relevant to the exercise of their jurisdiction under section 3 above or subsection (3) above.

(5) Proceedings on an application for habeas corpus shall be treated for the purposes of this section as pending (unless they are discontinued) until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal.

(6) In the application of this section to Scotland—

- (a) references to an application for habeas corpus shall be construed as references to an application for review of the order of committal; and
- (b) the reference to the High Court shall be construed as a reference to the High Court of Justiciary.

Order for return  
to requesting  
state.

9.—(1) Where a person is committed under section 6 above and is not discharged by order of the High Court or the High Court of Justiciary, the Secretary of State may by warrant order him to be returned to the state by which the extradition request was made unless his return is prohibited, or prohibited for the time being, by this Part of this Act, or the Secretary of State decides under this section to make no such order in his case.



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(2) The Secretary of State shall give the person to whom an order under subsection (1) above would relate notice in writing that he is contemplating making such an order.

(3) The person to whom such an order would relate shall have a right to make representations, at any time before the expiration of the period of 15 days commencing with the date on which the notice is given, as to why he should not be returned to the foreign state, and unless he waives that right, no such order shall be made in relation to him before the end of that period.

(4) A notice under subsection (2) above shall explain in ordinary language the right conferred by subsection (3) above.

(5) It shall be the duty of the Secretary of State to consider any representations made in the exercise of that right.

(6) Unless the person to whom it relates waives the right conferred on him by subsection (7) below, he shall not be returned to the foreign state until the expiration of the period of 7 days commencing with the date on which the warrant is issued or such longer period as—

(a) in England and Wales, rules of court under section 84 of the Supreme Court Act 1981, or

1981 c. 54.

(b) in Scotland, the High Court of Justiciary by Act of Adjournal may provide.

(7) At any time within that period he may apply for leave to seek judicial review of the Secretary of State's decision to make the order.

(8) If he applies for judicial review, he may not be returned so long as the proceedings for judicial review are pending.

(9) Proceedings for judicial review shall be treated for the purposes of this section as pending (unless they are discontinued) until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal.

(10) A warrant under this section—

(a) shall state in ordinary language that the Secretary of State has considered any representations made in the exercise of the right conferred by subsection (3) above; and

(b) shall explain in ordinary language the rights conferred by this section on a person whose return to a foreign state has been ordered under this section,

and a copy shall be given to the person to whom it relates as soon as the order for his return is made.

(11) Without prejudice to his general discretion as to the making of an order for the return of a person to a foreign state under this Part of this Act—

(a) the Secretary of State shall not make an order in the case of any person if it appears to the Secretary of State that—

(i) by reason of the trivial nature of the offence of which he is accused or was convicted; or

(ii) by reason of the passage of time since he is alleged to have committed it or to have become unlawfully at large, as the case may be; or

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(iii) because the accusation against him is not made in good faith in the interests of justice,

it would, having regard to all the circumstances, be unjust or oppressive to return him; and

- (b) the Secretary of State may decide not to make an order for the return of a person accused or convicted of an extradition crime constituted by conduct not punishable with death in Great Britain if that person could be or has been sentenced to death for that offence in the state by which the request for his return is made.

(12) An order for the return of a person to a foreign state under this Part of this Act shall not be made in the case of a person who is serving a sentence of imprisonment or detention, or is charged with an offence, in the United Kingdom—

- (a) in the case of a person serving such a sentence, until the sentence has been served;
- (b) in the case of a person charged with an offence, until the charge is disposed of or withdrawn or unless an order is made for it to lie on the file and, if it results in his serving a term of imprisonment or detention, until the sentence has been served.

(13) In the application of this section to Scotland, the reference in subsection (12) above to an order being made for the charge to lie on the file shall be construed as a reference to the diet being deserted *pro loco et tempore*.

(14) The Secretary of State may decide to make no order under this section for the return of a person committed in consequence of an extradition request if another extradition request has been made in respect of him and it appears to the Secretary of State, having regard to all the circumstances of the case and in particular—

- (a) the relative seriousness of the offences in question;
- (b) the date on which each such request was made; and
- (c) the nationality or citizenship of the person concerned and his ordinary residence,

that preference should be given to that other request.

Simplified  
procedure.

**10.—(1)** A person may give notice that he waives the rights conferred on him by section 8 above.

1980 c. 43.

(2) A notice under this section shall be given in England and Wales in the manner prescribed by rules under section 144 of the Magistrates' Courts Act 1980, and, without prejudice to the generality of subsection (1) of that section, the power to make such rules shall include power to make provision for a magistrate to order the committal for return of a person with his consent at any time after his arrest.

(3) A notice under this section shall be given in Scotland in the manner prescribed by the High Court of Justiciary by Act of Adjournal and the sheriff may order the committal for return of a person with his consent at any time after his arrest.

(4) Where an order is made under this section, this Part of this Act shall cease to apply to the person in respect of whom it is made, except that, if within one month after the order is made, he is not surrendered to the foreign state to which he is to be returned, the High Court or, in Scotland, the High Court of Justiciary, upon application by or on behalf of that person, may, unless reasonable cause is shown for the delay, order him to be discharged.

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11.—(1) Where special extradition arrangements have been made in respect of a person, extradition procedures shall be available in the case of that person, as between the United Kingdom and the foreign state with whom the arrangements have been made, subject to the limitations, restrictions, exceptions and qualifications, if any, contained in the arrangements.

Special extradition arrangements.

(2) If the Secretary of State issues a certificate of special extradition arrangements, it shall be conclusive evidence of all matters stated in it.

(3) In subsection (2) above “certificate of special extradition arrangements” means a certificate—

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

12.—(1) If a person committed under section 6 above is still in the United Kingdom after the expiration of the relevant period, he may apply to the High Court or the High Court of Justiciary for his discharge.

Discharge in case of delay.

(2) Unless he has instituted proceedings for judicial review of the Secretary of State’s decision to order his return, the relevant period is—

- (a) the period of two months beginning with the first day on which, having regard to section 8(2) above, he could have been returned;
- (b) where a warrant for his return has been issued under section 9 above, the period of one month beginning with the day on which that warrant was issued.

(3) If he has instituted such proceedings, the relevant period is the period expiring one month after they end.

(4) Proceedings for judicial review end for the purposes of this section—

- (a) if they are discontinued, on the date of discontinuance; and
- (b) if they are determined, on the date on which (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal.

(5) If upon an application under this section the court is satisfied that reasonable notice of the proposed application has been given to the Secretary of State, the court may, unless sufficient cause is shown to the contrary, by order direct the applicant to be discharged and if a warrant for his return has been issued under section 9 above, quash that warrant.

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Authentication of  
foreign  
documents.

**13.—(1)** For the purposes of this Part of this Act foreign documents may be authenticated by the oath of a witness, but shall in any case be deemed duly authenticated—

- (a) if they purport to be signed or certified by a judge, magistrate or officer of the foreign state where they were issued; and
- (b) if they purport to be certified by the Minister of Justice, or some other Minister of State, of the foreign state.

(2) Judicial notice shall be taken of such certification as is mentioned in subsection (1)(b) above, and documents authenticated by such certification shall be received in evidence without further proof.

Custody.

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

(2) If any person who is in custody by virtue of a warrant under this Part of this Act escapes out of custody, he may be retaken in any part of the United Kingdom in like manner as a person escaping from custody under a warrant for his arrest issued in that part in respect of an offence committed in that part.

(3) Where a person, being in custody in any part of the United Kingdom whether under this Part of this Act or otherwise, is required to be removed in custody under this Part of this Act to another part of the United Kingdom and is so removed by sea or by air, he shall be deemed to continue in legal custody until he reaches the place to which he is required to be removed.

(4) A warrant for the return of any person to a foreign state shall be sufficient authority for all persons to whom it is directed and all constables to receive that person, keep him in custody and convey him into the jurisdiction of that foreign state.

Form of warrants  
and orders.

**15.—(1)** Any warrant or order to be issued or made by the Secretary of State under this Part of this Act shall be given under the hand of the Secretary of State, a Minister of State or an Under-Secretary of State.

(2) The Secretary of State may by regulations made by statutory instrument prescribe the form of any document (except a notice required under section 10(2) above) required for the purposes of this Part of this Act.

*Treatment of persons returned from foreign states*

Restrictions upon  
proceedings for  
other offences.

**16.—(1)** Where any person is returned to the United Kingdom by a foreign state in pursuance of general or special extradition arrangements, he shall not, unless he has first been restored or had an opportunity of leaving the United Kingdom, be triable or tried for any offence committed prior to the surrender in any part of the United Kingdom, other than—

- (a) an offence in respect of which he was returned; or
- (b) any offence disclosed by the particulars furnished to the foreign state on which his return is grounded; or
- (c) any other offence in respect of which the foreign state may consent to his being tried.

(2) Where any person returned to the United Kingdom in pursuance of general or special extradition arrangements has been convicted before his return of an offence for which his return was not granted, any punishment for that offence shall by operation of this section be remitted; but his conviction for it shall be treated as a conviction for all other purposes.

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

Restoration of persons not tried or acquitted.

(2) If in the case of a person to whom this section applies either—

(a) proceedings against him for the offence for which he was returned are not begun within the period of six months beginning with the day of his arrival in the United Kingdom on being returned; or

(b) on his trial for that offence, he is acquitted or discharged under any of the following provisions—

(i) section 7(1) of the Powers of Criminal Courts Act 1973; 1973 c. 62.

(ii) section 182 or 383 of the Criminal Procedure (Scotland) Act 1975; 1975 c. 21.

(iii) section 5(1) of the Probation Act (Northern Ireland) 1950, 1950 c. 7 (N.I.).

the Secretary of State may, if he thinks fit, on the request of that person, arrange for him to be sent back free of charge and with as little delay as possible to the foreign state from which he was returned.

*Repatriation cases*

18.—(1) This section applies where—

Persons serving sentences outside country of conviction.

(a) a request is made—

(i) by some person recognised as a diplomatic representative of a foreign state in the case of which the Extradition Act 1870 applies or as between which and the United Kingdom extradition procedures under this Part of this Act are available; or

1870 c. 52.

(ii) by or on behalf of the Government of a Commonwealth country which is a designated Commonwealth country, as defined in subsection (1) of section 2 of the Fugitive Offenders Act 1967, or the Governor of a United Kingdom dependency, as defined in subsection (2) of that section,

1967 c. 68.

for the arrest and return of a person in the United Kingdom who is alleged to be unlawfully at large from a prison in which he was serving a sentence in pursuance of international arrangements for the repatriation of prisoners sentenced in one country (“the country of conviction”) to serve their sentences in another (“the country of imprisonment”); and

(b) there are furnished with the request—

(i) particulars of the person whose return or surrender is requested;

(ii) particulars of the offence of which he was convicted (including information sufficient to justify the issue of a warrant for his arrest under the relevant legislation);

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- (iii) a certificate of the conviction and sentence; and
- (iv) a certificate of the international arrangements for repatriation under which he was held.

(2) Where this section applies, the relevant legislation shall have effect—

- (a) if the request is from the country of conviction, as if the person to whom the request relates were alleged to be unlawfully at large from a prison in that country; and
- (b) if it is from the country of imprisonment, as if he were alleged to have been convicted of a corresponding offence under the law of that country committed there,

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

(3) A person shall not be returned under subsection (2)(b) above unless—

- (a) the offence was committed in the country of conviction; or
- (b) the offence was not committed there but was committed in circumstances in which he might be returned on a request made by the country of conviction.

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

- (a) if the request is made by some person recognised as a diplomatic representative of a foreign state in the case of which the Extradition Act 1870 applies, the Extradition Acts 1870 to 1935 as they apply in the case of that state;
- (b) if it is made by some person recognised as a diplomatic representative of a foreign state as between whom and the United Kingdom extradition procedures under this Part of this Act are available, the following provisions of this Act, as they apply in the case of that state—
  - (i) section 1(1) to (8); and
  - (ii) sections 2 to 17; and
- (c) if it is made by or on behalf of the Government of a designated Commonwealth country or the Governor of a United Kingdom dependency, the Fugitive Offenders Act 1967 as it applies in the case of that country or dependency.

1870 c. 52.

1967 c. 68.

*Channel Islands, Isle of Man and colonies*

Application to  
Channel Islands  
and Isle of Man.

**19.**—(1) Subject to the provisions of this section, sections 1 to 18 above shall extend to the Channel Islands and the Isle of Man, and shall have effect as if each of them were part of the United Kingdom.

(2) Her Majesty may by Order in Council direct that any of the provisions mentioned in subsection (1) above shall, in its application to any of the said islands, have effect subject to such exceptions, adaptations or modifications as may be specified in the Order.

Application of  
general extradition  
arrangements to  
colonies.

**20.**—(1) Upon the making of an Order in Council under section 2 above, the provisions of this Act specified in subsection (2) below shall, unless the Order otherwise provides, extend to every colony, as regards the extradition arrangements to which the Order refers, but subject—

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- (a) to the modifications set out in subsections (3) to (6) below;
- (b) to any further modifications as to procedure prescribed by the law of the colony; and
- (c) to the limitations, restrictions, exceptions and qualifications, if any, contained in the Order.
- (2) The provisions of this Act mentioned in subsection (1) above are—
- (a) section 1(1) to (8);
- (b) sections 3 to 10;
- (c) sections 12 to 18; and
- (d) this section.
- (3) A reference to the colony shall be substituted for any reference to the United Kingdom or Great Britain.
- (4) An extradition request may be made to the Governor and the Governor may exercise the powers of the Secretary of State.
- (5) A reference to a consular representative recognised by the Governor shall be substituted for the reference in section 4(1) above to a diplomatic representative recognised by the Secretary of State.
- (6) Any reference to a magistrate, judge or court shall be construed as a reference to such judicial authority as the law of the colony may provide.
- (7) Her Majesty may by Order in Council direct that in any colony specified in the Order—
- (a) the Extradition Act 1870 shall have effect with the amendments made by this Act; and 1870 c. 52.
- (b) the Fugitive Offenders Act 1967 shall have effect with the amendments and repeals so made. 1967 c. 68.
- 21.**—(1) Her Majesty may by Order in Council direct that this section shall extend to any colony specified in the Order in the case of foreign states with whom there are no general extradition arrangements, subject to the limitations, restrictions, exceptions and qualifications, if any, contained in the Order. Special extradition arrangements—colon
- (2) Where arrangements have been made in respect of a person under which extradition procedures under this Part of this Act will be available as between a colony to which this section applies and a foreign state, such extradition procedures shall be available in the case of that person, as between the colony and the state with whom the arrangements have been made, subject—
- (a) to the modifications of the provisions of this Act specified in subsection (2) of section 20 above set out in subsections (3) to (6) of that section;
- (b) to any further modifications as to procedure prescribed by the law of the colony; and
- (c) to the limitations, restrictions, exceptions and qualifications, if any, contained in the arrangements.
- (3) The provisions of this Act mentioned in section 20(2)(a) to (c) above shall extend to the colony so far as is necessary for the purposes of the arrangements.

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- (4) If the governor or the Secretary of State issues a certificate—
- (a) that such arrangements have been made; and
  - (b) that extradition procedures are available in the case of the person named in the certificate as between the colony and the foreign state to the extent specified in the certificate,
- it shall be conclusive evidence of all matters stated in it.

*Suppression of terrorism*

Suppression of  
terrorism.  
1978 c. 26.

22.—(1) Schedule 1 to the Suppression of Terrorism Act 1978 shall be amended as follows.

(2) The following sub-paragraph shall be inserted before paragraph 8(a)—

“(za) section 4 (soliciting etc. to commit murder);”.

(3) The following shall be inserted after paragraph 9—

“9A. The offence of torture under section 134 of the Criminal Justice Act 1988.”.

(4) The following shall be inserted after paragraph 13—

*“Nuclear material*

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

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

*“Conspiracy*

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

## PART II

## DOCUMENTARY EVIDENCE IN CRIMINAL PROCEEDINGS

First-hand  
hearsay.

23.—(1) Subject—

(a) to subsection (4) below;

(b) to paragraph 1A of Schedule 2 to the Criminal Appeal Act 1968 (evidence given orally at original trial to be given orally at retrial); and

(c) to section 69 of the Police and Criminal Evidence Act 1984 (evidence from computer records),

a statement made by a person in a document shall be admissible in criminal proceedings as evidence of any fact of which direct oral evidence by him would be admissible if—

(i) the requirements of one of the paragraphs of subsection (2) below are satisfied; or

(ii) the requirements of subsection (3) below are satisfied.

(2) The requirements mentioned in subsection (1)(i) above are—

(a) that the person who made the statement is dead or by reason of his bodily or mental condition unfit to attend as a witness;

1968 c. 19.

1984 c. 60.



- (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 Police and Criminal Evidence Act 1984. PART II  
1984 c. 60.
- 24.—(1) Subject—** Business etc.  
documents.
- (a) to subsections (3) and (4) below;
  - (b) to paragraph 1A of Schedule 2 to the Criminal Appeal Act 1968; 1968 c. 19.  
and
  - (c) to section 69 of the Police and Criminal Evidence Act 1984,
- a statement in a document shall be admissible in criminal proceedings as evidence of any fact of which direct oral evidence would be admissible, if the following conditions are satisfied—
- (i) the document was created or received by a person in the course of a trade, business, profession or other occupation, or as the holder of a paid or unpaid office; and
  - (ii) the information contained in the document was supplied by a person (whether or not the maker of the statement) who had, or may reasonably be supposed to have had, personal knowledge of the matters dealt with.
- (2) Subsection (1) above applies whether the information contained in the document was supplied directly or indirectly but, if it was supplied indirectly, only if each person through whom it was supplied received it—
- (a) in the course of a trade, business, profession or other occupation;  
or
  - (b) as the holder of a paid or unpaid office.
- (3) Subsection (1) above does not render admissible a confession made by an accused person that would not be admissible under section 76 of the Police and Criminal Evidence Act 1984.
- (4) A statement prepared otherwise than in accordance with section 29 below or an order under paragraph 6 of Schedule 13 to this Act or under section 30 or 31 below for the purposes—
- (a) of pending or contemplated criminal proceedings; or
  - (b) of a criminal investigation,
- shall not be admissible by virtue of subsection (1) above unless—

## PART II

- (i) the requirements of one of the paragraphs of subsection (2) of section 23 above are satisfied; or
- (ii) the requirements of subsection (3) of that section are satisfied; or
- (iii) the person who made the statement cannot reasonably be expected (having regard to the time which has elapsed since he made the statement and to all the circumstances) to have any recollection of the matters dealt with in the statement.

Principles to be followed by court.

**25.**—(1) If, having regard to all the circumstances—

(a) the Crown Court—

(i) on a trial on indictment;

(ii) on an appeal from a magistrates' court; or

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

(b) the criminal division of the Court of Appeal; or

(c) a magistrates' court on a trial of an information,

is of the opinion that in the interests of justice a statement which is admissible by virtue of section 23 or 24 above nevertheless ought not to be admitted, it may direct that the statement shall not be admitted.

(2) Without prejudice to the generality of subsection (1) above, it shall be the duty of the court to have regard—

(a) to the nature and source of the document containing the statement and to whether or not, having regard to its nature and source and to any other circumstances that appear to the court to be relevant, it is likely that the document is authentic;

(b) to the extent to which the statement appears to supply evidence which would otherwise not be readily available;

(c) to the relevance of the evidence that it appears to supply to any issue which is likely to have to be determined in the proceedings; and

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

1987 c. 38.

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

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

(a) of pending or contemplated criminal proceedings; or

(b) of a criminal investigation,

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

- (i) to the contents of the statement;
- (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.

## PART II

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

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

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

Proof of statements contained in documents.

28.—(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.

Documentary evidence—supplementary.

(2) Schedule 2 to this Act shall have effect for the purpose of supplementing this Part of this Act.

## PART III

## OTHER PROVISIONS ABOUT EVIDENCE IN CRIMINAL PROCEEDINGS

29.—(1) Where on an application made in accordance with the following provisions of this section it appears to a justice of the peace or judge that criminal proceedings—

Issue of letters of request.

- (a) have been instituted; or
  - (b) are likely to be instituted if evidence is obtained for the purpose,
- he may order that a letter of request shall be issued to a court or tribunal or appropriate authority specified in the order and exercising jurisdiction in a place outside the United Kingdom, requesting it to assist in obtaining for the purposes of the proceedings evidence specified in the letter.

(2) In subsection (1) above “appropriate authority” means any central authority designated by a state to receive requests for assistance in legal matters.

(3) An application for an order under this section may be made by a prosecuting authority.

(4) If proceedings have already been instituted, a person charged with an offence in the proceedings may make such an application.

## PART III

(5) Without prejudice to the generality of any enactment conferring power to make them—

- (a) Crown Court Rules;
- (b) Criminal Appeal Rules; and

1980 c. 43.

(c) rules under section 144 of the Magistrates' Courts Act 1980, may make such provision as appears to the authority making any of them to be necessary or expedient for the purposes of this section and in particular for the appointment of a person before whom evidence may be taken in pursuance of a letter of request.

(6) In exercising the discretion conferred by section 25 above in relation to a statement contained in evidence taken in pursuance of a letter of request, the court shall have regard—

- (a) to whether it was possible to challenge the statement by questioning the person who made it; and
- (b) to whether the local law allowed the parties to the criminal proceedings to be legally represented when the evidence was being taken.

Expert reports.

**30.**—(1) An expert report shall be admissible as evidence in criminal proceedings, whether or not the person making it attends to give oral evidence in those proceedings.

(2) If it is proposed that the person making the report shall not give oral evidence, the report shall only be admissible with the leave of the court.

(3) For the purpose of determining whether to give leave the court shall have regard—

- (a) to the contents of the report;
- (b) to the reasons why it is proposed that the person making the report shall not give oral evidence;
- (c) to any risk, having regard in particular to whether it is likely to be possible to controvert statements in the report if the person making it does not attend to give oral evidence in the proceedings, that its admission or exclusion will result in unfairness to the accused or, if there is more than one, to any of them; and
- (d) to any other circumstances that appear to the court to be relevant.

(4) An expert report, when admitted, shall be evidence of any fact or opinion of which the person making it could have given oral evidence.

(5) In this section "expert report" means a written report by a person dealing wholly or mainly with matters on which he is (or would if living be) qualified to give expert evidence.

Form of evidence and glossaries.

**31.** 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;

PART III

in any case where the court gives leave for, or requires, evidence or a glossary to be so furnished.

32.—(1) A person other than the accused may give evidence through a live television link on a trial on indictment or an appeal to the criminal division of the Court of Appeal or the hearing of a reference under section 17 of the Criminal Appeal Act 1968 if—

Evidence through television links.

1968 c. 19.

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

(b) the witness is under the age of 14 and the offence charged is one to which subsection (2) below applies,

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

(2) This subsection applies—

(a) to an offence which involves an assault on, or injury or a threat of injury to, a person;

(b) to an offence under section 1 of the Children and Young Persons Act 1933 (cruelty to persons under 16);

1933 c. 12.

(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

1956 c. 69.  
1960 c. 33.  
1967 c. 60.  
1977 c. 45.  
1978 c. 37.

(d) to an offence which consists of attempting or conspiring to commit, or of aiding, abetting, counselling, procuring or inciting the commission of, an offence falling within paragraph (a), (b) or (c) above.

(3) A statement made on oath by a witness outside the United Kingdom and given in evidence through a link by virtue of this section shall be treated for the purposes of section 1 of the Perjury Act 1911 as having been made in the proceedings in which it is given in evidence.

1911 c. 6.

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

(5) The rules to which subsection (4) above applies are—

(a) Crown Court Rules; and

(b) Criminal Appeal Rules.

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

Evidence of persons under 14 in committal proceedings.  
1980 c. 43.

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

103.—(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

## PART III

(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—

1933 c. 12.

(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);

1956 c. 69.

1960 c. 33.

1967 c. 60.

1977 c. 45.

1978 c. 37.

(c) to an offence under the Sexual Offences Act 1956, the Indecency with Children Act 1960, the Sexual Offences Act 1967, section 54 of the Criminal Law Act 1977 or the Protection of Children Act 1978; and

(d) to an offence which consists of attempting or conspiring to commit, or of aiding, abetting, counselling, procuring or inciting the commission of, an offence falling within paragraph (a), (b) or (c) above.

(3) The application of subsection (1) above is excluded—

(a) where at or before the time when the statement is tendered in evidence the defence objects to its admission; or

(b) where the prosecution requires the attendance of the child for the purpose of establishing the identity of any person; or

(c) where the court is satisfied that it has not been possible to obtain from the child a statement that may be given in evidence under this section; or

(d) where the inquiry into the offence takes place after the court has discontinued to try it summarily and the child has given evidence in the summary trial.

(4) Section 28 above shall not apply to any statement admitted in pursuance of subsection (1) above.

(5) In this section “child” means a person under the age of 14.”.

Abolition of requirement of corroboration for unsworn evidence of children.

**34.**—(1) The proviso to subsection (1) of section 38 of the Children and Young Persons Act 1933 (under which, where the unsworn evidence of a child of tender years admitted by virtue of that section is given on behalf of the prosecution, the accused is not liable to be convicted unless that evidence is corroborated by some other material evidence in support thereof implicating him) shall cease to have effect.

(2) Any requirement whereby at a trial on indictment it is obligatory for the court to give the jury a warning about convicting the accused on the uncorroborated evidence of a child is abrogated in relation to cases where such a warning is required by reason only that the evidence is the evidence of a child.

PART III

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

1933 c. 12.

PART IV

REVIEWS OF SENTENCING

35.—(1) A case to which this Part of this Act applies may be referred to the Court of Appeal under section 36 below.

Scope of Part IV.

(2) Subject to Rules of Court, the jurisdiction of the Court of Appeal under section 36 below shall be exercised by the criminal division of the Court, and references to the Court of Appeal in this Part of this Act shall be construed as references to that division.

(3) This Part of this Act applies to any case in which sentence is passed on a person—

- (a) for an offence triable only on indictment; or
- (b) for an offence of a description specified in an order under this section.

(4) The Secretary of State may by order made by statutory instrument provide that this Part of this Act shall apply to any case in which sentence is passed on a person for an offence triable either way of a description specified in the order.

(5) A statutory instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(6) In this Part of this Act “sentence” has the same meaning as in the Criminal Appeal Act 1968, except that it does not include an interim hospital order under Part III of the Mental Health Act 1983, and “sentencing” shall be construed accordingly.

1968 c. 19.  
1983 c. 20.

(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

PART IV  
1946 c. 36.

Parliament in like manner as a statutory instrument, and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.”.

1968 c. 19.  
1983 c. 20.  
1980 c. 47.  
S.I. 1986/4 (N.I.).

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

Reviews of  
sentencing.

**36.**—(1) If it appears to the Attorney General—

(a) that the sentencing of a person in a proceeding in the Crown Court has been unduly lenient; and

(b) that the case is one to which this Part of this Act applies,

he may, with the leave of the Court of Appeal, refer the case to them for them to review the sentencing of that person; and on such a reference the Court of Appeal may—

(i) quash any sentence passed on him in the proceeding; and

(ii) in place of it pass such sentence as they think appropriate for the case and as the court below had power to pass when dealing with him.

(2) Without prejudice to the generality of subsection (1) above, the condition specified in paragraph (a) of that subsection may be satisfied if it appears to the Attorney General that the judge erred in law as to his powers of sentencing.

(3) For the purposes of this Part of this Act any two or more sentences are to be treated as passed in the same proceeding if they would be so treated for the purposes of section 10 of the Criminal Appeal Act 1968.

(4) No judge shall sit as a member of the Court of Appeal on the hearing of, or shall determine any application in proceedings incidental or preliminary to, a reference under this section of a sentence passed by himself.

(5) Where the Court of Appeal have concluded their review of a case referred to them under this section the Attorney General or the person to whose sentencing the reference relates may refer a point of law involved in any sentence passed on that person in the proceeding to the House of Lords for their opinion, and the House shall consider the point and give their opinion on it accordingly, and either remit the case to the Court of Appeal to be dealt with or deal with it themselves; and section 35(1) of the Criminal Appeal Act 1968 (composition of House for appeals) shall apply also in relation to any proceedings of the House under this section.

(6) A reference under subsection (5) above shall be made only with the leave of the Court of Appeal or the House of Lords; and leave shall not be granted unless it is certified by the Court of Appeal that the point of law is of general public importance and it appears to the Court of Appeal or the House of Lords (as the case may be) that the point is one which ought to be considered by that House.

(7) For the purpose of dealing with a case under this section the House of Lords may exercise any powers of the Court of Appeal.

(8) The supplementary provisions contained in Schedule 3 to this Act shall have effect.



- (9) In the application of this section to Northern Ireland— PART IV
- (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 Criminal Appeal Act 1968 shall be construed as references to sections 10(2) and 33(1) of the Criminal Appeal (Northern Ireland) Act 1980, respectively. 1968 c. 19.  
1980 c. 47.

PART V

JURISDICTION, IMPRISONMENT, FINES, ETC.

*Jurisdiction*

- 37.—(1) In section 12 of the Theft Act 1968 (taking motor vehicle or other conveyance without authority etc.)— Certain either way offences relating to motor vehicles to be summary offences.  
1968 c. 60.
- (a) in subsection (2), for the words “on conviction on indictment be liable to imprisonment for a term not exceeding three years.” there shall be substituted the words “be liable on summary conviction to a fine not exceeding level 5 on the standard scale, to imprisonment for a term not exceeding six months, or to both.”; and
  - (b) at the end of subsection (4) there shall be added the words “and if he is found guilty of it, he shall be liable as he would have been liable under subsection (2) above on summary conviction.”.
- (2) In Schedule 4 to the Road Traffic Act 1972 (prosecution and punishment of offences) as it applies in England and Wales, the following shall be substituted for columns 3 and 4 of the entry relating to offences under section 99(b) (driving while disqualified)— 1972 c. 20.
- |            |  |
|------------|--|
| “Summarily | 6 months or level 5 on the standard scale or both.”. |
|------------|--|

- 38.—(1) In subsection (1) of section 22 of the Magistrates’ Courts Act 1980 (under which, where an offence of or related to criminal damage is charged and it appears to a magistrates’ court clear that the value involved does not exceed the relevant sum, the court is required to proceed as if the offence charged were triable only summarily) in the second paragraph (which states the relevant sum) for “£400” there shall be substituted “£2,000”. Criminal damage etc. as summary offences.  
1980 c. 43.

(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.”.

## PART V

(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.

Common assault and battery to be summary offences.

**39.** 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.

Power to join in indictment count for common assault etc.

**40.—(1)** A count charging a person with a summary offence to which this section applies may be included in an indictment if the charge—

- (a) is founded on the same facts or evidence as a count charging an indictable offence; or
- (b) is part of a series of offences of the same or similar character as an indictable offence which is also charged,

but only if (in either case) the facts or evidence relating to the offence were disclosed in an examination or deposition taken before a justice in the presence of the person charged.

(2) Where a count charging an offence to which this section applies is included in an indictment, the offence shall be tried in the same manner as if it were an indictable offence; but the Crown Court may only deal with the offender in respect of it in a manner in which a magistrates' court could have dealt with him.

(3) The offences to which this section applies are—

- (a) common assault;
- 1968 c. 60. (b) an offence under section 12(1) of the Theft Act 1968 (taking motor vehicle or other conveyance without authority etc.);
- 1972 c. 20. (c) an offence under section 99(b) of the Road Traffic Act 1972 (driving a motor vehicle while disqualified);
- 1980 c. 43. (d) an offence mentioned in the first column of Schedule 2 to the Magistrates' Courts Act 1980 (criminal damage etc.) which would otherwise be triable only summarily by virtue of section 22(2) of that Act; and
- (e) any summary offence specified under subsection (4) below.

(4) The Secretary of State may by order made by statutory instrument specify for the purposes of this section any summary offence which is punishable with imprisonment or involves obligatory or discretionary disqualification from driving.

(5) A statutory instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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

**41.—(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,

PART V

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

1980 c. 43.

(2) Where a magistrates' court commits a person to the Crown Court for trial on indictment for a number of offences triable either way and exercises the power conferred by subsection (1) above in respect of a summary offence, the magistrates' court shall give the Crown Court and the person who is committed for trial a notice stating which of the offences triable either way appears to the court to arise out of circumstances which are the same as or connected with those giving rise to the summary offence.

(3) A magistrates' court's decision to exercise the power conferred by subsection (1) above shall not be subject to appeal or liable to be questioned in any court.

(4) The committal of a person under this section in respect of an offence to which section 40 above applies shall not preclude the exercise in relation to the offence of the power conferred by that section; but where he is tried on indictment for such an offence, the functions of the Crown Court under this section in relation to the offence shall cease.

(5) If he is convicted on the indictment, the Crown Court shall consider whether the conditions specified in subsection (1) above were satisfied.

(6) If it considers that they were satisfied, it shall state to him the substance of the summary offence and ask him whether he pleads guilty or not guilty.

(7) If he pleads guilty, the Crown Court shall convict him, but may deal with him in respect of that offence only in a manner in which a magistrates' court could have dealt with him.

(8) If he does not plead guilty, the powers of the Crown Court shall cease in respect of the offence except as provided by subsection (9) below.

(9) If the prosecution inform the Court that they would not desire to submit evidence on the charge relating to the summary offence, the Court shall dismiss it.

(10) The Crown Court shall inform the clerk of the magistrates' court of the outcome of any proceedings under this section.

(11) Where the Court of Appeal allows an appeal against conviction of an offence triable either way which arose out of circumstances which were the same as or connected with those giving rise to a summary offence of which the appellant was convicted under this section—

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

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

## PART V

(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.

1980 c. 43.

(13) The references to the clerk of the magistrates' court in this section are to be construed in accordance with section 141 of the Magistrates' Courts Act 1980.

Amendments  
relating to  
committal for  
sentence.  
1967 c. 80.

**42.**—(1) Section 56 of the Criminal Justice Act 1967 shall be amended as follows.

(2) In subsection (1), for the words “offence triable either way” there shall be substituted the words “indictable offence”.

1973 c. 62.

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

1977 c. 45.

*Power of Court of Appeal to order retrial*

Power of Court of  
Appeal to order  
retrial.  
1968 c. 19.

**43.**—(1) The Criminal Appeal Act 1968 shall be amended as follows.

(2) In section 7(1), the words “and do so only by reason of evidence received or available to be received by them under section 23 of this Act” shall cease to have effect.

(3) At the end of subsection (1) of section 8 there shall be added the words “but after the end of two months from the date of the order for his retrial he may not be arraigned on an indictment preferred in pursuance of such a direction unless the Court of Appeal give leave.”

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

“(1A) Where a person has been ordered to be retried but may not be arraigned without leave, he may apply to the Court of Appeal to set aside the order for retrial and to direct the court of trial to enter a judgment and verdict of acquittal of the offence for which he was ordered to be retried.

(1B) On an application under subsection (1) or (1A) above the Court of Appeal shall have power—

(a) to grant leave to arraign; or

(b) to direct the entry of a judgment and verdict of acquittal, but shall not give leave to arraign unless they are satisfied—

(i) that the prosecution has acted with all due expedition;  
and

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

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

*Imprisonment*

## PART V

**44.**—(1) Part 1 of Schedule 6 to the Firearms Act 1968 (prosecution and punishment of offences) shall be amended as follows. Firearms offences.  
1968 c. 27.

(2) For the third and fourth columns of the entries relating to an offence under section 2(1) (possessing, etc. shotgun without shotgun certificate) there shall be substituted—

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

(3) “Life imprisonment” shall be substituted for “14 years” in the fourth column of the entries relating to offences under—

- (a) section 17(2) (possessing firearm or imitation firearm at time of committing or being arrested for certain offences); and
- (b) section 18(1) (carrying firearm or imitation firearm with criminal intent).

(4) Nothing in this section shall affect the punishment for an offence committed before this section comes into force.

**45.**—(1) In section 1(1)(a) of the Children and Young Persons Act 1933 (under which the maximum term of imprisonment for cruelty to persons under 16 is two years) and in section 12(1)(a) of the Children and Young Persons (Scotland) Act 1937 (which makes corresponding provision for Scotland), for “two” there shall be substituted “ten”. Increase in maximum term of imprisonment for cruelty to children and young persons.  
1933 c. 12.  
1937 c. 37.

(2) Nothing in subsection (1) above shall affect the punishment for an offence committed before this section comes into force.

**46.**—(1) In section 1(1)(a) of the Prevention of Crime Act 1953 “six months” shall be substituted for “three months”. Maximum term of imprisonment on summary conviction under Prevention of Crime Act 1953 and maximum fine under Restriction of Offensive Weapons Act 1959.

(2) The maximum fine that may be imposed for an offence under section 1 of the Restriction of Offensive Weapons Act 1959 shall be a fine not exceeding level 5 on the standard scale.

(3) This section shall not have effect in relation to anything done before it comes into force. 1953 c. 14.  
1959 c. 37.

**47.**—(1) The following paragraph shall be substituted for paragraph (a) of section 2 of the Public Bodies Corrupt Practices Act 1889 (penalty for corruption in office)— Corruption.  
1889 c. 69.

“(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”.

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1906 c. 34. (2) In subsection (1) of section 1 of the Prevention of Corruption Act 1906 (punishment of corrupt transactions with agents) for the words from “shall be liable” to the end of the subsection there shall be substituted the words “shall be liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both; and
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years or to a fine, or to both.”.
- (3) Nothing in this section shall affect the punishment for an offence committed before this section comes into force.
- Increase in penalty for insider dealing.  
1985 c. 8. **48.**—(1) In section 8(1)(a) of the Company Securities (Insider Dealing) Act 1985 (under which the maximum term of imprisonment for insider dealing offences is 2 years) for “2” there shall be substituted “7”.
- (2) Nothing in subsection (1) above shall affect the punishment for an offence committed before this section comes into force.
- Repeal of s.134 of Magistrates’ Courts Act 1980.  
1980 c. 43. **49.** Section 134 of the Magistrates’ Courts Act 1980 (under which a magistrates’ court having power to impose imprisonment on any person may instead of doing so order him to be detained for any period not exceeding 4 days in a place certified by the Secretary of State to be suitable for the purpose) shall cease to have effect.
- Suspended and partly suspended sentences on certain civilians in courts-martial and Standing Civilian Courts. **50.**—(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—
- 1955 c. 18. (a) persons to whom Part II of the Army Act 1955 applies by virtue of section 209 of that Act;
  - 1955 c. 19. (b) persons to whom Part II of the Air Force Act 1955 applies by virtue of section 209 of that Act; and
  - 1957 c. 53. (c) persons to whom Parts I and II of the Naval Discipline Act 1957 apply by virtue of section 118 of that Act.
- (3) An order under this section—
- (a) may amend—
    - (i) the Army Act 1955;
    - (ii) the Air Force Act 1955;
    - (iii) the Naval Discipline Act 1957; and
    - 1976 c. 52. (iv) the Armed Forces Act 1976;
  - (b) may apply, with or without modifications, any enactment contained in—
    - 1973 c. 62. (i) the Powers of Criminal Courts Act 1973;
    - 1977 c. 45. (ii) the Criminal Law Act 1977; or

- (iii) any other Act not mentioned in paragraph (a) above;  
and
- (c) may make such incidental or consequential provision as the Secretary of State considers necessary or expedient.
- (4) Without prejudice to the generality of this section, an order under this section may make—
- (a) provision prohibiting a court which passes a suspended sentence on a person from making an order under paragraph 4 of Schedule 5A to the Army Act 1955 or the Air Force Act 1955 or paragraph 4 of Schedule 4A to the Naval Discipline Act 1957 (community supervision orders) in respect of another offence; and
- (b) provision restricting the powers conferred by sections 110 and 113 of the Army Act 1955 and the Air Force Act 1955 (confirmation and review) and sections 70 and 71 of the Naval Discipline Act 1957 (review).
- (5) A statutory instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

PART V

1955 c. 18.

1955 c. 19.

1957 c. 53.

*Maximum fines under subordinate legislation*

- 51.—(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.
- (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.

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

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(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.

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

**52.**—(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.

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.

**53.**—(1) Where an instrument which was made under an enactment on or after 11th April 1983 but before this section came into force confers on any authority other than a harbour authority a power by subordinate instrument to make a person liable to a fine on conviction of a summary offence of an amount shown in the second column of the standard scale, as that scale had effect when the instrument was made, a reference to the level in the first column of the standard scale which then corresponded to that amount shall be substituted for the reference in the instrument conferring the power to the amount of the fine.



(2) If an order under section 143 of the Magistrates' Courts Act 1980 alters the sums specified in section 37(2) of the Criminal Justice Act 1982, the second reference to the standard scale in subsection (1) above is to be construed as a reference to that scale as it has effect by virtue of the order.

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1980 c. 43.  
1982 c. 48.

(3) This section shall not affect so much of any instrument as (in whatever words) makes a person liable on summary conviction to a maximum fine not exceeding a specified amount for each period of a specified length during which a continuing offence is continued.

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

Fines on summary conviction for offences under subordinate instruments—conversion to references to levels on scale—Scotland.  
1975 c. 21.

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

289GD—(1) Where an instrument which was made under an enactment on or after 11th April 1983 but before the commencement of section 54 of the Criminal Justice Act 1988 confers on any authority other than a harbour authority a power by subordinate instrument to make a person liable on summary conviction to a fine of an amount shown in the second column of the standard scale, as that scale had effect when the instrument was made, a reference to the level in the first column of the standard scale which then corresponded to that amount shall be substituted for the reference in the instrument conferring the power to the amount of the fine.

(2) This section shall not affect so much of any instrument as (in whatever words) makes a person liable on summary conviction to a maximum fine not exceeding a specified amount for each period of a specified length during which a continuing offence is continued”.

**55.—**(1) This section applies to any instrument (however framed or worded) which—

Fines under secondary subordinate instruments—England and Wales.  
1982 c. 48.

- (a) was made before 11th April 1983 (the date of the commencement of sections 35 to 50 of the Criminal Justice Act 1982); and
- (b) confers on any authority other than a harbour authority a power by subordinate instrument to make a person, as regards any summary offence (whether or not created by the latter instrument), liable on conviction to a maximum fine of a specified amount not exceeding £1,000,

but does not affect so much of any such instrument as (in whatever words) confers a power by subordinate instrument to make a person liable on conviction to a fine for each period of a specified length during which a continuing offence is continued.

(2) The maximum fine to which a subordinate instrument made by virtue of an instrument to which this section applies may provide that a person shall be liable on conviction of a summary offence is—

- (a) if the specified amount is less than £25, level 1 on the standard scale;
- (b) if it is £25 or more but less than £50, level 2;
- (c) if it is £50 or more but less than £200, level 3;

## PART V

- (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.

1982 c. 48.

(6) Section 36 of the Criminal Justice Act 1982 (abolition of enhanced penalties under subordinate instruments) shall have effect as if the references in it to an Act included references to an instrument and the reference in subsection (2) to the coming into force of the section were a reference, in relation to an instrument conferring a power such as is mentioned in subsection (1), to the coming into force of this section.

Fines under  
secondary  
subordinate  
instruments:  
Scotland.  
1975 c. 21.  
1987 c. 41.

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

“Fines under  
secondary  
subordinate  
instruments—  
Scotland.

289GC.—(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.

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(2) The maximum fine to which a subordinate instrument made by virtue of an instrument to which this section applies may provide that a person shall be liable on conviction of a summary offence is—

- (a) if the specified amount is less than £25, level 1 on the standard scale;
- (b) if it is £25 or more but less than £50, level 2;
- (c) if it is £50 or more but less than £200, level 3;
- (d) if it is £200 or more but less than £400, level 4; and
- (e) if it is £400 or more, level 5.

(3) Subject to subsection (5) below, where an instrument to which this section applies confers a power by subordinate instrument to make a person, as regards a summary offence, liable on conviction to a fine in respect of a specified quantity or a specified number of things, that fine shall be treated for the purposes of this section as being the maximum fine to which a person may be made liable by virtue of the instrument.

(4) Where an instrument to which this section applies confers a power to provide for different maximum fines in relation to different circumstances or persons of different descriptions, the amount specified as those maximum fines are to be treated separately for the purposes of this section.

(5) Where an instrument to which this section applies confers a power by subordinate instrument to make a person, as regards a summary offence, liable on conviction to a fine in respect of a specified quantity or a specified number of things but also confers a power by subordinate instrument to make a person, as regards such an offence, liable on conviction to an alternative fine, this section shall have effect in relation—

- (a) to the alternative fine; and
- (b) to any amount that the instrument specifies as the maximum fine for which a subordinate instrument made in the exercise of the power conferred by it may provide,

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

(2) Section 289E of the Criminal Procedure (Scotland) Act 1975 (penalties for first and subsequent convictions of summary offences to be the same) shall have effect as if the references in it to an Act included references to an instrument and the reference in subsection (5) to the commencement of the section were a reference, in relation to an instrument conferring a power such as is mentioned in subsection (1), to the coming into force of this section. 1975 c. 21.

## PART V

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

**57.—(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.

Byelaws relating to the burning of crop residues.  
1982 c. 48.

**58.—(1)** In section 43 of the Criminal Justice Act 1982 (maximum fines under byelaws relating to the burning of straw or stubble)—

- (a) after the word “stubble” there shall be inserted the words “or any other crop residue”; and
- (b) the words from “and, in the case of a continuing offence,” to “thereof” and from “(but” to the end of the section shall cease to have effect.

1972 c. 70.

(2) Any byelaw relating to the burning of crop residues other than straw or stubble made by a local authority under section 235 of the Local Government Act 1972 which is in force at the coming into force of this section shall have effect as if it specified level 5 on the standard scale as the maximum fine which may be imposed on summary conviction of an offence under it.

(3) Nothing in this section shall affect the punishment for an offence committed before this section comes into force.

*Exceptionally high maximum fines*

Power to alter exceptionally high maximum fines.

**59.—(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.

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(2) Subsection (1) above applies to any sum which—

- (a) is specified as the maximum fine which may be imposed on conviction of a summary offence; and
- (b) is higher than level 5 on the standard scale.

(3) The Secretary of State may by order amend an enactment or subordinate instrument specifying a sum to which this subsection applies so as to substitute for that sum such other sum as appears to him—

- (a) to be justified by a change in the value of money appearing to him to have taken place since the last occasion on which the sum in question was fixed; or
- (b) to be appropriate to take account of an order made or proposed to be made altering the statutory maximum.

(4) Subsection (3) above applies to any sum which—

- (a) is specified as the maximum fine which may be imposed on summary conviction of an offence triable either way; and
- (b) is higher than the statutory maximum.

(5) An order under this section—

- (a) shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament; and
- (b) shall not affect the punishment for an offence committed before it comes into force.

(6) In this section—

- “enactment” includes an enactment contained in an Act passed after this Act; and
- “subordinate instrument” includes an instrument made after the passing of this Act.

*Default in payment of fines etc.*

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

- “An amount not exceeding £50 ..... 5 days
- 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”.

Periods of imprisonment for default.  
1973 c. 62.  
1980 c. 43.

PART V  
1973 c. 62.

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

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

Default -  
procedure.  
1980 c. 43.

61.—(1) The Magistrates’ Courts Act 1980 shall be amended as follows.

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

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

- (a) to direct that the issue of the warrant of commitment shall be postponed until a time different from that to which it was previously postponed;
- (b) to vary any of the conditions on which its issue is postponed,

but only if it thinks it just to do so having regard to a change of circumstances since the relevant time.

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

- (a) where neither of the powers conferred by subsection (3) above has been exercised previously, the date when the issue of the warrant was postponed under subsection (2) above; and
- (b) in any other case, the date of the exercise or latest exercise of either or both of the powers.

(5) Without prejudice to the generality of subsection (3) above, if on an application by a person in respect of whom issue of a warrant has been postponed it appears to a justice of the peace acting for the petty sessions area in which the warrant has been or would have been issued that since the relevant time there has been a change of circumstances which would make it just for the court to exercise one or other or both of the powers conferred by that subsection, he shall refer the application to the court.

(6) Where such an application is referred to the court, it shall be the duty of the clerk of the court—

- (a) to fix a time and place for the application to be heard; and
- (b) to give the applicant notice of the time and place which he fixes.

(7) Where such a notice has been given but the applicant does not appear at the time and place specified in the notice, the court may proceed with the consideration of the application in his absence.

(8) If a warrant of commitment in respect of the sum adjudged to be paid has been issued before the hearing of the application, the court shall have power to order that the warrant shall cease to have effect and, if the applicant has been arrested in pursuance of it, to order that he shall be released, but it shall only make an order under this subsection if it is satisfied that the change of circumstances on which the applicant relies was not put before the court when it was determining whether to issue the warrant.”.

(3) The following subsection shall be inserted after subsection (4) of section 82 (restriction on power to impose imprisonment for default)—

“(4A) The methods of enforcing payment mentioned in subsection (4)(b)(ii) above are—

- (a) a warrant of distress under section 76 above;
- (b) an application to the High Court or county court for enforcement under section 87 below;
- (c) an order under section 88 below;
- (d) an attachment of earnings order; and
- (e) if the offender is under the age of 21, an order under section 17 of the Criminal Justice Act 1982 (attendance centre orders).”.

1982 c. 48.

(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.

## PART V

(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—

"Power to remit fine.

85.—(1) Where a fine has been imposed on conviction of an offender by a magistrates' court, the court may at any time remit the whole or any part of the fine, but only if it thinks it just to do so having regard to a change of circumstances which has occurred—

- (a) where the court is considering whether to issue a warrant of commitment after the issue of such a warrant in respect of the fine has been postponed under subsection (2) of section 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".



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

"Fines imposed on companies.

87A.—(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."

PART V  
Fines on companies.  
1980 c. 43.

1986 c. 45.

1979 c. 55.

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

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

*Fines and other pecuniary penalties—miscellaneous*

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

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

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

Fixed penalty notices.  
1982 c. 49.

## PART V

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

**64.**—(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.

Powers of civilian fine enforcement officers. 1980 c. 43.

**65.**—(1) The following paragraph shall be inserted after the first paragraph of subsection (2) of section 125 (warrants) of the Magistrates’ Courts Act 1980—

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

- (a) is employed by an authority of a prescribed class;
- (b) is authorised in the prescribed manner to execute such warrants; and
- (c) is acting within the area for which the authority that employs him performs its functions.”.

(2) In section 136(2)(a) of that Act (by virtue of which a warrant for the detention of a fine defaulter overnight in a police station may be executed by any police constable) after the word “constable” there shall be inserted the words “or any person who—

- (a) is employed by an authority of a prescribed class;
- (b) is authorised in the prescribed manner to execute such warrants; and
- (c) is acting within the area for which the authority that employs him performs its functions.”.

Fisheries offences on River Tweed. 1981 c. 29. 1982 c. 48.

**66.**—(1) Section 38 of the Fisheries Act 1981 (which applied certain enactments to so much of the River Tweed as is situated outwith Scotland as if it were situated in Scotland) shall be deemed not to have been excluded from the operation of section 38(1) of the Criminal Justice Act 1982 (general increase of fines for summary offences) by paragraph (c) of that subsection (exclusion of offences where fine or maximum fine altered since 29th July 1977).

(2) Nothing in this section shall affect the punishment for an offence committed before this section comes into force.

Fines imposed and recognizances forfeited by coroners.

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

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

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

**PART V**  
Causing death by reckless driving—  
increased  
minimum  
disqualification  
period.  
1972 c. 20.

#### *Forfeiture*

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

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

(a) the court by or before which he is convicted is satisfied that any property which has been lawfully seized from him or which was in his possession or under his control at the time when he was apprehended for the offence or when a summons in respect of it was issued—

(i) has been used for the purpose of committing, or facilitating the commission of, any offence; or

(ii) was intended by him to be used for that purpose;  
or

(b) the offence, or an offence which the court has taken into consideration in determining his sentence, consists of unlawful possession of property which—

(i) has been lawfully seized from him; or

(ii) was in his possession or under his control at the time when he was apprehended for the offence of which he has been convicted or when a summons in respect of that offence was issued,

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

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

(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”.

Forfeiture  
general.  
1973 c. 62.

PART V  
Forfeiture for  
drug offences.  
1971 c. 38.  
1986 c. 32.

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

## PART VI

### CONFISCATION OF THE PROCEEDS OF AN OFFENCE

Confiscation  
orders.

71.—(1) The Crown Court and a magistrates' court shall each have power, in addition to dealing with an offender in any other way, to make an order under this section requiring him to pay such sum as the court thinks fit.

(2) The Crown Court may make such an order against an offender where—

- (a) he is found guilty of any offence to which this Part of this Act applies; and
- (b) it is satisfied—
  - (i) that he has benefited from that offence or from that offence taken together with some other offence of which he is convicted in the same proceedings, or which the court takes into consideration in determining his sentence, and which is not a drug trafficking offence; and
  - (ii) that his benefit is at least the minimum amount.

(3) A magistrates' court may make such an order against an offender where—

- (a) he is convicted of an offence listed in Schedule 4 to this Act; and
- (b) it is satisfied—
  - (i) that he has benefited from that offence or from that offence taken together with some other offence listed in that Schedule of which he is convicted in the same proceedings, or which the court takes into consideration in determining his sentence; and
  - (ii) that his benefit is at least the minimum amount.

(4) For the purposes of this Part of this Act a person benefits from an offence if he obtains property as a result of or in connection with its commission and his benefit is the value of the property so obtained.

(5) Where a person derives a pecuniary advantage as a result of or in connection with the commission of an offence, he is to be treated for the purposes of this Part of this Act as if he had obtained as a result of or in connection with the commission of the offence a sum of money equal to the value of the pecuniary advantage.

(6) The sum which an order made by a court under this section requires an offender to pay must be at least the minimum amount, but must not exceed—

- (a) the benefit in respect of which it is made; or
- (b) the amount appearing to the court to be the amount that might be realised at the time the order is made,

whichever is the less.

(7) For the purposes of this Part of this Act the minimum amount is £10,000 or such other amount as the Secretary of State may specify by order made by statutory instrument.

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(8) A statutory instrument containing an order made by the Secretary of State under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(9) In this Part of this Act—

- (a) an order made by a court under this section is referred to as a “confiscation order”;
- (b) “drug trafficking offence” has the same meaning as in the Drug Trafficking Offences Act 1986; 1986 c. 32.
- (c) references to an offence to which this Part of this Act applies are references to any offence which—
  - (i) is listed in Schedule 4 to this Act; or
  - (ii) if not so listed, is an indictable offence, other than a drug trafficking offence; and
- (d) a person against whom proceedings have been instituted for an offence to which this Part of this Act applies is referred to (whether or not he has been convicted) as “the defendant”.

72.—(1) A court shall not make a confiscation order unless the prosecutor has given written notice to the court to the effect that it appears to him that, were the court to consider that it ought to make such an order, it would be able to make an order requiring the offender to pay at least the minimum amount.

Making of  
confiscation  
orders.

(2) If the prosecutor gives the court such a notice, the court shall determine whether it ought to make a confiscation order.

(3) When considering whether to make a confiscation order the court may take into account any information that has been placed before it showing that a victim of an offence to which the proceedings relate has instituted, or intends to institute, civil proceedings against the defendant in respect of loss, injury or damage sustained in connection with the offence.

(4) If the court determines that it ought to make such an order, the court shall, before sentencing or otherwise dealing with the offender in respect of the offence or, as the case may be, any of the offences concerned, determine the amount to be recovered in his case by virtue of this section and make a confiscation order for that amount specifying the offence or offences.

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

- (a) imposing any fine on him;
- (b) making any order involving any payment by him, other than an order under section 35 of the Powers of Criminal Courts Act 1973 (compensation orders); or 1973 c. 62.
- (c) making any order under—
  - (i) section 27 of the Misuse of Drugs Act 1971 (forfeiture orders); or 1971 c. 38.

PART VI  
1973 c. 62.

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

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

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

(7) Where—

(a) a court makes both a confiscation order and an order for the payment of compensation under section 35 of the Powers of Criminal Courts Act 1973 against the same person in the same proceedings; and

(b) it appears to the court that he will not have sufficient means to satisfy both the orders in full,

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

Statements, etc.  
relevant to  
making  
confiscation  
orders.

73.—(1) Where—

(a) a defendant has been convicted of an offence to which this Part of this Act applies and the prosecutor tenders to the court a statement as to any matters relevant—

(i) to determining whether the defendant has benefited from the offence or from any other offence to which this Part of this Act applies of which he is convicted in the same proceedings or which is taken into consideration in determining his sentence; or

(ii) to an assessment of the value of the defendant's benefit from the offence or any other offence to which this Part of this Act applies of which he is so convicted or which is so taken into consideration; and

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

the court may, for the purposes of so determining or making such an assessment, treat his acceptance as conclusive of the matters to which it relates.

(2) Where—

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

(b) the court is satisfied that a copy of that statement has been served on the defendant,

the court may require the defendant to indicate to what extent he accepts each allegation in the statement and, so far as he does not accept any such allegation, to indicate any matters he proposes to rely on.

(3) If the defendant fails in any respect to comply with a requirement under subsection (2) above, he may be treated for the purposes of this section as accepting every allegation in the statement apart from—

(a) any allegation in respect of which he has complied with the requirement; and

- (b) any allegation that he has benefited from an offence or that any property was obtained by him as a result of or in connection with the commission of an offence.

(4) Where—

- (a) there is tendered to the court by the defendant a statement as to any matters relevant to determining the amount that might be realised at the time the confiscation order is made; and
- (b) the prosecutor accepts to any extent any allegation in the statement;

the court may, for the purposes of that determination, treat the acceptance by the prosecutor as conclusive of the matters to which it relates.

(5) An allegation may be accepted or a matter indicated for the purposes of this section either—

- (a) orally before the court; or
- (b) in writing in accordance with rules of court.

(6) If the court is satisfied as to any matter relevant for determining the amount that might be realised at the time the confiscation order is made (whether by an acceptance under this section or otherwise), the court may issue a certificate giving the court's opinion as to the matters concerned and shall do so if satisfied that the amount that might be realised at the time the confiscation order is made is less than the amount the court assesses to be the value of the defendant's benefit from the offence or, if more than one, all the offences in respect of which the order may be made.

74.—(1) In this Part of this Act, “realisable property” means, subject to subsection (2) below—

Definition of principal terms used.

- (a) any property held by the defendant; and
- (b) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Part of this Act.

(2) Property is not realisable property if—

- (a) an order under section 43 of the Powers of Criminal Courts Act 1973 (deprivation orders); 1973 c. 62.
- (b) an order under section 27 of the Misuse of Drugs Act 1971 (forfeiture orders); or 1971 c. 38.
- (c) an order under section 223 or 436 of the Criminal Procedure (Scotland) Act 1975 (forfeiture of property), 1975 c. 21.

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.

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(4) Subject to the following provisions of this section, for the purposes of this Part of this Act the value of property (other than cash) in relation to any person holding the property—

- (a) where any other person holds an interest in the property, is—
  - (i) the market value of the first-mentioned person's beneficial interest in the property, less
  - (ii) the amount required to discharge any incumbrance (other than a charging order) on that interest; and
- (b) in any other case, is its market value.

(5) References in this Part of this Act to the value at any time (referred to in subsection (6) below as "the material time") of any property obtained by a person as a result of or in connection with the commission of an offence are references to—

- (a) the value of the property to him when he obtained it adjusted to take account of subsequent changes in the value of money; or
- (b) where subsection (6) below applies, the value there mentioned, whichever is the greater.

(6) If at the material time he holds—

- (a) the property which he obtained (not being cash); or
- (b) property which, in whole or in part, directly or indirectly represents in his hands the property which he obtained,

the value referred to in subsection (5)(b) above is the value to him at the material time of the property mentioned in paragraph (a) above or, as the case may be, of the property mentioned in paragraph (b) above, so far as it so represents the property which he obtained, but disregarding any charging order.

(7) Subject to subsection (12) below, references in this Part of this Act to the value at any time (referred to in subsection (8) below as "the material time") of a gift caught by this Part of this Act are references to—

- (a) the value of the gift to the recipient when he received it adjusted to take account of subsequent changes in the value of money; or
- (b) where subsection (8) below applies, the value there mentioned, whichever is the greater.

(8) Subject to subsection (12) below, if at the material time he holds—

- (a) the property which he received (not being cash); or
- (b) property which, in whole or in part, directly or indirectly represents in his hands the property which he received;

the value referred to in subsection (7) above is the value to him at the material time of the property mentioned in paragraph (a) above or, as the case may be, of the property mentioned in paragraph (b) above so far as it so represents the property which he received, but disregarding any charging order.

(9) For the purposes of subsection (3) above, an obligation has priority at any time if it is an obligation of the defendant to—

- (a) pay an amount due in respect of a fine, or other order of a court, imposed or made on conviction of an offence, where the fine was imposed or order made before the confiscation order; or



- (b) pay any sum which would be included among the preferential debts (within the meaning given by section 386 of the Insolvency Act 1986) in the defendant's bankruptcy commencing on the date of the confiscation order or winding up under an order of the court made on that date.

PART VI  
1986 c. 45.

(10) A gift (including a gift made before the commencement of this Part of this Act) is caught by this Part of this Act if—

- (a) it was made by the defendant at any time after the commission of the offence or, if more than one, the earliest of the offences to which the proceedings for the time being relate; and  
(b) the court considers it appropriate in all the circumstances to take the gift into account.

(11) The reference in subsection (10) above to an offence to which the proceedings for the time being relate includes, where the proceedings have resulted in the conviction of the defendant, a reference to any offence which the court takes into consideration when determining his sentence.

(12) For the purposes of this Part of this Act—

- (a) the circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration provided by the defendant; and  
(b) in those circumstances, the preceding provisions of this section shall apply as if the defendant had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in paragraph (a) above bears to the value of the consideration provided by the defendant.

*Enforcement, etc. of confiscation orders*

75.—(1) Where the Crown Court orders the defendant to pay an amount under this Part of this Act, sections 31(1) to (3C) and 32(1) and (2) of the Powers of Criminal Courts Act 1973 (powers of Crown Court in relation to fines and enforcement of Crown Court fines) shall have effect as if that amount were a fine imposed on him by the Crown Court.

Application of  
procedure for  
enforcing fines.  
1973 c. 62.

(2) Where a magistrates' court orders the defendant to pay an amount under this Part of this Act, that amount shall be treated as a fine for the purposes of section 31(3) of the Magistrates' Courts Act 1980 (general limit on the power of a magistrates' court to impose imprisonment not to apply in the case of imprisonment in default).

1980 c. 43.

(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 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.

1982 c. 48.

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(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—

1973 c. 62.

(i) any sentence suspended under section 22(1) of the Powers of Criminal Courts Act 1973 which has not taken effect at the time the warrant is issued;

1977 c. 45.

(ii) in the case of a sentence of imprisonment passed with an order under section 47(1) of the Criminal Law Act 1977, any part of the sentence which the defendant has not at that time been required to serve in prison; and

(iii) any term of imprisonment or detention fixed under section 31(2) of the Powers of Criminal Courts Act 1973 for which a warrant of commitment has not been issued at that time.

1980 c. 43.

(5) In the application of Part III of the Magistrates' Courts Act 1980 to amounts payable under confiscation orders—

(a) such an amount is not a sum adjudged to be paid by a conviction for the purposes of section 81 (enforcement of fines imposed on young offenders) or a fine for the purposes of section 85 (remission of fines); and

(b) in section 87 (enforcement by High Court or county court), subsection (3) shall be omitted.

(6) This section applies in relation to confiscation orders made by the criminal division of the Court of Appeal, or by the House of Lords on appeal from that division, as it applies in relation to confiscation orders made by the Crown Court, and the reference in subsection (1) above to the Crown Court shall be construed accordingly.

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

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

(a) proceedings have been instituted in England and Wales against the defendant for an offence to which this Part of this Act applies;

(b) the proceedings have not been concluded; and

(c) either a confiscation order has been made or it appears to the court that there are reasonable grounds for thinking that a confiscation order may be made in them.

(2) Those powers are also exercisable where—

(a) the court is satisfied that, whether by the laying of an information or otherwise, a person is to be charged with an offence to which this Part of this Act applies; and

(b) it appears to the court that a confiscation order may be made in proceedings for the offence.

(3) For the purposes of sections 77, 78 and 92 below at any time when those powers are exercisable before proceedings have been instituted—

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- (a) references in this Part of this Act to the defendant shall be construed as references to the person referred to in subsection (2)(a) above;
- (b) references in this Part of this Act to the prosecutor shall be construed as references to the person who the High Court is satisfied is to have the conduct of the proposed proceedings; and
- (c) references in this Part of this Act to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in subsection (2)(a) above for an offence to which this Part of this Act applies.

(4) Where the court has made an order under section 77(1) or 78(1) below by virtue of subsection (2) above, the court shall discharge the order if proceedings in respect of the offence are not instituted (whether by the laying of an information or otherwise) within such time as the court considers reasonable.

77.—(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.

Restraint orders.

(2) Without prejudice to the generality of subsection (1) above, a restraint order may make such provision as the court thinks fit for living expenses and legal expenses.

(3) A restraint order may apply—

- (a) to all realisable property held by a specified person, whether the property is described in the order or not; and
- (b) to realisable property held by a specified person, being property transferred to him after the making of the order.

(4) This section shall not have effect in relation to any property for the time being subject to a charge under section 78 below.

(5) A restraint order—

- (a) may be made only on an application by the prosecutor;
- (b) may be made on an ex parte application to a judge in chambers; and
- (c) shall provide for notice to be given to persons affected by the order.

(6) A restraint order—

- (a) may be discharged or varied in relation to any property; and
- (b) shall be discharged when proceedings for the offence are concluded.

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

(8) Where the High Court has made a restraint order, the court may at any time appoint a receiver—

- (a) to take possession of any realisable property, and

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- (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.

1972 c. 61.  
1925 c. 21.

(12) The Land Charges Act 1972 and the Land Registration Act 1925 shall apply—

- (a) in relation to restraint orders, as they apply in relation to orders affecting land made by the court for the purpose of enforcing judgments or recognisances; and  
 (b) in relation to applications for restraint orders, as they apply in relation to other pending land actions.

(13) The prosecutor shall be treated for the purposes of section 57 of the Land Registration Act 1925 (inhibitions) as a person interested in relation to any registered land to which a restraint order or an application for such an order relates.

Charging orders  
in respect of land,  
securities, etc.

**78.**—(1) The High Court may make a charging order on realisable property for securing the payment to the Crown—

- (a) where a confiscation order has not been made, of an amount equal to the value from time to time of the property charged; and  
 (b) in any other case, of an amount not exceeding the amount payable under the confiscation order.

(2) For the purposes of this Part of this Act, a charging order is an order made under this section imposing on any such realisable property as may be specified in the order a charge for securing the payment of money to the Crown.

(3) A charging order—

- (a) may be made only on an application by the prosecutor;  
 (b) may be made on an ex parte application to a judge in chambers;  
 (c) shall provide for notice to be given to persons affected by the order; and

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

**79.—**(1) The Land Charges Act 1972 and the Land Registration Act 1925 shall apply in relation to charging orders as they apply in relation to orders or writs issued or made for the purpose of enforcing judgments.

Charging orders:  
supplementary  
provisions.  
1972 c. 61.  
1925 c. 21.

(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.

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(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.

1972 c. 61.  
1925 c. 21.

(4) Where a charging order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 1925, an order under section 78(7) above discharging the charging order may direct that the entry be cancelled.

(5) The Secretary of State may by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament amend section 78 above by adding to or removing from the kinds of asset for the time being referred to there any asset of a kind which in his opinion ought to be so added or removed.

1979 c. 53.

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

Realisation of  
property.

**80.—(1) Where—**

(a) a confiscation order is made;

(b) the order is not subject to appeal; and

(c) the proceedings in which it was made have not been concluded, the High Court may, on an application by the prosecutor, exercise the powers conferred by subsections (2) to (6) below.

(2) The court may appoint a receiver in respect of realisable property.

(3) The court may empower a receiver appointed under subsection (2) above, under section 77 above or in pursuance of a charging order—

(a) to enforce any charge imposed under section 78 above on realisable property or on interest or dividends payable in respect of such property; and

(b) in relation to any realisable property other than property for the time being subject to a charge under section 78 above, to take possession of the property subject to such conditions or exceptions as may be specified by the court.

(4) The court may order any person having possession of realisable property to give possession of it to any such receiver.

(5) The court may empower any such receiver to realise any realisable property in such manner as the court may direct.

(6) The court may order any person holding an interest in realisable property to make such payment to the receiver in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Part of this Act as the court may direct and the court may, on the payment being made, by order transfer, grant or extinguish any interest in the property.

(7) Subsections (4) to (6) above do not apply to property for the time being subject to a charge under section 78 above.

(8) The court shall not in respect of any property exercise the powers conferred by subsection (3)(a), (5) or (6) above unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the court.

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**81.**—(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—

Application of proceeds of realisation and other sums.

- (a) the proceeds of the enforcement of any charge imposed under section 78 above;
- (b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under section 77 or 80 above; and
- (c) any other sums, being property held by the defendant;

shall first be applied in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under section 87(2) below and then shall, after such payments (if any) as the High Court may direct have been made out of those sums, be applied on the defendant's behalf towards the satisfaction of the confiscation order.

(2) If, after the amount payable under the confiscation order has been fully paid, any such sums remain in the hands of such a receiver, the receiver shall distribute them—

- (a) among such of those who held property which has been realised under this Part of this Act, and
- (b) in such proportions,

as the High Court may direct after giving a reasonable opportunity for such persons to make representations to the court.

(3) The receipt of any sum by a justices' clerk on account of an amount payable under a confiscation order shall reduce the amount so payable, but the justices' clerk shall apply the money received for the purposes specified in this section and in the order so specified.

(4) The justices' clerk shall first pay any expenses incurred by a person acting as an insolvency practitioner and payable under section 87(2) below but not already paid under subsection (1) above.

(5) If the money was paid to the justices' clerk by a receiver appointed under this Part of this Act or in pursuance of a charging order, the justices' clerk shall next pay the receiver's remuneration and expenses.

(6) After making—

- (a) any payment required by subsection (4) above; and
- (b) in a case to which subsection (5) above applies, any payment required by that subsection,

the justices' clerk shall reimburse any amount paid under section 88(2) below.

(7) The justices' clerk shall finally pay any compensation directed to be paid out of any sums recovered under the confiscation order under section 72(7) above.

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1979 c. 55.

(8) Any balance in the hands of the justices' clerk after he has made all payments required by the foregoing provisions of this section shall be treated for the purposes of section 61 of the Justices of the Peace Act 1979 (application of fines, etc.) as if it were a fine imposed by a magistrates' court.

(9) Where under subsection (3) above a sum falls to be applied in payment both of compensation and of other outgoings—

- (a) the person entitled to the compensation shall be liable to pay to the Secretary of State such an amount as bears to the remuneration or expenses the same proportion as the amount payable in accordance with the direction under 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.

Exercise of powers  
by High Court or  
receiver.

**82.**—(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.**—(1) If, on an application by the defendant in respect of a confiscation order, the High Court is satisfied that the realisable property is inadequate for the payment of any amount remaining to be recovered under the order the court shall issue a certificate to that effect, giving the court's reasons.

**PART VI**  
Variation of  
confiscation  
orders.

(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 defendant may apply—

- (a) where the confiscation order was made by the Crown Court, to that court; and
- (b) where the confiscation order was made by a magistrates' court, to a magistrates' court for the same area,

for the amount to be recovered under the order to be reduced.

(4) The Crown Court shall, on an application under subsection (3) above—

- (a) substitute for the amount to be recovered under the order such lesser amount as the court thinks just in all the circumstances of the case; and
- (b) substitute for the term of imprisonment or of detention fixed under subsection (2) of section 31 of the Powers of Criminal Courts Act 1973 in respect of the amount to be recovered under the order a shorter term determined in accordance with that section in respect of the lesser amount.

1973 c. 62.

(5) A magistrates' court shall, on an application under subsection (3) above, substitute for the amount to be recovered under the order such lesser amount as the court thinks just in all the circumstances of the case.

**84.**—(1) Where a person who holds realisable property is adjudged bankrupt—

**Bankruptcy of  
defendant etc.**

- (a) property for the time being subject to a restraint order made before the order adjudging him bankrupt, and
- (b) any proceeds of property realised by virtue of section 77(8) or 80(5) or (6) above for the time being in the hands of a receiver appointed under section 77 or 80 above,

is excluded from the bankrupt's estate for the purposes of Part IX of the Insolvency Act 1986.

1986 c. 45.

## PART VI

(2) Where a person has been adjudged bankrupt, the powers conferred on the High Court by sections 77 to 81 above or on a receiver so appointed or on the Court of Session by sections 90 to 92 below shall not be exercised in relation to—

- (a) property for the time being comprised in the bankrupt's estate for the purposes of that Part of that Act;
- (b) property in respect of which his trustee in bankruptcy may (without leave of court) serve a notice under section 307 or 308 of that Act (after-acquired property and tools, clothes, etc. exceeding value of reasonable replacement); and
- (c) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under section 280(2)(c) of that Act.

(3) Nothing in that Act shall be taken as restricting, or enabling the restriction of, the exercise of those powers.

(4) Subsection (2) above does not affect the enforcement of a charging order—

- (a) made before the order adjudging the person bankrupt; or
- (b) on property which was subject to a restraint order when the order adjudging him bankrupt was made.

(5) Where, in the case of a debtor, an interim receiver stands appointed under section 286 of that Act and any property of the debtor is subject to a restraint order, the powers conferred on the receiver by virtue of that Act do not apply to property for the time being subject to the restraint order.

(6) Where a person is adjudged bankrupt and has directly or indirectly made a gift caught by this Part of this Act—

- (a) no order shall be made under section 339 or 423 of that Act (avoidance of certain transactions) in respect of the making of the gift at any time when proceedings for an offence to which this Part of this Act applies have been instituted against him and have not been concluded or when property of the person to whom the gift was made is subject to a restraint order or charging order; and
- (b) any order made under either of those sections after the conclusion of the proceedings shall take into account any realisation under this Part of this Act of property held by the person to whom the gift was made.

(7) In any case in which a petition in bankruptcy was presented, or a receiving order or adjudication in bankruptcy was made, before 29th December 1986 (the date on which the Insolvency Act 1986 came into force), this section shall have effect with the following modifications—

1986 c. 45.

- (a) for references to the bankrupt's estate for the purposes of Part IX of that Act there shall be substituted references to the property of the bankrupt for the purposes of the Bankruptcy Act 1914;

1914 c. 59.

- (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.

PART VI

**85.—**(1) Where the estate of a person who holds realisable property is sequestrated—

Sequestration in Scotland of defendant etc.

- (a) property for the time being subject to a restraint order made before the award of sequestration, and
- (b) any proceeds of property realised by virtue of section 77(8) or 80(5) or (6) above for the time being in the hands of a receiver appointed under section 77 or 80 above,

is excluded from the debtor's estate for the purposes of the Bankruptcy (Scotland) Act 1985. 1985 c. 66.

(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, under subsection (6) of that section, vests in the permanent trustee

and it shall not be competent to submit a claim in relation to the confiscation order to the permanent trustee in accordance with section 48 of that Act.

(3) Nothing in that Act shall be taken as restricting, or enabling the restriction of, the exercise of those powers.

(4) Subsection (2) above does not affect the enforcement of a charging order—

- (a) made before the award of sequestration; or
- (b) on property which was subject to a restraint order when the award of sequestration was made.

(5) Where, during the period before sequestration is awarded, an interim trustee stands appointed under the proviso to section 13(1) of that Act and any property in the debtor's estate is subject to a restraint order, the powers conferred on the trustee by virtue of that Act do not apply to property for the time being subject to the restraint order.

(6) Where the estate of a person is sequestrated and he has directly or indirectly made a gift caught by this Part of this Act—

- (a) no decree shall be granted under section 34 or 36 of that Act (gratuitous alienations and unfair preferences) in respect of the making of the gift at any time when proceedings for an offence to which this Part of this Act applies have been instituted against him and have not been concluded or when property of the person to whom the gift was made is subject to a restraint order or charging order, and

## PART VI

- (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.

1985 c. 66.  
1913 c. 20.

(7) In any case in which, notwithstanding the coming into force of the Bankruptcy (Scotland) Act 1985, the Bankruptcy (Scotland) Act 1913 applies to a sequestration, subsection (2) above shall have effect as if for paragraphs (a) and (b) thereof there were substituted the following paragraphs—

- “(a) property comprised in the whole property of the debtor which vests in the trustee under section 97 of the Bankruptcy (Scotland) Act 1913,  
(b) any income of the bankrupt which has been ordered under subsection (2) of section 98 of that Act to be paid to the trustee of any estate which, under subsection (1) of that section, vests in the trustee,”;

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

Winding up of  
company holding  
realisable  
property.

**86.**—(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.

1986 c. 45.

(3) Nothing in the Insolvency Act 1986 shall be taken as restricting, or enabling the restriction of, the exercise of those powers.

(4) Subsection (2) above does not affect the enforcement of a charging order made before the relevant time or on property which was subject to a restraint order at the relevant time.

(5) For the purposes of the application of Parts IV and V of the Insolvency Act 1986 (winding up of registered companies and winding up of unregistered companies) to a company which the Court of Session has jurisdiction to wind up, a person is not a creditor in so far as any sum due to him by the company is due in respect of a confiscation order. PART VI  
1986 c. 45.

(6) In this section—

“company” means any company which may be wound up under the Insolvency Act 1986; and

“the relevant time” means—

- (a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;
- (b) where such an order has been made and, before the presentation of the petition for the winding up of the company by the court, such a resolution had been passed by the company, the time of the passing of the resolution; and
- (c) in any other case where such an order has been made, the time of the making of the order.

(7) In any case in which a winding up of a company commenced or is treated as having commenced before 29th December 1986, this section shall have effect with the substitution for references to the Insolvency Act 1986 of references to the Companies Act 1985. 1985 c. 6.

**87.—**(1) Without prejudice to the generality of any enactment contained in the Insolvency Act 1986 or in any other Act, where— Insolvency officers  
dealing with  
property subject  
to restraint order.

- (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

## PART VI

- (b) other than in respect of such property as is so mentioned, being expenses which, but for the effect of a restraint order, might have been met by taking possession of and realising the property,

shall be entitled (whether or not he has seized or disposed of that property so as to have a lien under that subsection) to payment of those expenses under section 81(1) or (4) above.

(3) In this Part of this Act the expression “acting as an insolvency practitioner” shall be construed in accordance with section 388 (interpretation) of the said Act of 1986 except that for the purposes of such construction the reference in subsection (2)(a) of that section to a permanent or interim trustee in a sequestration shall be taken to include a reference to a trustee in sequestration and subsection (5) of that section (which provides that nothing in the section is to apply to anything done by the official receiver) shall be disregarded; and the expression shall also comprehend the official receiver acting as receiver or manager of the property.

Receivers:  
supplementary  
provisions.

**88.—**(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.

Compensation.

**89.—**(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—

PART VI

- (a) that there has been some serious default on the part of a person concerned in the investigation or prosecution of the offence concerned, being a person mentioned in subsection (5) below; and
- (b) that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of an order under this Part of this Act.

(3) The Court shall not order compensation to be paid in any case where it appears to the Court that the proceedings would have been instituted or continued even if the serious default had not occurred.

(4) The amount of compensation to be paid under this section shall be such as the High Court thinks just in all the circumstances of the case.

(5) Compensation payable under this section shall be paid—

- (a) where the person in default was or was acting as a member of a police force, out of the police fund out of which the expenses of that police force are met;
- (b) where the person in default was a member of the Crown Prosecution Service or acting on behalf of the service, by the Director of Public Prosecutions;
- (c) where the person in default was a member of the Serious Fraud Office, by the Director of that Office;
- (d) where the person in default was an officer within the meaning of the Customs and Excise Management Act 1979, by the Commissioners of Customs and Excise; and
- (e) where the person in default was an officer of the Commissioners of Inland Revenue, by those Commissioners.

1979 c. 2.

#### *Enforcement in Scotland*

90.—(1) An order to which this section applies shall, subject to this section and section 91 below, have effect in the law of Scotland but shall be enforced in Scotland only in accordance with this section and that section.

Recognition and enforcement of orders in Scotland.

(2) A receiver's functions under or for the purpose of section 77, 80 or 81 above shall, subject to this section and section 91 below, have effect in the law of Scotland.

(3) If an order to which this section applies is registered under this section—

- (a) the Court of Session shall have, in relation to its enforcement, the same power;
- (b) proceedings for or with respect to its enforcement may be taken; and
- (c) proceedings for or with respect to any contravention of such an order (whether before or after such registration) may be taken,

as if the order had originally been made in that Court.

(4) Nothing in this section enables any provision of an order which empowers a receiver to do anything in Scotland under section 80(3)(a) above to have effect in the law of Scotland.

## PART VI

(5) The orders to which this section applies are orders of the High Court—

- (a) made under section 77, 78 or 81 above;
- (b) relating to the exercise by that Court of its powers under those sections; or
- (c) relating to receivers in the performance of their functions under any of them,

but not including an order in proceedings for enforcement of any such order.

(6) References in this section to an order under section 77 above include references to a discharge under section 76(4) above of such an order.

(7) In this section and in sections 91 and 93 below, “order” means any order, direction or judgment by whatever name called.

(8) Nothing in any order of the High Court under section 80(6) above prejudices any enactment or rule of law in respect of the recording of deeds relating to heritable property in Scotland or the registration of interests in such property.

## Supplementary.

**91.**—(1) The Court of Session shall, on application made to it in accordance with rules of court for registration of an order to which section 90 above applies, direct that the order shall, in accordance with such rules, be registered in that Court.

(2) Subsections (1) and (3) of that section and subsection (1) above are subject to any provision made by rules of court—

- (a) as to the manner in which and conditions subject to which orders to which that section applies are to be enforced in Scotland;
- (b) for the sisting of proceedings for enforcement of such an order;
- (c) for the modification or cancellation of the registration of such an order if the order is modified or revoked or ceases to have effect.

(3) This section and that section are without prejudice to any enactment or rule of law as to the effect of notice or the want of it in relation to orders of the High Court.

## 1972 c. 59.

(4) The Court of Session shall have the like power to make an order under section 1 of the Administration of Justice (Scotland) Act 1972 (extended power to order inspection of documents, etc.) in relation to proceedings brought or likely to be brought under this Part of this Act in the High Court as if those proceedings had been brought or were likely to be brought in the Court of Session.

(5) The Court of Session may, additionally, for the purpose of—

- (a) assisting the achievement in Scotland of the purposes of orders to which section 90 above applies,
- (b) assisting receivers performing functions thereunder or for the purposes of section 77, 80 or 81 above,

make such orders and do otherwise as seems to it appropriate.



**92.**—(1) On the application of the prosecutor, the Court of Session may, in respect of—

**PART VI**  
Inhibition and  
arrestment of  
property in  
Scotland.

- (a) heritable realisable property in Scotland affected by a restraint order registered under section 90 above (whether such property generally or particular such property) grant warrant for inhibition against any person with an interest in that property;
- (b) moveable realisable property so affected (whether such property generally or particular such property) grant warrant for arrestment if the property would be arrestable were the person entitled to it a debtor;

and, subject to the provisions of this section, the warrant—

- (i) shall have effect as if granted on the dependence of an action for debt at the instance of the prosecutor against the person and may be executed, recalled, loosed or restricted accordingly;
- (ii) where granted under subsection (1)(a) above, shall have the effect of letters of inhibition and shall forthwith be registered by the prosecutor in the register of inhibitions and adjudications.

(2) Section 155 of the Titles to Land Consolidation (Scotland) Act 1868 (effective date of inhibition) shall apply in relation to an inhibition for which warrant has been granted under subsection (1)(a) above as that section applies to an inhibition by separate letters or contained in a summons.

1868 c. 101.

(3) In the application of section 158 of the said Act of 1868 (recall of inhibition) to such inhibition as is mentioned in subsection (2) above, references in that section to a particular Lord Ordinary shall be construed as references to any Lord Ordinary.

(4) Any power of the Court of Session to recall, loose or restrict inhibitions or arrestments shall, in relation to an inhibition or arrestment proceeding upon a warrant under this section and without prejudice to any other consideration lawfully applying to the exercise of the power, be exercised with a view to achieving the purposes specified in section 80 above.

(5) That an inhibition or arrestment has been executed under subsection (1) above in respect of property shall not prejudice the exercise of a receiver's powers under or for the purposes of section 77, 80 or 81 above in respect of that property.

(6) No inhibition or arrestment executed under subsection (1) above shall have effect once, or in so far as, the restraint order affecting the property in respect of which the warrant for such inhibition or arrestment has been granted has ceased to have effect in respect of that property; and the prosecutor shall—

- (a) apply for the recall, or as the case may be restriction, of the inhibition or arrestment accordingly; and
- (b) ensure that recall, or restriction, of an inhibition on such application is reflected in the register of inhibitions and adjudications.

PART VI  
Proof in Scotland  
of High Court  
orders.

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

*Enforcement of external orders*

Enforcement of  
Northern Ireland  
orders.

**94.**—(1) Her Majesty may by Order in Council provide that for the purposes of sections 76 to 89 above, this Part of this Act shall have effect as if—

- (a) references to confiscation orders included a reference to orders made by courts in Northern Ireland which appear to Her Majesty to correspond to confiscation orders;
- (b) references to proceedings in England and Wales or to the institution or conclusion in England and Wales of proceedings included a reference to proceedings in Northern Ireland or to the institution or conclusion in Northern Ireland of proceedings, as the case may be; and
- (c) the references to the laying of an information in section 76(2) and (4) above included references to making a complaint under Article 20 of the Magistrates' Courts (Northern Ireland) Order 1981.

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

(2) An Order in Council under this section may provide for those sections to have effect in relation to anything done or to be done in Northern Ireland subject to such further modifications as may be specified in the Order.

(3) An Order in Council under this section may contain such incidental, consequential and transitional provisions as Her Majesty considers expedient.

(4) An Order in Council under this section shall not be made unless a draft of the Order has been laid before Parliament and approved by resolution of each House of Parliament.

Enforcement of  
Northern Ireland  
order in Scotland.

**95.**—(1) Her Majesty may by Order in Council provide that for the purposes of any part of the law of Northern Ireland which appears to Her Majesty to correspond to this Part of this Act sections 90 to 93 above shall have effect as they have effect for the purposes of this Part subject to such modifications as may be specified in the Order.

(2) An Order in Council under this section may contain such incidental, consequential and transitional provisions as Her Majesty considers expedient.

(3) An Order in Council under this section shall not be made unless a draft of the Order has been laid before Parliament and approved by resolution of each House of Parliament.

**96.—(1) Her Majesty may by Order in Council—**

- (a) direct in relation to a country or territory outside the United Kingdom designated by the Order (“a designated country”) that, subject to such modifications as may be specified, this Part of this Act shall apply to external confiscation orders and to proceedings which have been or are to be instituted in the designated country and may result in an external confiscation order being made there;
- (b) make—
- (i) such provision in connection with the taking of action in the designated country with a view to satisfying a confiscation order;
  - (ii) such provision as to evidence or proof of any matter for the purposes of this section and section 97 below; and
  - (iii) such incidental, consequential and transitional provision,
- as appears to Her Majesty to be expedient; and
- (c) without prejudice to the generality of this subsection, direct that in such circumstances as may be specified proceeds which arise out of action taken in the designated country with a view to satisfying a confiscation order shall be treated as reducing the amount payable under the order to such extent as may be specified.

**(2) In this Part of this Act—**

“external confiscation order” means an order made by a court in a designated country for the purpose—

- (a) of recovering—
- (i) property obtained as a result of or in connection with conduct corresponding to an offence to which this Part of this Act applies; or
  - (ii) the value of property so obtained; or
- (b) of depriving a person of a pecuniary advantage so obtained; and

“modifications” includes additions, alterations and omissions.

(3) An Order in Council under this section may make different provision for different cases or classes of case.

(4) The power to make an Order in Council under this section includes power to modify this Part of this Act in such a way as to confer power on a person to exercise a discretion.

(5) An Order in Council under this section shall not be made unless a draft of the order has been laid before Parliament and approved by resolution of each House of Parliament.

**97.—(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;

**PART VI**  
Enforcement of  
other external  
orders.

Registration of  
external  
confiscation  
orders.

## PART VI

- (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.

*Miscellaneous and supplemental*

Disclosure of information subject to contractual restriction upon disclosure.

**98.**—(1) Where a person discloses to a constable—

- (a) a suspicion or belief that any property—
  - (i) has been obtained as a result of or in connection with the commission or an offence to which this Part of this Act applies; or
  - (ii) derives from property so obtained; or
- (b) any matter on which such a suspicion or belief is based,

the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract.

1964 c. 48.

(2) In subsection (1) above “constable” includes a police officer engaged on central service (as defined in section 43(5) of the Police Act 1964).

Authorisation of delay in notifying arrest etc.  
1984 c. 60.

**99.**—(1) The Police and Criminal Evidence Act 1984 shall be amended as follows.

(2) In section 56(5A) (which authorises delay in notifying arrest for a drug trafficking offence)—

- (a) after the word “offence”, in the second place where it occurs, there shall be inserted the words “or an offence to which Part VI of the Criminal Justice Act 1988 applies (offences in respect of which confiscation orders under that Part may be made)”; and
- (b) the following paragraphs shall be substituted for paragraphs (a) and (b)—

“(a) where the offence is a drug trafficking offence, that the detained person has benefited from drug trafficking and that the recovery of the value of that person’s proceeds of drug trafficking will be hindered by telling the named person of the arrest; and

(b) where the offence is one to which Part VI of the Criminal Justice Act 1988 applies, that the detained person has benefited from the offence and that the recovery of the value of the property obtained by that person from or in

connection with the offence or of the pecuniary advantage derived by him from or in connection with it will be hindered by telling the named person of the arrest.”

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(3) In section 58(8A) (which authorises delay in access to legal advice on arrest for a drug trafficking offence)—

(a) after the word “offence”, in the second place where it occurs, there shall be inserted the words “or an offence to which Part VI of the Criminal Justice Act 1988 applies”; and

(b) the following paragraphs shall be substituted for paragraphs (a) and (b)—

“(a) where the offence is a drug trafficking offence, that the detained person has benefited from drug trafficking and that the recovery of the value of that person’s proceeds of drug trafficking will be hindered by the exercise of the right conferred by subsection (1) above; and

(b) where the offence is one to which Part VI of the Criminal Justice Act 1988 applies, that the detained person has benefited from the offence and that the recovery of the value of the property obtained by that person from or in connection with the offence or of the pecuniary advantage derived by him from or in connection with it will be hindered by the exercise of the right conferred by subsection (1) above.”

(4) Without prejudice to section 20(2) of the Interpretation Act 1978, the Police and Criminal Evidence Act 1984 (Application to Customs and Excise) Order 1985 shall apply to sections 56 and 58 of the Police and Criminal Evidence Act 1984 as those sections have effect by virtue of this section.

1978 c. 30.  
S.I. 1985/1800.  
1984 c. 60.

**100.**—(1) The Chief Land Registrar (in this section referred to as “the registrar”) shall, on an application under subsection (2) or (4) below made in relation to a person specified in the application or to property so specified, provide the applicant with any information kept by the registrar under the Land Registration Act 1925 which relates to the person or property so specified.

Power to inspect  
Land Register,  
etc.

1925 c. 21.

(2) An application may be made by—

(a) any police officer not below the rank of superintendent;

(b) any Crown Prosecutor; or

(c) any member of the Serious Fraud Office designated for the purposes of section 1 of the Criminal Justice Act 1987; or

1987 c. 38..

(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.

## PART VI

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

1988 c. 3.

Abolition of  
power to make  
criminal  
bankruptcy order.  
1973 c. 62.

**101.**—(1) The power to make a criminal bankruptcy order which section 39 of the Powers of Criminal Courts Act 1973 confers on the Crown Court is abolished.

(2) Nothing in subsection (1) above—

- (a) shall affect any criminal bankruptcy order made before this section comes into force; or
- (b) shall prevent the taking of any step following such an order.

Part VI—  
Interpretation.

**102.**—(1) In this Part of this Act—

“constable” includes a person commissioned by the Commissioners of Customs and Excise;

“interest”, in relation to property, includes right;

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

(2) The expressions listed in the left-hand column below are respectively defined or (as the case may be) fall to be construed in accordance with the provisions of this Act listed in the right-hand column in relation to those expressions.

## PART VI

Expression	Relevant provision
Benefited from an offence	Section 71(4)
Charging order	Section 78(2)
Confiscation order	Section 71(9)(a)
Dealing with property	Section 77(9)
Defendant	Section 71(9)(d)
Gift caught by this Part of this Act	Section 74(10)
Making a gift	Section 74(12)
Offence to which this Part of this Act applies	Section 71(9)(c)
Realisable property	Section 74(1)
Restraint order	Section 77(1)
Value of gift	Section 74(7) and (8)
Value of property	Section 74(4) to (6)

(3) This Part of this Act applies to property wherever situated.

(4) References in this Part of this Act to offences include a reference to offences committed before the commencement of this Part of this Act; but nothing in this Part of this Act confers any power on any court in connection with proceedings against a person for an offence instituted before the commencement of this Part of this Act.

(5) References in this Part of this Act to property obtained, or to a pecuniary advantage derived, in connection with the commission of an offence include a reference to property obtained or to a pecuniary advantage derived, both in that connection and in some other connection.

(6) The following provisions shall have effect for the interpretation of this Part of this Act.

(7) Property is held by any person if he holds any interest in it.

(8) References to property held by a person include a reference to property vested in his trustee in bankruptcy, permanent or interim trustee within the meaning of the Bankruptcy (Scotland) Act 1985 or liquidator. 1985 c. 66.

(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 Magistrates' Courts Act 1980 in respect of that offence; 1980 c. 43.
- (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 Administration of Justice (Miscellaneous Provisions) Act 1933 in a case falling within paragraph (b) of subsection (2) of that section; 1933 c. 36.

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.

## PART VI

(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.

Amendments of  
Drug Trafficking  
Offences Act 1986  
and Criminal  
Justice (Scotland)  
Act 1987.  
1986 c. 32.  
1987 c. 41.

**103.**—(1) The amendments of the Drug Trafficking Offences Act 1986 specified in Part I of Schedule 5 to this Act (which make certain provisions of that Act correspond to provisions of this Part of this Act) shall have effect.

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

## PART VII

COMPENSATION BY COURT AND CRIMINAL INJURIES COMPENSATION  
BOARD

*Powers of court*

Compensation  
orders.  
1973 c. 62.

**104.**—(1) At the end of subsection (1) of section 35 of the Powers of Criminal Courts Act 1973 there shall be added the words “or to make payments for funeral expenses or bereavement in respect of a death resulting from any such offence, other than a death due to an accident arising out of the presence of a motor vehicle on a road; and a court shall give reasons, on passing sentence, if it does not make such an order in a case where this section empowers it to do so”.

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

“(3) A compensation order may only be made in respect of injury, loss or damage (other than loss suffered by a person’s dependants in consequence of his death) which was due to an accident arising out of the presence of a motor vehicle on a road, if—

- (a) it is in respect of damage which is treated by subsection (2) above as resulting from an offence under the Theft Act 1968; or
- (b) it is in respect of injury, loss or damage as respects which—
  - (i) the offender is uninsured in relation to the use of the vehicle; and
  - (ii) compensation is not payable under any arrangements to which the Secretary of State is a party;

1968 c. 60.

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. PART VII  
1972 c. 20.

(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. 1976 c. 30.

(3D) The amount of compensation in respect of bereavement shall not exceed the amount for the time being specified in section 1A(3) of the Fatal Accidents Act 1976.”.

**105.** The following sections shall be substituted for sections 36 to 38 of the Powers of Criminal Courts Act 1973— Enforcement of  
compensation  
orders.  
1973 c. 62.

“Enforcement  
and appeals.

36.—(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. 1980 c. 43.  
1970 c. 31.

(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.

PART VII      Review of  
                         compensation  
                         orders.

37. 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
- (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.

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

38.—(1) This section shall have effect where a compensation order has been made in favour of any person in respect of any injury, loss or damage and a claim by him in civil proceedings for damages in respect of the injury, loss or damage subsequently falls to be determined.

(2) The damages in the civil proceedings shall be assessed without regard to the order; but the plaintiff may only recover an amount equal to the aggregate of the following—

- (a) any amount by which they exceed the compensation; and
- (b) a sum equal to any portion of the compensation which he fails to recover,

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

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

“(8) Subject to subsection (8A) below, where in the case specified in paragraph 10 of Schedule 9 to this Act the Crown Court thinks that the period for which the person subject to the order is liable apart from this subsection to be committed to prison for default under the order is insufficient, it may specify a longer period for that purpose; and then, in the case of default—

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

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

PART VII  
Discretion of  
Crown Court to  
specify extended  
period of  
imprisonment in  
default of  
payment of  
compensation.  
1970 c. 31.

1980 c. 43.

*Compensation for victim out of forfeited property*

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

“Application of  
proceeds of  
forfeited  
property.

43A—(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.”.

Power to make  
order applying  
proceeds of sale of  
property forfeited  
by offender for  
benefit of victim.  
1973 c. 62.

1897 c. 30.

## PART VII

*The Criminal Injuries Compensation Scheme*

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

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

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

(3) Schedule 6 to this Act shall have effect with respect to the Board and Schedule 7 shall have effect with respect to the scheme.

Criminal injuries.

**109.**—(1) In this Part of this Act “criminal injury” means any personal injury caused by—

(a) conduct constituting—

- (i) an offence which is specified in subsection (3) below; or
- (ii) an offence which is not so specified but which requires proof of intent to cause death or personal injury or recklessness as to whether death or personal injury is caused; or

(b) any of the following activities—

- (i) the apprehension or attempted apprehension of an offender or suspected offender;
- (ii) the prevention or attempted prevention of the commission of an offence; or
- (iii) assisting a constable engaged in any of the activities mentioned in sub-paragraph (i) or (ii) above;

and “personal injury” includes any disease, any harm to a person’s physical or mental condition and pregnancy.

(2) Harm to a person’s mental condition is only a criminal injury if it is attributable—

- (a) to his having been put in fear of immediate physical injury to himself or another; or
- (b) to his being present when another sustained a criminal injury other than harm to his mental condition.

(3) The offences mentioned in subsection (1)(a)(i) above are—

- (a) rape;
- (b) assault;
- (c) an offence which falls to be charged as arson;
- (d) wilful fireraising;
- (e) any offence under section 2 (causing explosion likely to endanger life or property) or 3 (attempt to cause explosion, or making or keeping explosive with intent to endanger life or property) of the Explosive Substances Act 1883;
- (f) an offence under section 16 (possession of firearm with intent to injure), 17 (use of firearm to resist arrest), 18 (carrying firearm with criminal intent), 19 (carrying firearm in a public place) or 20 (trespassing with firearm) of the Firearms Act 1968;

1883 c. 3.

1968 c. 27.

- (g) an offence under section 1 (riot), 2 (violent disorder) or 3 (affray) of the Public Order Act 1986; PART VII  
1986 c. 64.
- (h) mobbing;
- (j) kidnapping;
- (k) false imprisonment;
- (l) abduction;
- (m) trespass on a railway; and
- (n) any attempt to commit an offence mentioned in this subsection.

(4) For the purposes of this Part of this Act, a person's conduct shall be treated as constituting an offence notwithstanding that he may not be convicted of the offence by reason of age, insanity or diplomatic immunity.

**110.**—(1) Compensation for a criminal injury shall only be payable under this Part of this Act if the injury is a qualifying injury. Qualifying injuries.

- (2) A criminal injury is only a qualifying injury if it is sustained—
- (a) in Great Britain;
  - (b) within the limits of the territorial waters adjacent to the United Kingdom;
  - (c) on board a British ship, a British aircraft or a British hovercraft;
  - (d) on, under or above an installation in a designated area within the meaning of section 1(7) of the Continental Shelf Act 1964 or any waters within 500 metres of such an installation; or 1964 c. 29.
  - (e) on, under or above any waters in respect of which an Order in Council made under section 23 of the Oil and Gas (Enterprise) Act 1982 provides that questions arising from acts or omissions on, under or above such waters are to be determined in accordance with the law of England and Wales or the law of Scotland. 1982 c. 23.

(3) In subsection (2) above—  
 “British aircraft” means a British-controlled aircraft within the meaning of section 92 of the Civil Aviation Act 1982 (application of criminal law to aircraft), or one of Her Majesty's aircraft; 1982 c. 16.

“British hovercraft” means a British-controlled hovercraft within the meaning of that section (as applied in relation to hovercraft by virtue of provision made under the Hovercraft Act 1968), or one of Her Majesty's hovercraft; and 1968 c. 59.

“British ship” means—

- (a) any vessel used in navigation which is owned wholly by persons of the following descriptions, namely—
  - (i) British citizens; and
  - (ii) bodies corporate incorporated under the law of some part of, and having their principal place of business in, the United Kingdom; or
- (b) one of Her Majesty's ships.

## PART VII

(4) The references to Her Majesty's aircraft, hovercraft and ships in subsection (3) above are references to aircraft, hovercraft or ships which belong to, or are exclusively used in the service of, Her Majesty in right of the government of the United Kingdom.

(5) Where any injury which is a criminal injury by virtue of section 109(1)(a) above is sustained by a person not under the age of 18 years who, when he sustains the injury, is living in the same household as the person or, if more than one, any of the persons, responsible for causing it, that injury is not a qualifying injury unless—

(a) the Board are satisfied in relation to the person responsible for causing the injury or, where more than one person is responsible for causing it, each of the persons responsible who was living in the same household as the person injured when the injury was sustained—

(i) that he has been prosecuted in connection with the injury; or

(ii) that there is a sufficient reason why he has not been prosecuted; and

(b) the Board are satisfied—

(i) that the person injured has ceased to live, and does not intend to live again, in the same household as the person responsible for causing the injury or, where more than one person is responsible for causing it, any of the persons responsible who was living in the same household as the person injured when the injury was sustained; or

(ii) that the person injured has not so ceased to live but that the reason why he has not so ceased to live is that circumstances prevent him from doing so.

(6) Where a person accidentally sustains an injury which is a criminal injury only by virtue of section 109(1)(b) above, that injury is not a qualifying injury unless the Board are satisfied that the risk he was taking when he was injured was an exceptional risk which was justified in all the circumstances.

(7) Where any criminal injury is sustained in circumstances such that compensation in respect of the injury is payable—

(a) under any policy of insurance maintained in pursuance of Part VI of the Road Traffic Act 1972 (compulsory insurance in relation to the use of a motor vehicle on a road); or

(b) under any arrangements for the compensation of victims of uninsured or unidentified drivers to which the Secretary of State is a party;

that injury is not a qualifying injury.

(8) Any reference in this section to a person who is responsible for causing an injury includes, where the injury is a criminal injury by virtue of an offence, a reference to any person who is a party to the commission of that offence.

**111.—(1)** An award of compensation may be made—

(a) to any person who satisfies the Board that he has sustained a qualifying injury;

1972 c. 20.

Awards of  
compensation.

- (b) to any person who satisfies the Board that he is a dependant of a person who died after sustaining a qualifying injury (whether or not he died as a result of it);

and in this subsection "satisfies" means satisfies on a balance of probabilities.

(2) The heads of compensation are those specified in subsections (3) to (6) below.

(3) An award may be made under subsection (1)(a) above—

- (a) for the injury; and  
 (b) for any loss of or damage to property of the claimant which occurred in the course of his sustaining the injury,

but compensation shall only be payable under paragraph (b) above if he relied on the property as a physical aid and for damage only if the damage impaired the utility of the property as a physical aid and shall only be for the cost of replacing it with other property of equal utility as a physical aid or carrying out repairs to restore its utility as a physical aid.

(4) If a person dies as a result of a qualifying injury—

- (a) an award of compensation for funeral expenses may be made to any person other than a public authority but shall not exceed a reasonable amount;
- (b) where a claim falls to be determined in accordance with the rules of the law of England and Wales, an award of compensation for bereavement may be made to any person falling within section 1A(2) of the Fatal Accidents Act 1976; 1976 c. 30.
- (c) where a claim falls to be determined in accordance with the rules of the law of Scotland, an award of compensation for loss of society may be made to any person who is a member of the deceased's immediate family within the meaning of section 10(2) of the Damages (Scotland) Act 1976; and 1976 c. 13.
- (d) an award may be made to a dependant of the deceased (whether or not an award is made to him or to any other person under paragraph (a), (b) or (c) above) in respect of any loss of support suffered by the dependant.

(5) Subject to subsection (8) below, if a person who has sustained a qualifying injury dies otherwise than as a result of it, the Board may award compensation to a dependant of his in respect of any loss which he has suffered by reason—

- (a) of any reduction in earnings (not being prospective earnings) by the deceased; and  
 (b) of any expenses and liabilities incurred by the deceased as a result of the injury.

(6) If—

- (a) a woman is awarded compensation for rape; and  
 (b) she has given birth to a child conceived as a result of the rape; and  
 (c) at the time of the award she intends to keep the child,

the Board shall award her the additional statutory sum in respect of each child so conceived that she then intends to keep.

## PART VII

(7) The Board may make an interim award, but without prejudice to their powers on a final determination.

(8) If a person who has sustained a qualifying injury dies otherwise than as a result of it, the Board may not award compensation to a dependant of his if before he died he became entitled, otherwise than on an interim award, to a payment of compensation in respect of it.

(9) If—

(a) a deceased person was entitled to payment of compensation for an injury; and

(b) a claim for compensation for the same injury is made by one of his dependants,

any compensation awarded to the dependant shall be reduced by the amount of the compensation to payment of which the deceased was entitled; and proportionate reductions shall be made on awards to two or more dependants.

(10) Where a person has been awarded compensation by the Board in respect of a qualifying injury sustained by him, he may be awarded further compensation in respect of the injury if the Board are satisfied—

(a) that since the date of the previous award his medical condition has deteriorated as a result of having sustained the injury; and

(b) that the extent to which his condition has so deteriorated is such that it would be unjust not to make an award of further compensation to him in respect of the injury.

(11) In this Part of this Act—

“the additional statutory sum” means £5,000 or such other sum as may for the time being be specified by virtue of an order under subsection (12) below; and

“dependant”—

(a) where the appropriate law for the determination of a claim is the law of England and Wales, has the same meaning as in the Fatal Accidents Act 1976; and

(b) where it is the law of Scotland, means a relative within the meaning of the Damages (Scotland) Act 1976.

1976 c. 30.

1976 c. 13.

(12) The Secretary of State may by order made by statutory instrument substitute a different sum for the sum specified in subsection (11) above.

(13) A statutory instrument containing an order under subsection (12) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Powers to withhold and reduce compensation.

**112.—**(1) It is for the claimant to satisfy the Board, on a balance of probabilities—

(a) that he took all reasonable steps within a reasonable time to inform the police, or such other authority as the Board consider appropriate, of the circumstances of the injury to which the claim relates and that he has co-operated fully with the police, or with such other authority as the Board consider appropriate, in bringing to justice any person responsible for causing the injury;



## PART VII

(b) that he has given the Board, or such other authority as the Board consider appropriate, all the assistance in connection with the claim which it is reasonable for him to give; and

(c) that there is no possibility that a person responsible for causing the injury will benefit from an award,

and if a claimant fails so to satisfy the Board, they may, if they think fit, refuse an award or award less than they would otherwise have awarded.

(2) The Board may also, if they think fit, refuse an award or award less than they would otherwise have awarded because of any of the following—

(a) criminal convictions or unlawful conduct of the claimant;

(b) conduct on his part connected with the injury.

(3) The references to convictions and conduct in subsection (2) above are references to convictions and conduct at any time, including a time after the injury.

(4) Where the person who sustained the injury is dead, the references to the claimant in subsections (1)(a) and (b) and (2) above shall include references to the person who sustained that injury.

(5) Where an injury which is a criminal injury by virtue of section 109(1)(a) above is sustained by a person who, when he sustained it—

(a) was under the age of 18 years; and

(b) was living in the same household as the person or, if more than one, any of the persons, responsible for causing it,

the Board shall consider whether, in all the circumstances, it is in the interest of the person who sustained the injury to make an award of compensation to him and shall not make an award unless they are satisfied that it is in his interest.

**113.**—(1) If the Board have determined a claim after hearing, an appeal on any ground which involves a question of law alone shall lie—

Right of appeal.

(a) to the High Court if they determined it under the law of England and Wales; and

(b) to the Court of Session if they determined it under the law of Scotland.

(2) No appeal to the Court of Appeal shall be brought from a decision of the High Court under this section except with the leave of the High Court or the Court of Appeal.

(3) An appeal shall lie, with the leave of the Court of Session or the House of Lords, from any decision of the Court of Session under this section, and such leave may be given on such terms as to costs or otherwise as the Court of Session or the House of Lords may determine.

**114.**—(1) The Secretary of State may by order provide that the Board shall not make any award of compensation, other than an award in respect of funeral expenses, which is less than the minimum amount specified in the order.

Minimum awards.

(2) An order under this section may make different provision for different cases or classes of case.

## PART VII

(3) An order under this section shall be made by statutory instrument.

(4) A statutory instrument containing any such order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Reimbursement  
and recovery.

**115.**—(1) Where—

(a) a person has been convicted in England or Wales of an offence;  
and

(b) the Board have made an award of compensation in respect of an injury which is a criminal injury by virtue of the offence,

proceedings may be brought by the Board in a county court for an order for the repayment by the offender to the Board of the whole of the award or such part of it as the court thinks fit.

(2) The Board shall only make an application for an order under subsection (1) above if they have reason to believe that the offender is able to pay the whole or a substantial part of the award.

(3) In considering whether to make an order under subsection (1) above, the court shall have regard to the financial position of the offender and to such other matters (not including the question whether he was properly convicted) as the court considers relevant.

(4) Where after an award of compensation under this Part of this Act has been made to a person he receives any payment which, had he received it before the making of the award, would, under any provision contained in Schedule 7 to this Act, have led to any reduction in the amount of compensation payable to him he shall be liable to repay to the Board a sum equal to the amount of that reduction.

(5) The Board may set-off any sum owed to them by any person by virtue of subsection (4) above against any compensation under this Part of this Act to which that person is or becomes entitled.

## 1973 c. 62.

(6) Where by virtue of any order under section 35 of the Powers of Criminal Courts Act 1973 (compensation orders against convicted persons) compensation is required to be paid for any personal injury, loss or damage which the Board are satisfied has been the subject of compensation under this Part of this Act, they may by notice require the magistrates' court for the time being having functions in relation to the enforcement of that order to pay to them any amount recovered in pursuance of that order in respect of any such personal injury, loss or damage.

Reimbursement  
and recovery in  
Scotland.

**116.**—(1) Where any person has been convicted in Scotland of an offence and the Board have made an award of compensation in respect of an injury which is a criminal injury by virtue of the offence, the sheriff may, on a summary application made by the Board, require the offender to reimburse to the Board the whole or any specified part of the award.

(2) In considering whether to make an order under subsection (1) above the sheriff shall have regard to the financial position of the offender and to such other matters (not including the question whether he was properly convicted) as the sheriff considers relevant.

(3) The Board shall only make an application for an order under subsection (1) above if they have reason to believe that the offender is able to pay the whole or a substantial part of the award.

(4) Section 115(4) and (5) above shall have effect in relation to Scotland. PART VII

(5) Where by virtue of an order under section 58 of the Criminal Justice (Scotland) Act 1980 (compensation orders against convicted persons) compensation is required to be paid for any personal injury, loss or damage for which the person in whose favour the order is made has been compensated by an award under this Part of this Act, the Board may by notice require the clerk of the court having power to enforce the order to pay to them any amount recovered in pursuance of the order in respect of any such personal injury, loss or damage. 1980 c. 62.

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

## PART VIII

### AMENDMENTS OF LAW RELATING TO JURIES

**118.—**(1) The right to challenge jurors without cause in proceedings for the trial of a person on indictment is abolished. Abolition of peremptory challenge.

(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.—**(1) In section 1 of the Juries Act 1974 (qualification for jury service) for "sixty-five" there shall be substituted "seventy". Persons aged between 65 and 70 to be eligible as jurors.

(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)— 1974 c. 23.

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

**120.** The following section shall be inserted after section 9 of the Juries Act 1974— Discretionary deferral of jury service.

"Discretionary deferral.

9A.—(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.

## PART VIII

(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.”.

Continuation of trials for murder on death or discharge of juror.  
1974 c. 23.

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

Autrefois acquit and autrefois convict.

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

## PART IX

## YOUNG OFFENDERS

Custodial sentences for young offenders.  
1982 c. 48.

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

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

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

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

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

“(4) A court may not—

- (a) pass a sentence of detention in a young offender institution;  
or
- (b) pass a sentence of custody for life under section 8(2) below, unless it is satisfied—

- (i) that the circumstances, including the nature and the gravity of the offence, are such that if the offender were aged 21 or over the court would pass a sentence of imprisonment; and

- (ii) that he qualifies for a custodial sentence.

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

- (a) he has a history of failure to respond to non-custodial penalties and is unable or unwilling to respond to them; or
- (b) only a custodial sentence would be adequate to protect the public from serious harm from him; or

1933 c. 12.

- (c) the offence of which he has been convicted or found guilty was so serious that a non-custodial sentence for it cannot be justified.”.

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

“Detention in a young offender institution.  
1933 c. 12.

1A.—(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 imprisonment to run consecutively upon the sentence of detention in a young offender institution.

Special provision for offenders under 17.

1B.—(1) In the case of a male offender under 15 the maximum term of detention in a young offender

## PART IX

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.

Accommodation of offenders sentenced to detention in a young offender institution.

1952 c. 52.

1C.—(1) Subject to section 22(2)(b) of the Prison Act 1952 (removal to hospital etc.), an offender sentenced to detention in a young offender institution shall be detained in such an institution unless a direction under this section is in force in relation to him.

(2) The Secretary of State may from time to time direct that an offender sentenced to detention in a young offender institution shall be detained in a prison or

remand centre instead of a young offender institution, but if he is under 17 at the time of the direction, only for a temporary purpose.”.

PART IX

(5) The following subsection shall be substituted for section 2(4)—

“(4) Where—

(a) the Crown Court passes a sentence of detention in a young offender institution or a sentence of custody for life under section 8(2) below, or

(b) a magistrates’ court passes a sentence of detention in a young offender institution,  
it shall be its duty—

(i) to state in open court that it is satisfied that he qualifies for a custodial sentence under one or more of the paragraphs of section 1(4A) above, the paragraph or paragraphs in question and why it is so satisfied; and

(ii) to explain to the offender in open court and in ordinary language why it is passing a custodial sentence on him.”.

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

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

Detention of young offenders in Scotland.  
1975 c. 21.

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

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

(a) for a reference to a detention centre there shall be substituted a reference to a young offenders institution; and

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

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

(a) to section 21 of the Firearms Act 1968;

1968 c. 27.

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

1980 c. 55.

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

1980 c. 62.

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

**PART IX**

Abolition of power of court to commit juvenile to remand centre instead of local authority care. 1969 c. 54.  
Amendment of section 53(2) of Children and Young Persons Act 1933. 1933 c. 12.

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

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

“(2) Where—

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

(b) a child is convicted of manslaughter,”

Payment of fine by parent or guardian.

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

“(1A) Where but for this subsection—

(a) a court would order a child or young person to pay a fine under section 15(2A) of the Children and Young Persons Act 1969 (failure to comply with requirement included in supervision order); or

(b) a court would impose a fine on a young person under section 16(3) of the Powers of Criminal Courts Act 1973 (breach of requirements of community service order),

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.”.

1973 c. 62.

Supervision.

**128.—(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.

Signature of orders relating to detention of young offenders.

**129.** 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.—(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 IX  
Computation of sentence—time passed in care of local authority in accommodation provided for restricting liberty. 1967 c. 80.

PART X

PROBATION AND THE PROBATION SERVICE, ETC.

131.—(1) In section 3 of the Bail Act 1976 (grant of bail) the following subsection shall be inserted after subsection (6)—

“(6ZA) Where he is required under subsection (6) above to reside in a bail hostel or probation hostel, he may also be required to comply with the rules of the hostel.”.

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

Bail: hostel conditions. 1976 c. 63.

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

Administration of the probation service etc.

PART XI

MISCELLANEOUS

*Miscarriages of justice*

133.—(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.

Compensation for miscarriages of justice.

(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.

## PART XI

(4) If the Secretary of State determines that there is a right to such compensation, the amount of the compensation shall be assessed by an assessor appointed by the Secretary of State.

(5) In this section “reversed” shall be construed as referring to a conviction having been quashed—

(a) on an appeal out of time; or

(b) on a reference—

1968 c. 19.

(i) under section 17 of the Criminal Appeal Act 1968;

1975 c. 21.

(ii) under section 263 of the Criminal Procedure (Scotland) Act 1975; or

1980 c. 47.

(iii) under section 14 of the Criminal Appeal (Northern Ireland) Act 1980.

(6) For the purposes of this section a person suffers punishment as a result of a conviction when sentence is passed on him for the offence of which he was convicted.

(7) Schedule 12 shall have effect.

*Torture*

Torture.

**134.**—(1) A public official or person acting in an official capacity, whatever his nationality, commits the offence of torture if in the United Kingdom or elsewhere he intentionally inflicts severe pain or suffering on another in the performance or purported performance of his official duties.

(2) A person not falling within subsection (1) above commits the offence of torture, whatever his nationality, if—

(a) in the United Kingdom or elsewhere he intentionally inflicts severe pain or suffering on another at the instigation or with the consent or acquiescence—

(i) of a public official; or

(ii) of a person acting in an official capacity; and

(b) the official or other person is performing or purporting to perform his official duties when he instigates the commission of the offence or consents to or acquiesces in it.

(3) It is immaterial whether the pain or suffering is physical or mental and whether it is caused by an act or an omission.

(4) It shall be a defence for a person charged with an offence under this section in respect of any conduct of his to prove that he had lawful authority, justification or excuse for that conduct.

(5) For the purposes of this section “lawful authority, justification or excuse” means—

(a) in relation to pain or suffering inflicted in the United Kingdom, lawful authority, justification or excuse under the law of the part of the United Kingdom where it was inflicted;

(b) in relation to pain or suffering inflicted outside the United Kingdom—

(i) if it was inflicted by a United Kingdom official acting under the law of the United Kingdom or by a person acting in an official capacity under that law, lawful authority, justification or excuse under that law;

(ii) if it was inflicted by a United Kingdom official acting under the law of any part of the United Kingdom or by a person acting in an official capacity under such law, lawful authority, justification or excuse under the law of the part of the United Kingdom under whose law he was acting; and

(iii) in any other case, lawful authority, justification or excuse under the law of the place where it was inflicted.

(6) A person who commits the offence of torture shall be liable on conviction on indictment to imprisonment for life.

PART XI

**135.** 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.

Requirement of Attorney General's consent for prosecutions.

**136.—**(1) Torture shall be deemed to be included in the list of extradition crimes contained in Schedule 1 to the Extradition Act 1870.

Extradition under 1870 Act. 1870 c. 52.

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

**137.—**(1) Where—

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

Extradition under Part I.

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

- (i) torture;
- (ii) attempted torture;

## PART XI

(iii) counselling, procuring, commanding, aiding or abetting torture;  
and

(iv) being accessory before or after the fact to torture.

(2) The provisions of this Act mentioned in subsection (1) above are—

(a) section 1(1) to (8);

(b) sections 3 to 10; and

(c) sections 12 to 18.

(3) An Order in Council under this section may not provide that a court dealing with a person arrested for an offence mentioned in subsection (1) above shall not be under a duty to determine whether the evidence would be sufficient to warrant his trial if the offence had taken place within the jurisdiction of the court.

(4) For the purposes of the provisions of this Act specified in subsection (2) above, in their application by virtue of an Order in Council under this section as between the United Kingdom and any other State, any act or omission, wherever it takes place, which constitutes—

(a) an offence mentioned in subsection (1) above; and

(b) an offence against the law of that State,

shall be deemed to be an offence committed within the territory of that State.

(5) In this section “the Torture Convention” means the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the General Assembly of the United Nations on 10th December 1984.

Application to  
Channel Islands,  
Isle of Man and  
colonies.

**138.**—(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.

1870 c. 52.

(2) Sections 17 and 22 of the Extradition Act 1870 shall extend to section 136 above.

(3) Sections 19 and 20 above shall extend to section 137 above.

*Articles with blades or points and offensive weapons*

Offence of having  
article with blade  
or point in public  
place.

**139.**—(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.

## PART XI

(6) A person guilty of an offence under subsection (1) above shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) In this section “public place” includes any place to which at the material time the public have or are permitted access, whether on payment or otherwise.

(8) This section shall not have effect in relation to anything done before it comes into force.

**140.**—(1) In section 1 of the Police and Criminal Evidence Act 1984 (powers of constable to stop and search)—

Extension of  
constable’s power  
to stop and  
search.  
1984 c. 60.

(a) the words “or any article to which subsection (8A) below applies” shall be inserted—

- (i) in subsection (2)(a), after the word “articles”; and
- (ii) at the end of subsection (3);

(b) in subsection (6), after the word “article”, in the second place where it occurs, there shall be inserted the words “or an article to which subsection (8A) below applies”; and

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

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

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

**141.**—(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.

Offensive  
weapons.

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

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

1968 c. 27.

## PART XI

(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

1979 c. 2.

(b) with an offence under section 50(2) or (3) of the Customs and Excise Management Act 1979 (improper importation),

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

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

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

1952 c. 67.

(a) mentioned in subsection (1)(a) of section 1 of the Visiting Forces Act 1952; or

(b) designated for the purposes of any provision of that Act by Order in Council under subsection (2) of that section, which is present in the United Kingdom (including United Kingdom territorial waters) or in any place to which subsection (7) below applies on the invitation of Her Majesty's Government in the United Kingdom.

1964 c. 29.

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

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

(a) with an offence under subsection (1) above; or

(b) with an offence under section 50(2) or (3) of the Customs and Excise Management Act 1979,

to prove that the conduct in question was only for the purposes of making the weapon available to a museum or gallery to which this subsection applies.

(9) If a person acting on behalf of a museum or gallery to which subsection (8) above applies is charged with hiring or lending a weapon to which this section applies, it shall be a defence for him to prove that he had reasonable grounds for believing that the person to whom he lent or hired it would use it only for cultural, artistic or educational purposes.

(10) Subsection (8) above applies to a museum or gallery only if it does not distribute profits.

(11) In this section “museum or gallery” includes any institution which has as its purpose, or one of its purposes, the preservation, display and interpretation of material of historical, artistic or scientific interest and gives the public access to it.

PART XI

(12) This section shall not have effect in relation to anything done before it comes into force.

(13) In the application of this section to Northern Ireland the reference in subsection (2) above to the Firearms Act 1968 shall be construed as a reference to the Firearms (Northern Ireland) Order 1981.

1968 c. 27.  
S.I. 1981/155  
(N.I. 2).

**142.**—(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—

Power of justice of the peace to authorise entry and search of premises for offensive weapons.  
1959 c. 37.

(a) that there are on premises specified in the application—

(i) knives such as are mentioned in section 1(1) of the Restriction of Offensive Weapons Act 1959; or

(ii) weapons to which section 141 above applies; and

(b) that an offence under section 1 of the Restriction of Offensive Weapons Act 1959 or section 141 above has been or is being committed in relation to them; and

(c) that any of the conditions specified in subsection (3) below applies,

he may issue a warrant authorising a constable to enter and search the premises.

(2) A constable may seize and retain anything for which a search has been authorised under subsection (1) above.

(3) The conditions mentioned in subsection (1)(b) above are—

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

(b) that it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the knives or weapons to which the application relates;

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

(d) that the purpose of a search may be frustrated or seriously prejudiced unless a constable arriving at the premises can secure immediate entry to them.

(4) Subsection (1)(a)(i) shall be omitted in the application of this section to Northern Ireland.

### *Serious fraud*

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

Assistance to Isle of Man and Channel Islands.  
1987 c. 38.

## PART XI

Transferred  
charges.  
1987 c. 38.

**144.**—(1) The Criminal Justice Act 1987 shall be amended as follows.

(2) In section 4(1) (under which, on a notice of transfer in a fraud case, the functions of a magistrates' court, subject to certain exceptions, cease in relation to the case) after "5(3)" there shall be inserted ", (7A)".

(3) In section 5 (notices of transfer—procedure)—

(a) in subsection (4), for the words "without the person charged" there shall be substituted the words "in relation to a person charged without his";

(b) in subsection (5)(a), for the word "charged" there shall be substituted the words "in question";

(c) in subsection (6)—

(i) for the words "the person charged" there shall be substituted the words "a person to whom it relates"; and

(ii) for the words "examining justices" there shall be substituted the words "a magistrates' court";

(d) in subsection (7)—

(i) for the word "charged" there shall be substituted the words "to whom the notice of transfer relates"; and

(ii) for the words "examining justices" there shall be substituted the words "a magistrates' court";

(e) in subsection (8)(b), for the words "whose written statement is tendered in evidence for the purposes of the notice of transfer" there shall be substituted the words "indicated in the notice of transfer as a proposed witness;" and

(f) in subsection (9)(a)—

(i) in sub-paragraph (i), for the words "the person charged" there shall be substituted the words "any person to whom the notice of transfer relates"; and

(ii) in sub-paragraph (ii), after the word "the", in the second place where it occurs, there shall be inserted the words "place specified by the notice of transfer as the".

(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—

"Applications  
for dismissal.

6.—(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



## PART XI

charge, or any of the charges, in the case to be dismissed; and the judge shall dismiss a charge (and accordingly quash a count relating to it in any indictment preferred against the applicant) if it appears to him that the evidence against the applicant would not be sufficient for a jury properly to convict him.

(2) No oral application may be made under subsection (1) above unless the applicant has given the Crown Court sitting at the place specified by the notice of transfer as the proposed place of trial written notice of his intention to make the application.

(3) Oral evidence may be given on such an application only with the leave of the judge or by his order, and the judge shall give leave or make an order only if it appears to him, having regard to any matters stated in the application for leave, that the interests of justice require him to do so.

(4) If the judge gives leave permitting, or makes an order requiring, a person to give oral evidence, but he does not do so, the judge may disregard any document indicating the evidence that he might have given.

(5) Dismissal of the charge, or all the charges, against the applicant shall have the same effect as a refusal by examining magistrates to commit for trial, except that no further proceedings may be brought on a dismissed charge except by means of the preferment of a voluntary bill of indictment.

(6) Crown Court Rules may make provision for the purposes of this section and, without prejudice to the generality of this subsection—

- (a) as to the time or stage in the proceedings at which anything required to be done is to be done (unless the court grants leave to do it at some other time or stage);
- (b) as to the contents and form of notices or other documents;
- (c) as to the manner in which evidence is to be submitted; and
- (d) as to persons to be served with notices or other material.”.

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

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

Power to petition for winding-up etc. on information obtained on investigation by Director of Serious Fraud Office.  
1985 c. 6.  
1986 c. 46.  
S.I. 1986/1032 (N.I. 6).

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*Evidence before Service courts*

Evidence before  
courts-martial etc.  
1957 c. 53.

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

*Amendments of Police and Criminal Evidence Act 1984 etc.*

Searches of  
detained persons.  
1984 c. 60.

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

(a) the following paragraph shall be substituted for subsection (1)(b)—

“(b) arrested at the station or detained there under section 47(5) above.”; and

(b) the following subsections shall be inserted after subsection (6)—

“(6A) A person who is in custody at a police station or is in police detention otherwise than at a police station may at any time be searched in order to ascertain whether he has with him anything which he could use for any of the purposes specified in subsection (4)(a) above.

(6B) Subject to subsection (6C) below, a constable may seize and retain, or cause to be seized and retained, anything found on such a search.

(6C) A constable may only seize clothes and personal effects in the circumstances specified in subsection (4) above.”.

Computer data  
about fingerprints.

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

“(5) If fingerprints are destroyed—

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

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

“(6A) If—

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

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

(6B) In this section—

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

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

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

Body samples—  
Northern Ireland.

*Provisions relating to Customs and Excise*

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

Bail for persons in  
customs detention.  
1984 c. 60.

- (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.”.

1976 c. 63.

**151.—(1)** If—

Customs and  
Excise power of  
arrest.

(a) a person—

- (i) has been released on bail in criminal proceedings for an offence falling within subsection (4) below; and  
(ii) is under a duty to surrender into customs detention;  
and

(b) an officer of Customs and Excise has reasonable grounds for believing that that person is not likely to surrender to custody, he may be arrested without warrant by an officer of Customs and Excise.

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

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

(4) The offences that fall within this subsection are—

- (a) an offence against section 5(2) of the Misuse of Drugs Act 1971 (possession of controlled drugs); and  
(b) a drug trafficking offence.

1971 c. 38.

(5) In this section and section 152 below “drug trafficking offence” means a drug trafficking offence as defined by section 38(1) of the Drug Trafficking Offences Act 1986 other than an offence under section 24 of that Act (assisting another to retain the benefit of drug trafficking).

1986 c. 32.

**152.—(1)** Subject—

Remands of  
suspected drug  
offenders to  
customs detention.

- (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

## PART XI

(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,".

1986 c. 32. (4) The definition of "drug trafficking offence" in section 38(1) of the Drug Trafficking Offences Act 1986 shall extend to Northern Ireland for the purposes of this section but shall have effect in relation to Northern Ireland as if—

1977 c. 45. (a) the reference in paragraph (e) to section 1 of the Criminal Law S.I. 1983/1120 Act 1977 were a reference to Article 9 of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983; and (N.I. 13).

1981 c. 47. (b) the reference in paragraph (f) to section 1 of the Criminal Attempts Act 1981 were a reference to Article 3 of that Order.

*Bail and custody*

Court to give reasons for granting bail to a person accused of serious offence.  
1976 c. 63.

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

"9A.—(1) If—

- (a) the defendant is charged with an offence to which this paragraph applies; and
- (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."

Decisions where bail refused on previous hearing.

**154.** 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.—(1) The following section shall be inserted after section 128 of the Magistrates’ Courts Act 1980—

Remands in custody for more than eight days. 1980 c. 43.

“Remands in custody for more than eight days. 128A.—(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 Bail Act 1976 there shall be inserted— 1976 c. 63.

“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.”.

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*Appeals*

Appeals to Crown Court.  
1981 c. 54.

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

Groundless appeals and applications for leave to appeal.  
1968 c. 19.

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

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

20. 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.”.

*Reports of criminal proceedings*

Anonymity in rape etc. cases.  
1976 c. 82.

**158.—**(1) The Sexual Offences (Amendment) Act 1976 shall be amended as follows.

(2) The following subsections shall be substituted for subsection (1) of section 4 (anonymity of complainants in rape etc. cases)—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) the words “before the Crown Court at which a person is charged with a rape offence” and “relating to the complainant” shall cease to have effect; and
- (b) for the words “an acquittal of a defendant at” there shall be substituted the words “the outcome of”.

(5) Section 6 (anonymity of defendants in rape etc. cases) shall cease to have effect.

(6) In section 7(2), in the definition of a “rape offence”, for the words “and incitement to rape” there shall be substituted the words, “incitement to rape, conspiracy to rape and burglary with intent to rape”.

**159.—**(1) A person aggrieved may appeal to the Court of Appeal, if that court grants leave, against—

- (a) an order under section 4 or 11 of the Contempt of Court Act 1981 made in relation to a trial on indictment;
- (b) any order restricting the access of the public to the whole or any part of a trial on indictment or to any proceedings ancillary to such a trial; and
- (c) any order restricting the publication of any report of the whole or any part of a trial on indictment or any such ancillary proceedings;

Crown Court proceedings— orders restricting or preventing reports or restricting public access.  
1981 c. 49.

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.

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(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.

1981 c. 54.

(6) Without prejudice to the generality of section 84 of the Supreme Court Act 1981, Rules of Court may make in relation to trials satisfying specified conditions special provision as to the practice and procedure to be followed in relation to hearings in camera and appeals from orders for such hearings and may in particular, but without prejudice to the generality of this subsection, provide that subsection (4) above shall not have effect.

(7) In the application of this section to Northern Ireland—

- (a) subsection (2) shall be omitted; and
- (b) the reference in subsection (6) to section 84 of the Supreme Court Act 1981 shall be construed as a reference to sections 52 and 55 of the Judicature (Northern Ireland) Act 1978.

1978 c. 23.

*Possession of indecent photograph of child*

Summary offence of possession of indecent photograph of child.

**160.**—(1) It is an offence for a person to have any indecent photograph of a child (meaning in this section a person under the age of 16) in his possession.

(2) Where a person is charged with an offence under subsection (1) above, it shall be a defence for him to prove—

- (a) that he had a legitimate reason for having the photograph in his possession; or
- (b) that he had not himself seen the photograph and did not know, nor had any cause to suspect, it to be indecent; or
- (c) that the photograph was sent to him without any prior request made by him or on his behalf and that he did not keep it for an unreasonable time.

(3) A person shall be liable on summary conviction of an offence under this section to a fine not exceeding level 5 on the standard scale.



(4) Sections 1(3), 2(3), 3 and 7 of the Protection of Children Act 1978 shall have effect as if any reference in them to that Act included a reference to this section. PART XI  
1978 c. 37.

(5) Possession before this section comes into force is not an offence.

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

“Possession of indecent photographs of children.

52A.—(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.

Possession of indecent photographs of children: Scotland.  
1982 c. 45.

(2) Where a person is charged with an offence under subsection (1), it shall be a defence for him to prove—

- (a) that he had a legitimate reason for having the photograph in his possession; or
- (b) that he had not himself seen the photograph and did not know, nor had any cause to suspect, it to be indecent; or
- (c) that the photograph was sent to him without any prior request made by him or on his behalf and that he did not keep it for an unreasonable time.

(3) A person shall be liable on summary conviction of an offence under this section to a fine not exceeding level 5 on the standard scale.

(4) Subsections (2) and (8) of section 52 of this Act shall have effect for the purposes of this section as they have for the purposes of that section.”

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

#### *Video recordings*

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

“Enforcement.

16A.—(1) The functions of a local weights and measures authority include the enforcement in their area of this Act.

Enforcement of Video Recordings Act 1984.  
1984 c. 39.

(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—

1968 c. 29.

- 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.

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(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.

1968 c. 29.

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

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

*Restitution orders*

Application of  
restitution orders  
to the Crown.  
1968 c. 60.

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

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

*Magistrates' courts areas and officers*

Alteration of  
names of petty  
sessions areas.  
1979 c. 55.

**164.—**(1) The Justices of the Peace Act 1979 shall be amended as follows.

(2) The following sections shall be inserted after section 24—

“Alteration of  
names of petty  
sessions areas  
outside inner  
London area.

**24A.—**(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.

Procedure  
relating to  
s. 24A.

**24B.—**(1) Before submitting to the Secretary of State a draft order under section 24A of this Act, a magistrates' courts committee—

(a) shall consult the council of the non-metropolitan county, metropolitan district or outer London borough concerned and the magistrates of the petty sessions area to which their proposals relate; and

(b) after complying with paragraph (a) above, shall send a copy of their proposals to every interested authority and take into consideration any objections made in the prescribed manner and within the prescribed time.

(2) A magistrates' courts committee submitting to the Secretary of State a draft order under section 24A of this Act shall comply with such requirements (if any) as to notice as may be prescribed; and the Secretary of State, before making an order under that section otherwise than in accordance with a draft submitted to him by the magistrates' court committee, shall send a copy of his proposals to the committee, to the council of the non-metropolitan county, metropolitan district or outer London borough concerned and, if a non-metropolitan county is concerned, every interested authority.

(3) Before making any order under section 24A of this Act the Secretary of State shall take into consideration any objections made in the prescribed manner and within the prescribed time, and may cause a local inquiry to be held.

(4) For the purposes of this section—

(a) "interested authority", in relation to any order or draft order concerning a non-metropolitan county, means the council of any district in the county which is wholly or partly included in the area to which the order or draft order relates; and

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

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

"Alteration of names of petty sessions areas in inner London area.

36A.—(1) The committee of magistrates may at any time submit to the Secretary of State a draft order altering the name of any petty sessions area in the inner London area.

(2) Where the committee submit a draft order to the Secretary of State under this section, he may by statutory instrument make the order either in the terms of the draft or with such modifications as he thinks fit.

(3) Any order under this section may contain transitional and other consequential provisions."

165.—(1) Section 37 of the Justices of the Peace Act 1979 shall be amended as follows.

(2) In paragraph (b) of subsection (1), after "such" insert "senior deputy chief clerks,".

Officers of inner London magistrates' courts. 1979 c. 55.

## PART XI

(3) At the end of that subsection add “and, where there is only one, designate him”.

(4) In subsection (3), after “clerks”, in the first place where it occurs, insert “senior deputy chief clerks”.

*Costs and expenses*

Costs and expenses of prosecution witnesses and other persons.  
1985 c. 23.

**166.**—(1) Section 14 of the Prosecution of Offences Act 1985 (control of certain fees and expenses etc. paid by Crown Prosecution Service) shall be amended as follows—

(a) at the end of paragraph (b) of subsection (1) there shall be added the words “and, subject to subsection (1A) below, of any other person who in the opinion of the Service necessarily attends for the purpose of the case otherwise than to give evidence”;

(b) the following subsections shall be inserted after that subsection—

“(1A) The power conferred on the Attorney General by subsection (1)(b) above only relates to the costs and expenses of an interpreter if the interpreter is required because of the lack of English of a person attending to give evidence at the instance of the Service.

(1B) In subsection (1)(b) above “attending” means attending at the court or elsewhere.”; and

(c) the following subsection shall be inserted after subsection (2)—

“(3) Regulations made under subsection (1)(b) above may provide that scales or rates of costs and expenses shall be determined by the Attorney General with the consent of the Treasury.”.

(2) In paragraph (a) of section 19(3) of that Act (regulations as to payment out of central funds) after the word “proceedings” there shall be inserted the words “, and any other person who in the opinion of the court necessarily attends for the purpose of the proceedings otherwise than to give evidence,”.

(3) The following subsection shall be inserted after that subsection—

“(3A) In subsection (3)(a) above “attendance” means attendance at the court or elsewhere.”.

(4) The amendments made by subsections (2) and (3) above shall be deemed to have come into force on 1st October 1986.

1987 c. 38.

(5) In Schedule 1 to the Criminal Justice Act 1987 (control of certain fees and expenses etc. paid by Serious Fraud Office)—

(a) in sub-paragraph (1)(b) of paragraph 8, for the word “to” in the third place it occurs there shall be substituted the word “of”; and

(b) the following sub-paragraph shall be inserted after sub-paragraph (4) of that paragraph—

“(5) In sub-paragraph (1)(b) above “attends” means attends at the court or elsewhere.”

*Acquisition of easements etc.*

## PART XI

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

Acquisition of easements etc. under Prison Act 1952. 1952 c. 52.

## PART XII

## GENERAL AND SUPPLEMENTARY

**168.—**(1) An Order in Council under paragraph 1(1)(b) of Schedule 1 to the Northern Ireland Act 1974 (legislation for Northern Ireland in the interim period) which contains a statement that it is made only for purposes corresponding to those of any provision of this Act to which this section applies—

Northern Ireland. 1974 c. 28.

- (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.

**169.** There shall be paid out of money provided by Parliament—

Financial provision.

- (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.—**(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).

Minor and consequential amendments and repeals.

(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.

**PART XII**  
Commencement.

**171.**—(1) Subject to the following provisions of this section, this Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint and different days may be appointed in pursuance of this subsection for different provisions or different purposes of the same provision.

(2) An order under this section may make such transitional provision as appears to the Secretary of State to be necessary or expedient in connection with any provision thereby brought into force other than a provision contained in sections 108 to 117 above or in Schedule 6 or 7 to this Act.

(3) The Secretary of State may by regulations made by statutory instrument make such provision as he considers necessary or expedient in preparation for or in connection with the coming into force of any provision contained in those sections or Schedules.

(4) A statutory instrument containing any such regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(5) The following provisions shall come into force on the day this Act is passed—

section 66;

section 67;

section 103(1), so far as it relates—

1986 c. 32. (a) to the addition of two subsections at the end of section 8 of the Drug Trafficking Offences Act 1986;

(b) to the insertion of a new subsection in section 24 of that Act; and

(c) to the substitution of two new sections for section 26 of that Act;

section 129;

1982 c. 32. section 132, so far as it relates to the Local Government Finance Act 1982;

section 141;

section 142;

section 143;

section 144;

section 149;

section 166;

section 167;

section 168;

section 169;

subsection (1) of section 170, so far as relating to the following—

1925 c. 21. section 112A(1) of the Land Registration Act 1925;

1933 c. 12. the extension of references in the Children and Young Persons Act 1933 to the offences mentioned in Schedule 1 to that Act so as to include offences under Part I of the Child Abduction Act 1984;

1952 c. 67. the Visiting Forces Act 1952;

1967 c. 80. section 67(6) of the Criminal Justice Act 1967;

1969 c. 54. section 29 of the Children and Young Persons Act 1969;

section 6(1) of the Juries Act 1974;	<b>PART XII</b>
sections 171 and 368 of and Schedule 1 to the Criminal Procedure (Scotland) Act 1975;	1974 c. 23. 1975 c. 21.
the Child Care Act 1980;	1980 c. 5.
sections 37 and 133 of the Magistrates' Courts Act 1980;	1980 c. 43.
section 52(7) of the Civic Government (Scotland) Act 1982;	1982 c. 45.
the Criminal Justice Act 1982;	1982 c. 48.
the Police and Criminal Evidence Act 1984;	1984 c. 60.
the Prosecution of Offences Act 1985;	1985 c. 23.
the Criminal Justice Act 1987;	1987 c. 38.
the Criminal Justice (Scotland) Act 1987;	1987 c. 41.
subsection (2) of that section, so far as relating to the following—	
section 49 of the Criminal Justice Act 1967;	1967 c. 86.
section 29 of the Children and Young Persons Act 1969;	1969 c. 54.
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 Sexual Offences (Amendment) Act 1976, the Protection of Children Act 1978 and section 6(5) of the Magistrates' Courts Act 1980;	1976 c. 82. 1978 c. 37.
subsection (2) of that section, so far as relating to the following—	
the Prevention of Corruption Act 1916;	1916 c. 64.
Schedule 3 to the Criminal Justice Act 1967;	1967 c. 80.
section 28(3) of the Criminal Justice Act 1972;	1972 c. 71.
the Sexual Offences (Amendment) Act 1976;	1976 c. 82.

## PART XII

1978 c. 37.

1984 c. 46.

1984 c. 60.

the Protection of Children Act 1978;

the Cable and Broadcasting Act 1984;

section 24(2)(e) of the Police and Criminal Evidence Act 1984,

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

(7) Section 162 above shall come into force—

1984 c. 39.

(a) on the day appointed under section 23(2) of the Video Recordings Act 1984 for the coming into force of the provisions of that Act not in force at the passing of this Act; or

(b) on the passing of this Act,

whichever is the later.

Extent.

172.—(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;

section 94;

section 102, so far as relating to other provisions of this Act extending to Scotland;

sections 108 to 115 and 117;

section 133;

section 134;

section 136;

section 137;

sections 141 and 142;

section 143;

section 145(a) and (b);

section 162;

section 170;

section 171;

this section; and

section 173.



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

PART XII

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

(4) The following provisions—

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

extend to Scotland only.

(5) Section 95 above extends only to Scotland and Northern Ireland.

(6) Sections 145(c), 149 and 168 above extend to Northern Ireland only.

(7) So far as any provision of this Act to which this subsection applies relates to an Act specified in subsection (9) below, it extends to any place to which that Act extends.

(8) Subsection (7) above applies—

- (a) to section 50 above;
- (b) to section 146 above; and
- (c) to any other provision of this Act so far as it has effect in relation to courts-martial, the Courts-Martial Appeal Court or Standing Civilian Courts.

## PART XII

(9) The Acts mentioned in subsection (7) above are—

- 1955 c. 18. (a) the Army Act 1955;  
1955 c. 19. (b) the Air Force Act 1955;  
1957 c. 53. (c) the Naval Discipline Act 1957;  
1968 c. 20. (d) the Courts-Martial (Appeals) Act 1968; and  
1976 c. 52. (e) the Armed Forces Act 1976.

(10) Section 158 above extends—

- (a) to Scotland, so far as it relates to courts-martial; and  
(b) to Northern Ireland, so far as it relates to courts-martial and to such a publication or broadcast or inclusion in a cable programme in Northern Ireland as is mentioned in section 4(1) of the Sexual Offences (Amendment) Act 1976 as adapted by section 5(1)(b) of that Act.
- 1976 c. 82.

(11) The extent of any amendment of an enactment in Schedule 15 to this Act is the same as that of the enactment amended, except that the amendments of the Offences against the Person Act 1861 do not extend to Northern Ireland.

1861 c. 100.

(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.

Citation. **173.** This Act may be cited as the Criminal Justice Act 1988.

## SCHEDULES

### SCHEDULE 1

Section 1.

#### AMENDMENTS OF EXTRADITION ACT 1870, BACKING OF WARRANTS (REPUBLIC OF IRELAND) ACT 1965 AND FUGITIVE OFFENDERS ACT 1967

##### PART I

##### EXTRADITION ACT 1870

1. In section 3(3) (restrictions on surrender) after the word "otherwise" there shall be inserted the words "or unless an order is made for the charge in respect of the offence to lie on the file".

2. The following section shall be inserted after section 11—

"Simplified procedure.

11A.—(1) A person may give notice that he waives the rights conferred on him by section 11 above.

(2) A notice under this section shall be given in England and Wales in the manner prescribed by rules under section 144 of the Magistrates' Courts Act 1980 and, without prejudice to the generality of subsection (1) of that section, the power to make such rules shall include power to make provision for a magistrate to order the committal for return of a person with his consent at any time after his arrest.

1980 c. 43.

(3) A notice under this section shall be given in Scotland in the manner prescribed by the High Court of Justiciary by Act of Adjournal and the sheriff may order the committal for return of a person with his consent at any time after his arrest.

(4) Where an order is made under this section, this Act shall cease to apply to the person in respect of whom it is made, except that if, within one month after the order is made, he is not surrendered to the foreign state to which he is to be returned, the High Court, upon application by or on behalf of that person, may, unless reasonable cause is shown for the delay, order him to be discharged."

3. In section 26, in the definition of "police magistrate", for the words from "a" to the end there shall be substituted the words "the chief metropolitan stipendiary magistrate or a metropolitan stipendiary magistrate designated by the Lord Chancellor for the purposes of this Act and the Acts that may be cited together with it as the Extradition Acts 1870 to 1935".

4. There shall be included in the list of extradition crimes contained in Schedule 1—

(a) any offence under the Company Securities (Insider Dealing) Act 1985; 1985 c. 8.  
and

(b) offences under section 24 of the Drug Trafficking Offences Act 1986 1986 c. 32.  
(assisting another to retain the benefit of drug trafficking).

##### PART II

##### BACKING OF WARRANTS (REPUBLIC OF IRELAND) ACT 1965

5. The following section shall be inserted after section 2—

"Statement of case by court.

2A.—(1) If the court refuses to make an order in relation to a person under section 2 above, the chief officer of police for the area of the force to which the constable making the application under section 1 above belongs or, if the application is made in

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Northern Ireland, the chief constable of the Royal Ulster Constabulary may question the proceeding on the ground that it is wrong in law by applying to the court to state a case for the opinion of the High Court on the question of law involved.

(2) If the chief officer or chief constable immediately informs the court that he intends to make such an application, the court shall make an order providing for the detention of the person in question, or directing that he shall not be released except on bail.

(3) Rules of Court may specify—

- (a) a period within which the chief officer or chief constable must make such an application unless the Court grants a longer period; and
- (b) a period within which the court must comply with such an application.

(4) Where the court fails to comply with an application under subsection (1) above within the period specified in Rules of Court the High Court may, on the application of the chief officer or chief constable, make an order requiring the court to state a case.

(5) The High Court shall have power—

- (a) to remit the case to the magistrates' court to decide it according to the opinion of the High Court on the question of law; or
- (b) to dismiss the appeal.

(6) An order made by a court in England and Wales or Northern Ireland under subsection (2) above shall cease to have effect if—

- (a) the High Court dismisses the appeal; and
- (b) the chief officer or chief constable does not immediately—
  - (i) apply for leave to appeal to the House of Lords; or
  - (ii) inform the court that he intends to apply for leave.

(7) An order made by a court in Scotland under subsection (2) above shall cease to have effect if the court dismisses the appeal.

(8) In relation to a decision of a court on an appeal under this section, section 1 of the Administration of Justice Act 1960 or section 41 of the Judicature (Northern Ireland) Act 1978 (right of appeal to House of Lords) shall have effect as if so much of subsection (2) as restricts the grant of leave to appeal were omitted.

(9) The House of Lords may exercise any powers of the High Court under subsection (5) above and subsection (6) above shall apply to them as it applies to that Court.

(10) Subject to subsections (6) and (7) above, an order under subsection (2) above shall have effect so long as the case is pending.

(11) For the purposes of this section a case is pending (unless proceedings are discontinued) until (disregarding any power of a court to grant leave to take any step out of time) there is no step that the chief officer or chief constable can take.

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(12) In the application to Scotland of this section—

- (a) for the references to the chief officer of police or the chief constable of the Royal Ulster Constabulary there shall be substituted references to the procurator fiscal;
- (b) for the references to the High Court, other than the reference in subsection (9) above, there shall be substituted references to the High Court of Justiciary; and
- (c) subsections (8) and (9) shall be omitted; and, in relation to an appeal under this section in Scotland, the court may make an order providing for the detention of the person to whom it relates, or may grant bail; and section 446(2) of the Criminal Procedure (Scotland) Act 1975 shall apply for the purpose of such an appeal as it applies for the purpose of an appeal such as is mentioned in section 444 of that Act.”.

1975 c. 21.

## PART III

## FUGITIVE OFFENDERS ACT 1967

6. The following section shall be substituted for section 3—

“Relevant offences.

3.—(1) In this Act “relevant offence” means—

- (a) conduct in a designated Commonwealth country or United Kingdom dependency which, if it occurred in the United Kingdom, would constitute an offence punishable with imprisonment for a term of 12 months or any greater punishment, and which, however described in the law of the designated Commonwealth country or United Kingdom dependency, is so punishable under that law; or
- (b) any conduct which by virtue of subsection (4)(b) or (c) below is treated as conduct in a designated Commonwealth country or United Kingdom dependency and which satisfies the conditions in paragraph (a) above; or
- (c) an extra-territorial offence against the law of the designated Commonwealth country or United Kingdom dependency which is punishable under that law with imprisonment for a term of 12 months or any greater punishment, and which satisfies—
  - (i) the conditions specified in subsection (2) below; or
  - (ii) all the conditions specified in subsection (3) below.

(2) The condition mentioned in subsection (1)(c)(i) above is that in corresponding circumstances equivalent conduct would constitute an extra-territorial offence against the law of the United Kingdom punishable with imprisonment for a term of 12 months, or any greater punishment.

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(3) The conditions mentioned in subsection (1)(c)(ii) above are—

- (a) that the designated Commonwealth country or United Kingdom dependency bases its jurisdiction on the nationality of the offender;
- (b) that the conduct constituting the offence occurred outside the United Kingdom; and
- (c) that if it occurred in the United Kingdom it would constitute an offence under the law of the United Kingdom.

(4) For the purposes of this Act—

- (a) the law of a designated Commonwealth country or United Kingdom dependency includes the law of any part of that country or dependency and the law of the United Kingdom includes the law of any part of the United Kingdom; and
- (b) conduct in a dependency of a designated Commonwealth country, or a vessel, aircraft or hovercraft of such a country, shall be treated as if it were conduct in that country; and
- (c) conduct in a vessel, aircraft or hovercraft of a United Kingdom dependency shall be treated as if it were conduct in that dependency.”.

7.—(1) Section 4 (general restrictions on return) shall be amended as follows.

(2) The following paragraph shall be inserted after paragraph (a) of subsection (1)—

“(aa) that it is an offence under military law which is not also an offence under the general criminal law;”.

(3) In subsection (3)—

- (a) for the words “been restored or had an opportunity of returning to the United Kingdom” there shall be substituted the words “had an opportunity to leave that country”;
- (b) in paragraph (a), for the word “requested” there shall be substituted the word “ordered”;
- (c) the following paragraph shall be substituted for paragraph (b)—  
“(b) a lesser offence, other than an offence excluded by subsection (3A) below, which is disclosed by the facts in respect of which his return was ordered; or”; and
- (d) at the beginning of paragraph (c) there shall be inserted the words “subject to subsection (3B) below,”.

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

“(3A) The offences excluded from paragraph (b) of subsection (3) above are offences in relation to which an order for the return of the person concerned could not lawfully be made.

(3B) The Secretary of State may not give consent under paragraph (c) of that subsection in respect of an offence in relation to which it appears to him that an order for the return of the person concerned could not lawfully be made, or would not in fact be made.”.

8.—(1) The following subsections shall be substituted for subsection (2) of section 5 (authority to proceed)—

“(2) There shall be furnished with any such request—

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- (a) particulars of the person whose return is requested;
- (b) particulars of the offence of which he is accused or was convicted (including information sufficient to justify the issue of a warrant for his arrest under this Act);
- (c) in the case of a person accused of an offence, a warrant for his arrest issued in the Commonwealth country or United Kingdom dependency; and
- (d) in the case of a person unlawfully at large after conviction of an offence, a certificate of the conviction and sentence,

and copies of them shall be served on the person whose return is requested before he is brought before a court under section 7 of this Act.

(2A) Rules under section 144 of the Magistrates' Courts Act 1980 may make provision as to the procedure for service under subsection (2) above in England and Wales. 1980 c. 43.

(2B) The High Court of Justiciary may, by Act of Adjournment, make rules as to the procedure for service under subsection (2) above in Scotland.”.

(2) The following subsection shall be added at the end of that section—

“(4) An authority to proceed shall specify the offence or offences under the law of the United Kingdom which it appears to the Secretary of State would be constituted by equivalent conduct in the United Kingdom.”.

9. In subsection (1)(a) of section 6 (arrest for purposes of committal) for the words “a metropolitan stipendiary magistrate or by” there shall be substituted the words—

- “(i) the chief metropolitan stipendiary magistrate or a metropolitan stipendiary magistrate designated for the purposes of this Act by the Lord Chancellor; or
- (ii)”.

10.—(1) In subsection (1) of section 7 (proceedings for committal) for the words “a metropolitan stipendiary magistrate” there shall be substituted the words “the chief metropolitan stipendiary magistrate or a metropolitan stipendiary magistrate designated as mentioned in section 6(1)(a) above”.

(2) For the words in subsection (5) of that section from “the court shall” to the end there shall be substituted the words “the court, unless his committal is prohibited by any other provision of this Act, shall commit him in custody or on bail—

- (i) to await the Secretary of State's decision as to his return to the country on behalf of which the request for his return was made; and
- (ii) if the Secretary of State decides that he shall be returned to that country, to await his return.

(6) If the court commits a person under subsection (5) above, it shall issue a certificate of the offence against the law of the United Kingdom which would be constituted by his conduct.

(7) A person may be committed in the exercise of the power conferred by subsection (5) above either to custody or on bail.

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

(9) If—

- (a) the court is not satisfied as mentioned in subsection (5) above in relation to the person arrested; or

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(b) his committal is prohibited by a provision of this Act, it shall discharge him”.

11. The following section shall be inserted after section 7—

“Statement of case by court.

7A.—(1) If the court of committal refuses to make an order of committal in relation to a person under section 7 above, in respect of the offence or, as the case may be, any of the offences, to which the authority to proceed relates, the country seeking the return of that person to it may question the proceeding on the ground that it is wrong in law by applying to the court to state a case for the opinion of the High Court or, in Scotland, the High Court of Justiciary on the question of law involved.

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

(3) Rules of Court may specify—

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

(4) Where the court of committal fails to comply with an application under subsection (1) above within the period specified in Rules of Court, the High Court or, in Scotland, the High Court of Justiciary may, on the application of the country seeking the return of the person in question, make an order requiring the court to state a case.

(5) The High Court or High Court of Justiciary shall have power—

- (a) to remit the case to the court of committal to decide it according to the opinion of the High Court or High Court of Justiciary on the question of law; or
- (b) to dismiss the appeal.

(6) Where the court dismisses an appeal relating to an offence, it shall by order declare that that offence is not an offence in respect of which the Secretary of State has power to make an order under section 9 of this Act in respect of the person whose return was requested.

(7) An order made by a metropolitan magistrate under subsection (2) above shall cease to have effect if—

- (a) the court dismisses the appeal in respect of the offence or all the offences to which it relates; and
- (b) the country seeking return does not immediately—
  - (i) apply for leave to appeal to the House of Lords; or
  - (ii) inform the court that it intends to apply for leave.

(8) An order made by the sheriff of Lothian and Borders under subsection (2) above shall cease to have effect if the court dismisses the appeal in respect of the offence or all of the offences to which it relates.



(9) In relation to a decision of a court on an appeal under this section, section 1 of the Administration of Justice Act 1960 (right of appeal to House of Lords) shall have effect as if so much of subsection (2) as restricts the grant of leave to appeal were omitted. SCH. 1  
1960 c. 65.

(10) The House of Lords may exercise any powers of the High Court under subsection (5) above and subsection (6) above shall apply to them as it applies to that Court.

(11) Subject to subsections (7) and (8) above, an order under subsection (2) above shall have effect so long as the case is pending.

(12) For the purposes of this section a case is pending (unless proceedings are discontinued) until (disregarding any power of a court to grant leave to take any step out of time) there is no step that the Commonwealth country can take.

(13) In the application to Scotland of this section, subsections (9) and (10) shall be omitted, and, in relation to an appeal under this section in Scotland section 446(2) of the Criminal Procedure (Scotland) Act 1975 shall apply for the purpose of such an appeal as it applies for the purpose of an appeal such as is mentioned in section 444 of that Act." 1975 c. 21.

12.—(1) Section 8 (application for habeas corpus etc.) shall be amended as follows.

(2) The words "to custody" shall be omitted from subsections (1) and (2).

(3) The following words shall be substituted for the words in subsection (3) from the beginning to "the court", in the second place where those words occur—

"(3) Without prejudice to any jurisdiction of the High Court or High Court of Justiciary apart from this section, the court shall order the applicant's discharge if it appears to the court, in relation to the offence, or each of the offences, in respect of which the applicant's return is sought,".

(4) In subsection (5), for the words from "until" to the end there shall be substituted the words "(unless they are discontinued) until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal".

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

"(6) A person may give notice that he waives the rights conferred on him by subsection (2) above.

(7) A notice under this section shall be given in England and Wales in the manner prescribed by rules under section 144 of the Magistrates' Courts Act 1980 and, without prejudice to the generality of subsection (1) of that section, the power to make such rules shall include power to make provision for a magistrate to order the committal for return of a person with his consent at any time after his arrest. 1980 c. 43.

(8) In Scotland, a person may give notice in the manner prescribed by the High Court of Justiciary by Act of Adjournal that he waives the rights conferred on him by subsection (2) above and the sheriff may order the committal for return of a person with his consent at any time after his arrest.

(9) In any case where an order is made under this section, this Act shall cease to apply to the person in respect of whom it is made, except that if within one month after the order is made he is not surrendered to the country to which he is to be returned, the High Court or, in Scotland, the

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High Court of Judiciary, upon application by or on behalf of that person, may, unless reasonable cause is shown for the delay, order him to be discharged.”.

13.—(1) Section 9 (order for return to requesting country) shall be amended as follows.

(2) In subsection (1) for the words “to await his return” there shall be substituted the words “under section 7 of this Act”.

(3) In paragraph (b) of subsection (2), after the word “withdrawn” there shall be inserted the words “or unless an order is made for it to lie on the file”.

(4) The following subsection shall be inserted after that subsection—

“(2A) In the application of this section to Scotland, the reference to an order being made for the charge to lie on the file shall be construed as a reference to the diet being deserted pro loco et tempore.”.

14. In subsection (1) of section 10 (discharge in case of delay in returning) for the words from “to” to “Act”, in the first place where it occurs, there shall be substituted the words “under section 7 of this Act is still in the United Kingdom”.

15. The following paragraph shall be substituted for subsection (2)(b) of section 14 (restriction upon proceedings)—

“(b) any lesser offence disclosed by the particulars furnished to the designated Commonwealth country or United Kingdom dependency on which his return is grounded; or”.

16. In subsection (1) of section 16 (application to Channel Islands and Isle of Man) the words “(except for purposes of the references to the United Kingdom in section 3)” shall cease to have effect.

17. At the end of subsection (1) of section 19 (interpretation) there shall be added—

““warrant”, in the case of any country, includes any judicial document authorising the arrest of a person accused or convicted of an offence.”.

## Section 28.

## SCHEDULE 2

## 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— SCH. 2

(a) Crown Court Rules;

(b) Criminal Appeal Rules; and

(c) rules under section 144 of the Magistrates' Courts Act 1980, 1980 c. 43.

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.

5. Expressions used in Part II of this Act and in Part I of the Civil Evidence Act 1968 are to be construed in Part II of this Act in accordance with section 10 of that Act. 1968 c. 64.

6. In Part II of this Act "confession" has the meaning assigned to it by section 82 of the Police and Criminal Evidence Act 1984. 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.

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 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.

## SCH. 3

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, 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).

## Section 71.

## SCHEDULE 4

## CONFISCATION ORDERS

## PART I

OFFENCES IN RESPECT OF WHICH MAGISTRATES' COURTS MAY MAKE  
CONFISCATION ORDERS

Enactment	Description of offence
LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982 (c. 30) 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)	

SCH. 4

Enactment	Description of offence
Section 10(1)(a)	Use of unlicensed premises for exhibition which requires a licence.

## 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

## PART I

## AMENDMENTS OF DRUG TRAFFICKING OFFENCES ACT 1986

1. The Drug Trafficking Offences Act 1986 shall be amended as follows. 1986 c. 32.
2. In section 7 (cases in which restraint orders and charging orders may be made)—
- 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
  - 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)—
- “(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— 1972 c. 61.  
1925 c. 21.
- 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
  - 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.”

- SCH. 5
- 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.
- (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.”.

SCH. 5

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—

“Insolvency officers dealing with property subject to restraint order.

17A.—(1) Without prejudice to the generality of any enactment contained in the Insolvency Act 1986 or in any other Act, where—

1986 c. 45.

- (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.”.

SCH. 5 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;

(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. The following subsection shall be inserted after subsection (5) of section 24 (assisting another to retain the benefit of drug trafficking)—

1964 c. 48.

“(5A) In this section “constable” includes a police officer engaged on central service (as defined in section 43(5) of the Police Act 1964).”.

14.—(1) The following paragraph shall be substituted for subsection (1)(d) of section 25 (enforcement of Northern Ireland orders)—

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

“(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—

“Enforcement of other external orders. 26.—(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



- (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.

SCH. 5

(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.

Registration of  
external  
confiscation  
orders.

26A.—(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—

- (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).

SCH. 5 (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

1987 c. 41. 18. The Criminal Justice (Scotland) Act 1987 shall be amended as follows.

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".

1986 c. 22. 20. In subsection (6)(a) of section 11 (which applies the provisions of that section to restraint orders under the Drug Trafficking Offences Act 1986 registered in Scotland) after the word "information" there shall be inserted the words "in respect of the charge".

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;

(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".

Section 108.

## SCHEDULE 6

### THE CRIMINAL INJURIES COMPENSATION BOARD

#### *Status*

1. The Board shall not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and the Board's property shall not be regarded as property of, or held on behalf of, the Crown.

#### *Membership*

2.—(1) The Board shall consist of such number of members as the Secretary of State thinks fit to appoint, and he may appoint one of them as chairman.

(2) A person may only be appointed to be a member of the Board if he is a barrister practising in England and Wales, an advocate practising in Scotland, a solicitor practising in England and Wales or Scotland or a person who holds or has held judicial office in England and Wales or Scotland.

(3) Subject to the following provisions of this Schedule, a person shall hold and vacate office as a member or chairman of the Board in accordance with the terms of his appointment.

(4) A person shall not hold office as a member of the Board for more than five years under any one appointment, but a person who ceases to be a member shall be eligible for reappointment.

SCH. 6

(5) A person shall vacate office as a member of the Board—

- (a) if he ceases to be qualified for appointment to that office; 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 the compensation scheme that he should continue to hold office.

(6) A person may at any time resign his office as a member or as chairman of the Board by giving the Secretary of State notice in writing to that effect.

(7) Subject to sub-paragraph (8) below, the Secretary of State may at any time remove a person from office as a member of the Board 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.

(8) The power conferred by sub-paragraph (7) above shall only be exercisable—

- (a) in the case of a member who practises or has practised as a barrister or solicitor in England and Wales, or who holds or has held judicial office there, with the consent of the Lord Chancellor; and
- (b) in the case of a member who practises or has practised as an advocate or solicitor in Scotland, or who holds or has held judicial office there, with the consent of the Lord President of the Court of Session.

3.—(1) The Board shall pay to its members such remuneration and allowances as the Secretary of State may, with the approval of the Treasury, determine.

(2) In the case of any such member or former member of the Board as the Secretary of State may, with the approval of the Treasury, determine, the Board shall pay, or make arrangements for the payment of, such pension, allowance or gratuity to, or in respect of, him as may be so determined.

4. Where a person ceases to hold office as a member of or as chairman of the Board otherwise than on the expiry of his term of office and it appears to the Secretary of State that there are special circumstances which make it right for that person to receive compensation, the Secretary of State may, with the consent of the Treasury, direct the Board to make to that person a payment of such amount as, with the consent of the Treasury, the Secretary of State may determine.

#### *Staff*

5. The Board may, after consultation with the Secretary of State, appoint such officers and servants as the Board think fit, subject to the approval of the Treasury as to numbers and as to remuneration and other terms and conditions of service.

6. Employment by the Board shall be included among the kinds of employment to which a superannuation scheme under section 1 of the Superannuation Act 1972 can apply, and accordingly in Schedule 1 to that Act, at the beginning of the list of "Other Bodies" there shall be inserted—

1972 c. 11.

"Criminal Injuries Compensation Board".

## SCH. 6

*Expenses*

7. Any expenses incurred by the Board in discharging their functions shall be defrayed by the Secretary of State.

*Proceedings*

8. The validity of any proceedings of the Board shall not be affected by any defect in the appointment of a member.

*Accounts and information etc.*

9.—(1) The Board shall—

- (a) keep proper accounts and proper records in relation to the accounts; and
- (b) prepare in respect of each financial year a statement of accounts in such form as the Secretary of State may, with the approval of the Treasury, direct.

(2) The statement of accounts prepared by the Board for each financial year shall be submitted to the Secretary of State at such time as he shall, with the approval of the Treasury, direct.

(3) The Secretary of State shall, on or before 30th November in any year, send to the Comptroller and Auditor General the statement of accounts prepared by the Board under sub-paragraph (1) above for the financial year last ended.

(4) The Comptroller and Auditor General shall examine, certify and report on the statement of accounts sent to him under sub-paragraph (3) above and shall lay copies of the statement and of his report before each House of Parliament.

(5) In this Schedule “financial year” means the period beginning with the day on which this Schedule comes into force and ending with 31st March following that day and each successive period of 12 months.

10.—(1) As soon as possible after the end of each financial year the Board shall make a report to the Secretary of State on the operation of the scheme and the discharge of their functions during that year.

(2) The Secretary of State shall lay before each House of Parliament a copy of every report made by the Board under this paragraph.

11. The Board shall provide the Secretary of State with such information relating to their administration of the scheme as he may from time to time require and for that purpose shall permit any person authorised in that behalf by the Secretary of State to inspect and make copies of their accounts, books, documents or papers and shall afford to that person such explanation thereof as he may reasonably require.

12. The Secretary of State may give to the Board such directions as he thinks fit as to the financial and management systems and procedures to be adopted by the Board; and the Board shall give effect to any such directions.

## SCHEDULE 7

## COMPENSATION

*Claims for compensation*

1.—(1) The Board shall not award compensation to a person unless, in addition to any other conditions relating to it being satisfied, he has made a claim for it in the prescribed manner.

(2) In this Schedule "prescribed" means prescribed by rules under paragraph 14 below. SCH. 7

2. Unless the circumstances appear to them to be exceptional—

- (a) in a case where the Board have not previously awarded compensation in respect of an injury they shall not determine a claim in respect of it which is made after the end of three years from the date of the incident giving rise to the injury; and
- (b) in a case where they have previously awarded compensation in respect of an injury, they shall not determine any further claim in respect of it which is made after the end of three years beginning with the date of the notice under paragraph 6(2) below relating to the award, or latest award, of compensation in respect of the injury.

3. If (a) the Board—

- (i) have previously awarded compensation in respect of an injury; and
  - (ii) stated at the time of a previous award that the evidence before them showed that a particular medical condition might arise in the future as a result of the injury; and
- (b) a claim is made in respect of such a condition,  
the Board shall determine the claim whenever it is made.

#### *Procedure*

4.—(1) The Secretary of State shall make rules of procedure in relation to claims for compensation.

(2) Without prejudice to the generality of sub-paragraph (1) above rules under this paragraph may in particular—

- (a) specify matters which may be dealt with or which must be dealt with—
  - (i) by members of the Board's staff; or
  - (ii) by a member or members of the Board;
- (b) make provision—
  - (i) for the determination of a claim without a hearing;
  - (ii) for the reconsideration without a hearing of a previous determination without a hearing; and
  - (iii) for the extent to which a previous determination may be altered on such a reconsideration;
- (c) make provision as to circumstances in which a claim is to be or may be determined by a decision at a hearing on specified issues and as to the procedure for settling the issues which are to be considered;
- (d) make provision about the conduct of hearings and in particular about the calling of witnesses, the admissibility of, and weight to be given to, hearsay and opinion evidence and the order of proceedings;
- (e) make provision as to the confidentiality of information disclosed in connection with a claim; and
- (f) make such incidental or supplementary provision as appears to the Secretary of State to be appropriate.

(3) Rules under this paragraph may make different provision for different descriptions of cases.

(4) Rules under this paragraph shall be made by statutory instrument.

(5) A statutory instrument containing any such rules shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## SCH. 7

*Applications for reconsideration of claims*

5.—(1) Where a claimant is aggrieved by the determination of a claim which was determined without a hearing, he may question the determination by applying to the Board for the claim to be reconsidered after a hearing.

(2) A claimant may not make an application under this paragraph if, as part of their determination, the Board have certified that in their opinion no prima facie case for an award of compensation was disclosed by his application.

(3) An application under this paragraph—

(a) shall be entertained by the Board if it is made before the expiry of the period of three months beginning with the date on which the claimant was notified of their determination; and

(b) may be entertained by them if made outside that period if they are satisfied that there are exceptional reasons for doing so.

(4) The Board may refuse an application under this paragraph if they are of the opinion that there is sufficient reason to do so and, if the claimant so requires, shall give him a certificate that the application has been refused.

(5) Where the Board refuse an application for the reconsideration of a claim determined without a hearing in accordance with the law of England and Wales, the High Court, on the application of the claimant, may make an order of mandamus requiring the Board to reconsider his claim after a hearing.

(6) Where the Board refuse an application for the reconsideration of a claim determined without a hearing in accordance with the law of Scotland, the Court of Session, on the application of the claimant, may direct the Board to reconsider the claim after a hearing.

*Payment of compensation*

6.—(1) Except in prescribed cases, compensation, whether on an interim or a final award, shall be paid in a lump sum.

(2) It shall be the duty of the Board to give a claimant written notice of the amount of an award.

(3) A claimant shall not be entitled to a payment unless the Board have received from him written notice to the effect that he has received a notice under sub-paragraph (2) above and accepts the amount of compensation specified in the notice as the proper amount.

*Deferment of determination*

7.—(1) The Board may only defer the determination of a claim on the ground that criminal proceedings are current if they consider that the proceedings are likely to be material to their determination of the claim.

(2) Where the Board are satisfied that a claimant is qualified for an award of compensation but do not have all the information they need to assess the amount of the award, they may defer the determination of the claim for such reasonable period as may be appropriate to allow them to obtain that information.

(3) Where the Board are satisfied that a claimant is qualified for an award of compensation but have reason to believe that he may become entitled to an award of compensation under the scheme established by the Criminal Injuries (Compensation) (Northern Ireland) Order 1988, or any order replacing that Order, or under any similar scheme established in any other country or territory, they may defer the determination of his claim for such reasonable period as may be appropriate in order to establish whether he will become entitled to such an award and, if he will, the amount of the award.

*Appropriate law*

SCH. 7

8. Subject to the provisions of this Part of this Act, a claim for compensation under any of the heads specified in section 111 above is to be determined, and the amount of any compensation which falls to be assessed under any of those heads is to be assessed, in accordance with the rules of the law of England and Wales or the law of Scotland (including rules contained in Acts of Parliament but not including rules allowing a plaintiff or pursuer aggravated damages or interest) in accordance with which a claim in tort or delict arising out of the same facts for damages under a corresponding head would fall to be determined.

*Private medical treatment*

9. In assessing compensation no account shall be taken of any expenses incurred in respect of private medical treatment unless the Board are satisfied that such treatment is or was essential; and where the Board are so satisfied in relation to any such treatment, compensation for the expenses incurred in respect of that treatment shall not exceed a reasonable amount.

*Calculation of earning capacity*

10.—(1) For the purposes of assessing compensation payable under this Part of this Act, the earning capacity of the person who sustained the injury to which the claim in question relates shall be taken not to be or to have been in excess of one-and-a-half times the gross average industrial wage.

(2) For the purposes of this paragraph the gross average industrial wage shall be taken to be whatever sum is specified by the Secretary of State by order as being the gross average industrial wage; and the Secretary of State shall cause any order specifying such a sum to be published in such manner as he thinks fit.

(3) The Secretary of State may by order amend sub-paragraph (1) above by varying the multiplier for the time being specified in that sub-paragraph.

(4) An order under sub-paragraph (2) above shall be made by statutory instrument.

(5) A statutory instrument containing any such order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

*Reduction of compensation by reference to social security benefits etc.*

11.—(1) Compensation, other than compensation in respect of funeral expenses, shall be assessed on the basis that the loss to be compensated is reduced by the value of any entitlement to benefits which the claimant has in consequence of the injury to which the claim relates or, as the case may be, the death of the person who sustained that injury.

(2) In this paragraph—

“benefit” means—

(a) any social security benefits payable under the laws of any part of the United Kingdom and any similar benefits payable under the laws of any other country or territory;

(b) any award under the scheme established by the Criminal Injuries (Compensation) (Northern Ireland) Order 1988, or any order replacing that Order, or under any similar scheme established in any other country or territory;

(c) benefits (including any return of premiums) under any insurance arrangements, other than private insurance arrangements; and

“private insurance arrangements” means insurance arrangements for which no person wholly or partly pays except—

(a) the person who sustained the injury to which the claim relates;

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- (b) his spouse;
  - (c) any person who on the date that that injury was sustained—
    - (i) was living in the same household as the person who sustained that injury,
    - (ii) was so living with him as his spouse; and
    - (iii) had been so living with him in the same household during the whole of the period of two years immediately preceding that date;
  - (d) where the person who sustained that injury was at the time under the age of 18 years, his parent or guardian.
- (3) In calculating for the purposes of this paragraph the value of any entitlement to benefits regard shall be had—
- (a) to any liability to income tax likely to reduce the value of that entitlement; and
  - (b) to any effect the making of the award is likely to have on that entitlement.
- (4) In the case of a claim by the surviving spouse of a person who died as a result of having sustained the injury to which the claim relates, no account shall be taken of any re-marriage of his or of his prospect of re-marriage in calculating for the purposes of this paragraph the value of the surviving spouse's entitlement to social security benefits.

*Reduction of compensation by reference to pension rights*

- 12.—(1) Compensation payable, other than compensation in respect of funeral expenses, shall be assessed on the basis that the loss to be compensated is reduced by the value of any pension rights, other than private pension rights, which—
- (a) where the claimant is the person who sustained the injury to which the claim relates, are enjoyed by him in consequence of that injury and by virtue of any office or employment of his; or
  - (b) where the claimant is a dependant of the person who sustained the injury to which the claim relates, are enjoyed by him in consequence of that person's death and by virtue of any office or employment of that person.
- (2) In assessing the value of any pension rights for the purposes of this paragraph, regard shall be had to any likelihood that present or future liability to income tax may reduce their value.
- (3) In this Schedule "private pension rights" means rights arising under pension arrangements for which no person wholly or partly pays except—
- (a) the person who sustained the injury to which the claim relates;
  - (b) his spouse;
  - (c) any person who on the date that that injury was sustained—
    - (i) was living in the same household as the person who sustained that injury;
    - (ii) was so living with him as his spouse; and
    - (iii) had been so living with him in the same household during the whole of the period of two years immediately preceding that date;
  - (d) where the person who sustained that injury was at the time under the age of 18 years, his parent or guardian.
- (4) For the purposes of this paragraph "pension rights" includes sums paid under insurance arrangements, other than private insurance arrangements, and gratuities.



*Reduction of compensation by reference to damages etc.*

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13. Where the Board are satisfied that, by virtue of—

- (a) a judgment or decree in, or the settlement of, any action for damages; or
- (b) any order under section 35 (compensation orders against convicted persons) or section 43A (payment of the proceeds of forfeited property to a person suffering personal injury, loss or damage as the result of an offence) of the Powers of Criminal Courts Act 1973 or section 98 of the Criminal Justice (Scotland) Act 1980 (compensation orders against convicted persons),

1973 c. 62.  
1980 c. 62.

a claimant has received any payment which compensates him for any loss in respect of which compensation is payable to him under this Part of this Act, the compensation so payable to him shall be assessed on the basis that that loss is reduced by the amount of that payment.

*Miscellaneous rules*

14.—(1) The Secretary of State may by rules—

- (a) provide for the use of prescribed forms;
- (b) prescribe circumstances in which, and the method by which, one person may act for another in relation to a claim for compensation;
- (c) prescribe the manner in which the Board are to notify their determinations;
- (d) specify cases in which compensation is not to be paid as a lump sum and how it is to be paid in any such case;
- (e) provide that, in the case of compensation awarded to a person who is under the age of 18 years or under a disability, the Board shall have such power with respect to the payment and investment of the award as may be prescribed; and
- (f) make such incidental or supplementary provision as appears to the Secretary of State to be appropriate.

(2) Rules under this paragraph may make different provision for different descriptions of cases.

(3) Rules under this paragraph shall be made by statutory instrument.

(4) A statutory instrument containing any such rules shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## 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 Firearms Act 1968; 1968 c. 27.
- (b) Schedule 1 to the Juries Act 1974; 1974 c. 23.
- (c) section 5 of the Rehabilitation of Offenders Act 1974; and 1974 c. 53.

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1982 c. 48. (d) section 17(3) of the 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.

3.—(1) In any enactment except—

- 1974 c. 23. (a) Part II of Schedule 1 to the Juries Act 1974;  
1974 c. 53. (b) section 5 of the Rehabilitation of Offenders Act 1974; and  
1982 c. 48. (c) sections 1(3) and 17(3) of the 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.

*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)—

1982 c. 48. “(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 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)*

1973 c. 35. 7. In section 13(7)(a)(ii) of the 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;”.

*Juries Act 1974 (c. 23)*

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8. In Part I of Schedule 1 to the 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". 1974 c. 23.

*Rehabilitation of Offenders Act 1974 (c. 53)*

9. In section 5 of the Rehabilitation of Offenders Act 1974 (rehabilitation periods) the words "detention in a young offender institution" shall be inserted— 1974 c. 53.

(a) in subsection (1)(b), after the words "youth custody"; and

(b) in subsection (2), in Table A, after the word "imprisonment", in both places where it occurs.

*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 Criminal Justice Act 1982 comes into force an offender has been committed for sentence to the Crown Court under section 37 of the Magistrates' Courts Act 1980; but 1982 c. 48. 1980 c. 43.
- (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.

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 Army Act 1955, section 71AA of the Air Force Act 1955 or section 43AA of the Naval Discipline Act 1957; or 1955 c. 18. 1955 c. 19.
- (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 Naval Discipline Act 1957, 1957 c. 53.

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.

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1952 c. 52.  
1982 c. 48.

14. Rules under section 47 of the Prison Act 1952 may provide that any awards for an offence against discipline made before the commencement of section 1A of the 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.

15. Where on the commencement of section 1A of the Criminal Justice Act 1982 a person is subject—

1967 c. 80. (a) to a licence under section 60 of the 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.

16. Nothing in this Act affects any right of appeal against a sentence of youth custody.

Section 124.

## SCHEDULE 9

### DETENTION OF YOUNG OFFENDERS IN SCOTLAND

#### PART I

#### AMENDMENTS

##### *Prisons (Scotland) Act 1952 (c. 61)*

1952 c. 61. 1. In section 31(1) of the Prisons (Scotland) Act 1952 for paragraph (d) there shall be substituted the following paragraph—

“(d) young offenders institutions, that is to say, places in which offenders sentenced to detention in a young offenders institution may be kept.”

##### *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)*

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4. In paragraph (b) of Part II (Persons Disqualified) of Schedule 1 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."

## 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 71AA of the Army Act 1955, section 71AA of the 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 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.

8. Section 5 of the 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.

## SCHEDULE 10

Section 128.

## SUPERVISION

## PART I

## SECTIONS SUBSTITUTED FOR SECTION 12 OF CHILDREN AND YOUNG PERSONS ACT 1969

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;

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(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

(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.  
1983 c. 20.

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 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.

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.

1944 c. 31.

(3) Expressions used in subsection (1) above and in the 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.

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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 I FOR SECTION 12

The amendments of the Children and Young Persons Act 1969 mentioned in section 128(2) above are— 1969 c. 54.

- (a) the substitution of references to section 12A(3) for the references to section 12(3C) in section 15(1), 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 section 15(1) and (5) and section 16(6)(c) and (7); and
- (c) the insertion of “, 12A, 12B or 12C” after “section 12” in section 15(1)(a) and section 16(5)(b) and (c) and (6)(a).

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## PART III

## AMENDMENTS OF SECTION 15

## 1. The following subsection shall be substituted for subsection (2A)—

“(2A) If while a supervision order made under section 7(7) of this Act or made by a court on discharging a care order made under that subsection is in force in respect of a person who has not attained the age of 18 it is proved to the satisfaction of a juvenile court, on the application of the supervisor, that the supervised person has failed to comply with any requirement included in the supervision order in pursuance of section 12, 12A, 12C or 18(2)(b) of this Act, the court—

- (a) may order him to pay a fine of an amount not exceeding £100; or
- (b) subject to section 16A(1) of this Act, may make an attendance centre order in respect of him,

whether or not it also makes an order under subsection (1) of this section.”.

## 2. In subsection (3), for “12(1) or (2)” there shall be substituted “12, 12A, 12B or 12C”.

## 3. The following subsections shall be substituted for subsection (4)—

“(4) If while a supervision order made under section 7(7) of this Act or made by a court on discharging a care order made under that section is in force in respect of a person who has attained the age of 18 it is proved to the satisfaction of a magistrates’ court (not being a juvenile court), on the application of the supervisor, that the supervised person has failed to comply with any requirement included in the supervision order in pursuance of section 12, 12A, 12C or 18(2)(b) of this Act, the court—

- (a) whether or not it also makes an order under subsection (3) of this section, may order him to pay a fine of an amount not exceeding £100 or, subject to section 16A(1) of this Act, may make an attendance centre order in respect of him;
- (b) if it also discharges the supervision order, may make an order imposing on him any punishment other than a sentence of detention in a young offender institution which it could have imposed on him if it had then had power to try him for the offence in consequence of which the supervision order was made and had convicted him in the exercise of that power;

and in a case where the offence in question is of a kind which the court has no power to try or has no power to try without appropriate consents—

- (i) the punishment imposed by virtue of paragraph (b) of this subsection shall not exceed that which any court having power to try such an offence could have imposed in respect of it; and
- (ii) if the punishment imposed is a fine, it shall not in any event exceed £2,000.

(4A) If while a supervision order is in force in respect of a person it is proved to the court under subsection (2A) or (4) above that the supervised person has failed to comply with any requirement included in the supervision order in pursuance of section 12A(3)(a) of this Act directing the supervised person to participate in specified activities, the court may, if it also discharges the supervision order, make an order imposing on him any sentence which it could have imposed on him if it had then had power to try him for the offence in consequence of which the supervision order was made and had convicted him, or found him guilty, in the exercise of that power.

(4B) In a case where the offence in question is of a kind which the court has no power to try or has no power to try without appropriate consents, the sentence imposed shall not exceed that which any court having power to try such an offence could have imposed in respect of it and shall not in any event exceed a custodial sentence for a term of six months and a fine—

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- (a) if the offender has not attained the age of 18, of £400; and
- (b) if he has attained that age, of £2,000.

(4C) A court may not make an order by virtue of subsection (4A) of this section unless the court which made the supervision order made a statement under section 12D(1) of this Act.

(4D) For the purposes of subsection (4C) above a certificate under section 12D of this Act shall be evidence of the making of the statement to which it relates.”.

## PART IV

## SECTION INSERTED AFTER SECTION 16

“Application of sections 17 to 19 of Criminal Justice Act 1982. 1982 c. 48.

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—

1969 c. 54.

- (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 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”;
  - (ii) from subsection (6), the words “for an offence”.

## SCHEDULE 11

Section 132.

## ADMINISTRATION OF THE PROBATION SERVICE ETC.

*Amendments of Schedule 3 to Powers of Criminal Courts Act 1973*

1. Schedule 3 to the Powers of Criminal Courts Act 1973 shall be amended as follows. 1973 c. 62.

## SCH. 11

## 2. In paragraph 4—

- (a) in sub-paragraph (1), for the word “For” there shall be substituted the words “Subject to sub-paragraph (1A) below, for”;
- (b) the following sub-paragraph shall be inserted after that sub-paragraph—

“(1A) Where two or more petty sessions areas outside the inner London area form a probation area or part of a probation area, the probation committee, if they think fit, may determine that there shall be one or more joint probation liaison committees for those petty sessions areas; and a joint committee shall consist of not less than three justices appointed by the justices acting for each of the petty sessions areas.”; and

- (c) the following sub-paragraph shall be inserted after sub-paragraph (3)—

“(4) A probation liaison committee may delegate all or any of their functions to a sub-committee consisting of members of the committee.”.

## 3. The following paragraphs shall be inserted after paragraph 6—

“6A. Any probation committee may also co-opt one or more justices with experience of sitting as members of the Crown Court, and one or more stipendiary magistrates appointed in a commission area which is the same as or is situated within the probation area.

6B.—(1) The Secretary of State may by order provide that the probation committee for any probation area shall co-opt members of the local authority, or any of the local authorities, liable under paragraph 15 below to defray the expenses of the committee.

(2) An order under this paragraph may make such consequential, supplementary or transitional provision as appears to the Secretary of State to be necessary or expedient in consequence of the order, including provision for such repeals in or modifications of this Schedule as appear to him to be necessary or expedient in consequence of it.

(3) Without prejudice to the generality of sub-paragraph (2) above, an order under this paragraph—

- (a) may specify, either as a number or as a proportion of the members of the committee, how many persons may be co-opted to a committee and, where two or more authorities are liable to pay the expenses of a committee, how many persons may be co-opted from each of them;
- (b) may provide for the procedure for co-opting persons to be followed by a committee;
- (c) may require that such consultations as may be specified in the order shall be carried out before persons are so co-opted; and
- (d) may disqualify persons of specified descriptions from being co-opted.

(4) An order under this paragraph may make different provision for different committees.”.

## 4. Paragraph 7 shall cease to have effect.

## 5. The following paragraph shall be substituted for paragraph 10(3)(a)—

“(a) to appoint staff;”.

## 6. The following paragraph shall be inserted after paragraph 18(1)(a)—

“(aa) limiting the number of staff (other than probation officers) who may be appointed under paragraph 3 or 10 above;”.

*Amendment of Local Government Finance Act 1982*

SCH. 11

8. In paragraph (1) of section 12(2) of the Local Government Finance Act 1982 (bodies whose accounts are subject to audit by Audit Commission), after the word "committee" there shall be inserted the words ", except the committee for the inner London area."

1982 c. 32.

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—

- (a) a barrister practising in England and Wales or Northern Ireland;
- (b) an advocate practising in Scotland;
- (c) a solicitor practising in any part of the United Kingdom;
- (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.

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—

- (a) in the case of a person who practises or has practised as a barrister or solicitor in England and Wales or Northern Ireland or who holds or has held judicial office in any of those parts of the United Kingdom, with the consent of the Lord Chancellor; and
- (b) in the case of a person who practises or has practised as an advocate or solicitor in Scotland or who holds or has held judicial office there, with the consent of the Lord President of the Court of Session.

7. An assessor shall be paid such remuneration and allowances as the Secretary of State may, with the approval of the Treasury, determine.

Section 146.

## SCHEDULE 13

## EVIDENCE BEFORE COURTS-MARTIAL ETC.

*Interpretation*

## 1. In this Schedule—

“procedural instruments” means—

- 1955 c. 18. (a) Rules of Procedure under section 103 of the Army Act 1955 or section 103 of the Air Force Act 1955;
- 1955 c. 19. (b) General Orders under section 58 of the Naval Discipline Act 1957;
- 1957 c. 53. (c) rules under section 49 of the Courts-Martial (Appeals) Act 1968; and
- 1968 c. 20. (d) orders under paragraph 12 of Schedule 3 to the Armed Forces Act 1976; and
- 1976 c. 52.

“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.

*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)—

“(i) the person who made the statement is not in the country where the court is sitting; and”.

*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.

## 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.

*Letters of request etc.*

SCH. 13

6.—(1) In section 29 above “criminal proceedings” does not include 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.

*Form of evidence and glossaries*

7. For the purpose of helping members—

- (a) of courts-martial constituted under the Army Act 1955 or the Air Force Act 1955; or 1955 c. 18.  
1955 c. 19.
- (b) of courts-martial constituted under the Naval Discipline Act 1957 or disciplinary courts constituted under section 50 of that Act, 1957 c. 53.

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.

*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.

## SCH. 13

(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.

## Section 149.

## SCHEDULE 14

## BODY SAMPLES – NORTHERN IRELAND

*Scope of Schedule*

## 1. This Schedule applies—

- (a) to an offence (whether at common law or under any enactment) specified in paragraph 2 below;
- (b) to an offence specified in paragraph 3 below;
- (c) to an offence not mentioned in either of those paragraphs—
  - (i) for which a person of 21 years of age or over and of full capacity (not previously convicted) may be sentenced to imprisonment for a term of five years; and
  - (ii) which is serious for the purposes of this Schedule.

## 2. The offences mentioned in paragraph 1(a) above are—

- (a) treason;
- (b) murder;
- (c) manslaughter;
- (d) rape;
- (e) kidnapping;
- (f) incest with a girl under the age of 14;
- (g) buggery with—
  - (i) a boy under the age of 16; or
  - (ii) a person who has not consented; and
- (h) indecent assault which constitutes an act of gross indecency.

## 3. The offences mentioned in paragraph 1(b) above are—

- (a) causing an explosion likely to endanger life or property contrary to section 2 of the Explosives Substances Act 1883;
- (b) intercourse with a girl under the age of 14 contrary to section 4 of the Criminal Law Amendment Act 1885;
- (c) causing death by reckless driving contrary to Article 139(1) of the Road Traffic (Northern Ireland) Order 1981;
- (d) the following offences against the Firearms (Northern Ireland) Order 1981—

1883 c. 3.

1885 c. 69.

S.I. 1981/154  
(N.I.1).S.I. 1981/155  
(N.I.2).



- (i) possession of firearm with intent to injure contrary to Article 17; SCH. 14
- (ii) use of firearm or imitation firearm to resist arrest contrary to Article 18(1); and
- (iii) carrying firearm with criminal intent contrary to Article 19;
- (e) hostage-taking contrary to section 1 of the Taking of Hostages Act 1982; 1982 c. 28.
- (f) hi-jacking contrary to section 1 of the Aviation Security Act 1982; and 1982 c. 36.
- (g) torture contrary to section 134 above.

4.—(1) Subject to sub-paragraph (2) below, an offence not mentioned in paragraph 2 or 3 above is serious for the purposes of this Schedule only if its commission—

- (a) has led to any of the consequences mentioned in sub-paragraph (3) below; or
- (b) is intended or is likely to lead to any of those consequences.

(2) An offence which consists of making a threat is serious for the purposes of this Schedule if carrying out the threat would be likely to lead to any of the consequences specified in sub-paragraph (3) below.

(3) The consequences mentioned in sub-paragraphs (1) and (2) above are—

- (a) serious harm to the security of the State or to public order;
- (b) serious interference with the administration of justice or with the investigation of offences or of a particular offence;
- (c) the death of any person;
- (d) serious injury to any person;
- (e) substantial financial gain to any person; and
- (f) serious financial loss to any person.

(4) Loss is serious for the purposes of this Schedule if, having regard to all the circumstances, it is serious for the person who suffers it.

(5) In this paragraph “injury” includes any disease and any impairment of a person’s physical or mental condition.

5. A person arrested under section 12(1)(b) of the Prevention of Terrorism (Temporary Provisions) Act 1984 is to be treated for the purposes of this Schedule as having been arrested on suspicion of involvement in an offence to which this Schedule applies and any reference in the following provisions of this Schedule to such an offence includes a reference to being or having been concerned in the commission, preparation or instigation of acts of terrorism to which Part IV of that Act applies. 1984 c. 8.

#### *Interpretation*

6.—(1) In this Schedule—

“appropriate consent” means—

- (a) in relation to a person who has attained the age of 17 years, the consent of that person;
- (b) in relation to a person who has not attained that age but has attained the age of 14 years, the consent of that person and his parent or guardian; and
- (c) in relation to a person who has not attained the age of 14 years, the consent of his parent or guardian;

“intimate sample” means a sample of blood, semen or any other tissue fluid, urine or pubic hair, or a swab taken from any of a person’s body orifices except his mouth;

## SCH. 14

“non-intimate sample” means—

- (a) a sample of hair other than pubic hair;
- (b) a sample taken from a nail or from under a nail;
- (c) a sample of saliva;
- (d) a swab taken from a person’s mouth;
- (e) a swab taken from any other part of a person’s body except a body orifice other than his mouth;
- (f) a footprint or a similar impression of any part of a person’s body other than a part of his hand;

“parent or guardian” means in the case of a child or young person in the care of the Department of Health and Social Services for Northern Ireland or a Health and Social Services Board, that Department or Board; and

“the terrorism provisions” means—

1984 c. 8.

(a) section 12(1) of the Prevention of Terrorism (Temporary Provisions) Act 1984; and

(b) any provision conferring a power of arrest or detention and contained in an order under section 13 of that Act.

(2) A person is in police detention for the purposes of this Schedule if—

- (a) he has been taken to a police station after being arrested for an offence;  
or
- (b) he is arrested at a police station after attending voluntarily at the station or accompanying a constable to it,

and is detained there or is detained elsewhere in the charge of a constable, except that a person who is at a court after being charged is not in police detention for those purposes.

*Intimate samples*

7.—(1) An intimate sample may be taken from a person in police detention only—

- (a) if a police officer of at least the rank of superintendent authorises it to be taken; and
- (b) if the appropriate consent is given.

(2) An officer may only give an authorisation if he has reasonable grounds—

- (a) for suspecting the involvement of the person from whom the sample is to be taken in an offence to which this Schedule applies; and
- (b) for believing that the sample will tend to confirm or disprove his involvement.

(3) An officer may give an authorisation under sub-paragraph (1) above orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(4) The appropriate consent must be given in writing.

(5) Where—

- (a) an authorisation has been given; and
- (b) it is proposed that an intimate sample shall be taken in pursuance of the authorisation,

an officer shall inform the person from whom the sample is to be taken—

- (i) of the giving of the authorisation; and
- (ii) of the grounds for giving it.

(6) The duty imposed by sub-paragraph (5)(ii) above includes a duty to state the nature of the offence in which it is suspected that the person from whom the sample is to be taken has been involved.

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(7) If an intimate sample is taken from a person—

- (a) the authorisation by virtue of which it was taken;
- (b) the grounds for giving the authorisation; and
- (c) the fact that the appropriate consent was given,

shall be recorded in writing as soon as is practicable after the sample is taken.

(8) An intimate sample, other than a sample of urine, may only be taken from a person by a registered medical practitioner.

(9) Where the appropriate consent to the taking of an intimate sample from a person was refused without good cause, in any proceedings against that person for an offence—

- (a) the court, in determining—
  - (i) whether to commit that person for trial; or
  - (ii) whether there is a case to answer; and
- (b) the court or jury, in determining whether that person is guilty of the offence charged,

may draw such inferences from the refusal as appear proper; and the refusal may, on the basis of such inferences, be treated as, or as capable of amounting to, corroboration of any evidence against the person in relation to which the refusal is material.

(10) Nothing in this paragraph affects Articles 141 to 152 of the Road Traffic (Northern Ireland) Order 1981.

S.I. 1981/154  
(N.I.1).

#### *Other Samples*

8.—(1) Except as provided by this paragraph, a non-intimate sample may not be taken from a person without the appropriate consent.

(2) Consent to the taking of a non-intimate sample must be given in writing.

(3) A non-intimate sample may be taken from a person without the appropriate consent if—

- (a) he is in police detention or is being held in custody by the police on the authority of a court; and
- (b) an officer of at least the rank of superintendent authorises it to be taken without the appropriate consent.

(4) An officer may only give an authorisation under sub-paragraph (3) above if he has reasonable grounds—

- (a) for suspecting the involvement of the person from whom the sample is to be taken in an offence to which this Schedule applies; and
- (b) for believing that the sample will tend to confirm or disprove his involvement.

(5) An officer may give an authorisation under sub-paragraph (3) above orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(6) Where—

- (a) an authorisation has been given; and
- (b) it is proposed that a non-intimate sample shall be taken in pursuance of the authorisation,

an officer shall inform the person from whom the sample is to be taken—

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- (i) of the giving of the authorisation; and
- (ii) of the grounds for giving it.

(7) The duty imposed by sub-paragraph (6)(ii) above includes a duty to state the nature of the offence in which it is suspected that the person from whom the sample is to be taken has been involved.

(8) If a non-intimate sample is taken from a person by virtue of sub-paragraph (3) above—

- (a) the authorisation by virtue of which it was taken; and
- (b) the grounds for giving the authorisation,

shall be recorded in writing as soon as is practicable after the sample is taken.

*Destruction of samples*

9.—(1) If—

- (a) a sample is taken from a person in connection with the investigation of an offence; and
- (b) he is cleared of that offence,

it must be destroyed as soon as is practicable after the conclusion of the proceedings.

(2) If—

- (a) a sample is taken from a person in connection with such an investigation; and
- (b) it is decided that he shall not be prosecuted for the offence and he has not admitted it and been dealt with by way of being cautioned by a constable,

it must be destroyed as soon as is practicable after that decision is taken.

(3) If—

- (a) a sample is taken from a person in connection with the investigation of an offence; and
- (b) that person is not suspected of having committed the offence,

it must be destroyed as soon as it has fulfilled the purpose for which it was taken.

(4) Proceedings which are discontinued are to be treated as concluded for the purpose of this paragraph.

(5) Nothing in this paragraph—

- (a) affects any power conferred by paragraph 18(2) of Schedule 2 to the Immigration Act 1971; or
- (b) applies to a person arrested or detained under the terrorism provisions.

1971 c. 77.

Section 170.

SCHEDULE 15

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,”.

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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.

*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 Child Abduction Act 1984.

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”.

## SCH. 15

*Visiting Forces Act 1952 (c. 67)*

13. In section 5 of the Visiting Forces Act 1952 (custody of offenders against United Kingdom law)—

1980 c. 43.  
1984 c. 60.

(a) for each of the references in subsections (2) and (4) to section 43 of the Magistrates' Courts Act 1980 there shall be substituted references to Part IV of the Police and Criminal Evidence Act 1984; and

(b) the following subsection shall be substituted for subsection (3)—

“(3) In the application of subsection (2) of this section to Scotland,—

1975 c. 21.

(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

(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”.”.

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—

1964 c. 29.

“(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 Prosecution of Offences Act 1985”.

1985 c. 23.

*Criminal Justice Act 1967 (c. 80)*

17. The Criminal Justice Act 1967 shall be amended as follows.

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.”.

19. In subsection (6) of section 67 (computation of sentences) for “(1)” there shall be substituted “(1A)”.

*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—

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“(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.—(1) In subsection (2)(b) of section 10 (proceedings from which an appeal against sentence lies to Court of Appeal)—

- (a) after the words “probation order” there shall be inserted the words “, a community service order”; and
- (b) before the words “suspended sentence” there shall be inserted the words “wholly or partly”.

(2) In subsection (4) of that section, after the word “section” there shall be inserted the words “and section 11 of this Act”.

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.”

1973 c. 62.  
1977 c. 45.

25. The following section shall be inserted after section 18—

“Appeals in cases of contempt of court. 18A.—(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.

1960 c. 65.

(2) Notice of appeal shall be given within twenty-eight days from the date of the order or decision appealed against.

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(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”.

1981 c. 54.

28. The following section shall be substituted for section 30—

“Restitution of property.

30.—(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
- (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.

1976 c. 23.

1985 c. 23.

(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—

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(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.”

1985 c. 23.

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 Criminal Appeal Act 1968 (which relates to the effect on such orders of appeals)”.

1968 c. 19.

*Genocide Act 1969 (c. 12)*

34. In subsection (2) of section 2 of the Genocide Act 1969 (genocide offences etc. not to be regarded as political) for the words “and the Backing of Warrants (Republic of Ireland) Act 1965” there shall be substituted the words “, the Backing of Warrants (Republic of Ireland) Act 1965 and Part I of the Criminal Justice Act 1988”.

1965 c. 45

*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)*

37.—(1) In section 8(2) of the Tribunals and Inquiries Act 1971 (which excepts certain tribunals from the requirement of concurrence to the exercise of a power to remove tribunal members), after “5A” there shall be inserted “, 5B.”

(2) In Schedule 1 to that Act (list of tribunals under the direct supervision of the Council on Tribunals) the following entry shall be inserted after the entry the first column of which reads “Commons”—

“Criminal injuries compensation.

5B. The Criminal Injuries Compensation Board constituted under Part VII of the Criminal Justice Act 1988.”

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*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

(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”.

42. In sub-paragraph (2A)(b) of paragraph 3 (which empowers a probation committee to provide certain facilities) of Schedule 3 for the words “subsection (3C) of that section,” there shall be substituted the words “section 12A(3) of that Act,”.

*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)*

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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 Criminal Justice (Scotland) Act 1987)—

1987 c. 41.

(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.”

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).”

1980 c. 62.

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.”

1973 c. 62.

*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)”.

*Internationally Protected Persons Act 1978 (c. 17)*

54. The following sections shall be substituted for section 3 of the Internationally Protected Persons Act 1978—

“Extradition under 1870 Act. 3.—(1) An offence under section 1(3)(a) of this Act shall be deemed to be included in the list of extradition crimes in Schedule 1 to the Extradition Act 1870.

1870 c. 52.

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(2) for the purposes of that Act any act, wherever committed, which is any of the following offences—

- (a) an offence mentioned in paragraph (a) of subsection (1) of section 1 of this Act which is committed against a protected person within the meaning of that section;
- (b) an offence mentioned in paragraph (b) of that subsection which is committed in connection with such an attack as is so mentioned;
- (c) an attempt to commit an offence mentioned in the preceding paragraphs; or
- (d) an offence under section 1(3) of this Act,

1870 c. 52.

and an offence against the law of any State in the case of which the Extradition Act 1870 is applied by an Order in Council under section 2 of that Act shall be deemed to be an offence committed within the jurisdiction of that State.

Extradition under Part I of Criminal Justice Act 1988.

3A.—(1) Where—

- (a) no such arrangement as is mentioned in section 2 of the Extradition Act 1870 has been made with a State which is a party to the Convention mentioned in the title to this Act; and
- (b) general extradition arrangements have not been made with that State under Part I of the Criminal Justice Act 1988,

Her Majesty may by Order in Council direct that the provisions of the Criminal Justice Act 1988 specified in subsection (2) below shall apply as between the United Kingdom and that State, subject to the limitations, restrictions, exceptions and qualifications, if any, contained in the Order, as if the Convention constituted general extradition arrangements made with that State under Part I of that Act, but only in respect of the following offences—

- (i) an offence mentioned in section 3(2)(a) or (b) above;
- (ii) an attempt to commit such an offence;
- (iii) counselling, procuring, commanding, aiding or abetting such an offence;
- (iv) being accessory before or after the fact to such an offence; and
- (v) an offence under section 1(3) of this Act.

(2) The provisions of the Criminal Justice Act 1988 mentioned in subsection (1) above are—

- (a) section 1(1) to (8);
- (b) sections 3 to 10; and
- (c) sections 12 to 18.

(3) An Order in Council under this section may not provide that a court dealing with a person arrested for an offence mentioned in subsection (1) above shall not be under a duty to determine whether the evidence would be sufficient to warrant his trial if the offence had taken place within the jurisdiction of the court.

(4) For the purposes of the provisions of that Act specified in subsection (2) above, in their application by virtue of an Order in Council under this section as between the United Kingdom and any other State, any act or omission, wherever it takes place, which is—

- (a) an offence mentioned in subsection (1) above; and  
 (b) an offence against the law of that State,

shall be deemed to be an offence committed within the territory of that State.”

55. The following subsections shall be substituted for section 4(1) of that Act—

“(1) Sections 17 and 22 of the Extradition Act 1870 shall extend to section 3 above. 1870 c. 52.

(1A) Sections 19 and 20 of the Criminal Justice Act 1988 shall extend to section 3A above.”.

*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.)”.

*Suppression of Terrorism Act 1978 (c. 26)*

57. The words “or Part I of the Criminal Justice Act 1988” shall be inserted after the words “the Extradition Act 1870” in sections 1(3)(a) and 5(1)(b) of the Suppression of Terrorism Act 1978.

*Interpretation Act 1978 (c. 30)*

58. In Schedule 1 to the Interpretation Act 1978—

- (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 1982; 1982 c. 48.

(b) in relation to Scotland, has the meaning given by section 289G of the Criminal Procedure (Scotland) Act 1975; 1975 c. 21.

(c) in relation to Northern Ireland, has the meaning given by Article 5 of the Fines and Penalties (Northern Ireland) Order 1984.”; S.I. 1984/703 (N.I. 3).

- (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 1980; 1980 c. 43.

(b) in relation to Scotland, means the prescribed sum within the meaning of section 289B(6) of the Criminal Procedure (Scotland) Act 1975; and 1975 c. 21.

(c) in relation to Northern Ireland, means the prescribed sum within the meaning of Article 4 of the Fines and Penalties (Northern Ireland) Order 1984.”.

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 “, other than an offence triable on indictment only by virtue of Part V of the Criminal Justice Act 1988”.

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*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)*

1973 c. 62.

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 Powers of Criminal Courts Act 1973 (compensation orders)”.

*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.

1976 c. 82.

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 Sexual Offences (Amendment) Act 1976 (anonymity of complainant in rape etc. cases)”.

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”.

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”.

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.”.

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*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.”.

1968 c. 29 (N.I.).

73. The following section shall be inserted after section 16—

“Appeals in cases of contempt of court.  
1978 c. 23.

16A.—(1) Subject to subsection (2) below, a person who wishes to appeal under section 44 of the Judicature (Northern Ireland) Act 1978 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 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—

“Bail.

17.—(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—

“Groundless appeals or applications for leave to appeal.

18. 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

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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.”.

*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;”.

*Civil Aviation Act 1982 (c. 16)*

81. The following sections shall be inserted after section 93 of the Civil Aviation Act 1982—

“Extradition  
under Part I of  
Criminal Justice  
Act 1988.

93A.—(1)Where—

- (a) no such arrangement as is mentioned in section 2 of the Extradition Act 1870 has been made with a Convention country; and
- (b) general extradition arrangements have not been made with that country under Part I of the Criminal Justice Act 1988,

Her Majesty may by Order in Council direct that the provisions of the Criminal Justice Act 1988 specified in subsection (2) below shall apply as between the United Kingdom and that country, subject to the limitations, restrictions, exceptions and qualifications, if any, contained in the Order, as if the Convention constituted general extradition arrangements made with that country under Part I of that Act, but only in respect of the following offences—

- (i) an offence committed on board an aircraft in flight registered in that country;
- (ii) an attempt to commit such an offence;
- (iii) counselling, procuring, commanding, aiding or abetting such an offence; and
- (iv) being accessory before or after the fact to such an offence.



(2) The provision of the Criminal Justice Act 1988 mentioned in subsection (1) above are—

- (a) section 1(1) to (8);
- (b) sections 3 to 10; and
- (c) sections 12 to 18.

(3) An Order in Council under this section may not provide that a court dealing with a person arrested for an offence mentioned in subsection (1) above shall not be under a duty to determine whether the evidence would be sufficient to warrant his trial if the offence had taken place within the jurisdiction of the court.

(4) Subsections (4) and (5) of section 92 above shall apply for the purposes of this section as they apply for the purposes of that section.

Extradition under 1870 Act. 93B.—(1) Sections 17 and 22 of the Extradition Act 1870 shall extend to section 93 above.

(2) Sections 19 and 20 of the Criminal Justice Act 1988 shall extend to section 93A above and to section 92(4) and (5) above as they apply for the purposes of section 93A above.”.

*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 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)”. 1986 c. 32.

*Taking of Hostages Act 1982 (c.28)*

83. The following section shall be inserted after section 3 of the Taking of Hostages Act 1982—

“Extradition under Part I of Criminal Justice Act 1988.

3A.—(1) Where—

- (a) no such arrangement as is mentioned in section 2 of the Extradition Act 1870 has been made with a State which is a party to the Convention; and
- (b) general extradition arrangements have not been made with that State under Part I of the Criminal Justice Act 1988,

Her Majesty may by Order in Council direct that the provisions of the Criminal Justice Act 1988 specified in subsection (2) below shall apply as between the United Kingdom and that State, subject to the limitations, restrictions, exceptions and qualifications, if any, contained in the Order, as if the Convention constituted general extradition arrangements made with that State under Part I of that Act, but only in respect of the following offences—

- (i) an offence under this Act;
- (ii) an attempt to commit such an offence;
- (iii) counselling, procuring, commanding, aiding or abetting such an offence; and
- (iv) being accessory before or after the fact to such an offence.

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(2) The provisions of the Criminal Justice Act 1988 mentioned in subsection (1) above are—

- (a) section 1(1) to (8);
- (b) sections 3 to 10; and
- (c) sections 12 to 18.

(3) An Order in Council under this section may not provide that a court dealing with a person arrested for an offence mentioned in subsection (1) above shall not be under a duty to determine whether the evidence would be sufficient to warrant his trial if the offence had taken place within the jurisdiction of the court.

(4) For the purposes of the provisions of the Criminal Justice Act 1988 specified in subsection (2) above, in their application by virtue of an Order in Council under this section as between the United Kingdom and any other State, any act or omission, wherever it takes place, which is—

- (a) an offence mentioned in subsection (a) above; and
- (b) an offence against the law of that State,

shall be deemed to be an offence committed within the territory of that State.

(5) In this section ‘the Convention’ means the International Convention against the Taking of Hostages opened for signature at New York on 18 December 1979.”

84. The following subsections shall be substituted for section 5(1) of that Act—

1870 c. 52.

“(1) Sections 17 and 22 of the Extradition Act 1870 shall extend to section 3(1) and (4) above.

(1A) Sections 19 and 20 of the Criminal Justice Act 1988 shall extend to section 3A above.”

*Aviation Security Act 1982 (c. 36)*

85. The Aviation Security Act 1982 shall be amended as follows.

86. In subsection (3) of section 9, after the word “above” there shall be inserted the words “and of section 9A below”.

87. The following section shall be inserted after that section—

“Extradition  
under Part I of  
Criminal Justice  
Act 1988.

9A.—(1) Where—

- (a) no such arrangement as is mentioned in section 2 of the Extradition Act 1870 has been made with a State which is a party to a relevant Convention; and
- (b) general extradition arrangements have not been made with that State under Part I of the Criminal Justice Act 1988,

Her Majesty may by Order in Council direct that the provisions of the Criminal Justice Act 1988 specified in subsection (2) below shall apply as between the United Kingdom and that State, subject to the limitations, restrictions, exceptions and qualifications, if any, contained in the Order, as if the relevant Convention constituted general extradition arrangements made with that State under Part I of that Act, but only in respect of the following offences—

- (i) offences which are offences in pursuance of that Convention;
- (ii) an attempt to commit such an offence;

(iii) counselling, procuring, commanding, aiding or abetting such an offence; and

(iv) being accessory before or after the fact to such an offence.

(2) The provisions of the Criminal Justice Act 1988 mentioned in subsection (1) above are—

(a) section 1(1) to (8);

(b) sections 3 to 10; and

(c) sections 12 to 18.

(3) An Order in Council under this section may not provide that a court dealing with a person arrested for an offence mentioned in subsection (1) above shall not be under a duty to determine whether the evidence would be sufficient to warrant his trial if the offence had taken place within the jurisdiction of the court.

(4) For the purposes of the provisions of the Criminal Justice Act 1988 specified in subsection (2) above, in their application by virtue of an Order in Council under this section as between the United Kingdom and any other State any act or omission, wherever it takes place, which falls within section 9(4) of this Act shall be deemed to be an offence committed within the territory of that State.”.

88. The following subsections shall be substituted for section 39(1) of that Act—

“(1) Sections 17 and 22 of the Extradition Act 1870 shall extend to section 9 above.

(1A) Sections 19 and 20 of the Criminal Justice Act 1988 shall extend to section 9A above and to section 9 above as amended by the Criminal Justice Act 1988.”.

*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)

26. Section 134 (torture).”

*Transport Act 1982 (c. 49)*

92.—(1) In subsection (1) of section 34 (endorsement of licences without hearings) and subsections (1) and (3) of section 35 of the Transport Act 1982 (licence receipts), after the word “constable” (in each place) there shall be inserted the words “or authorised person”.

(2) The following subsection shall be added after subsection (10) of that section—

“(11) In this section and section 35 below “authorised person” has the meaning assigned to it by section 28(5) above.”

SCH. 15 93.—(1) In subsection (1) of section 47 of that Act (evidence in fixed penalty notice cases) after the word “constable”, in the second place where it occurs, there shall be inserted the words “or authorised person”.

(2) The following subsection shall be inserted after that subsection—

“(1A) In subsection (1) above “authorised person” has the meaning assigned to it by section 28(5) above.”.

94. In section 50(1) of that Act, in the definition of “chief officer of police”, after the word “means” there shall be inserted the words “, except in section 28(5) above,”.

*Nuclear Material (Offences) Act 1983 (c. 18)*

95. The following section shall be inserted after section 5 of the Nuclear Material (Offences) Act 1983 (extradition)—

“Extradition  
under Part I of  
Criminal Justice  
Act 1988.

5A.—(1) Where—

- (a) no such arrangement as is mentioned in section 2 of the Extradition Act 1870 has been made with a State which is a party to the Convention; and
- (b) general extradition arrangements have not been made with that State under Part I of the Criminal Justice Act 1988,

Her Majesty may by Order in Council direct that the provisions of the Criminal Justice Act 1988 specified in subsection (2) below shall apply as between the United Kingdom and that State, subject to the limitations, restrictions, exceptions and qualifications, if any, contained in the Order, as if the Convention constituted general extradition arrangements made with that State under Part I of the Criminal Justice Act 1988, but only in respect of the following offences—

- (i) an offence mentioned in paragraph (a), (b), (c) or (d) of subsection (1) of section 1 of this Act which is committed by doing an act in relation to or by means of nuclear material;
- (ii) an offence under section 2 of this Act;
- (iii) an attempt to commit an offence mentioned in paragraph (i) or (ii) above;
- (iv) counselling, procuring, commanding, aiding or abetting such an offence; and
- (v) being accessory before or after the fact to such an offence.

(2) The provisions of the Criminal Justice Act 1988 mentioned in subsection (1) above are—

- (a) section 1(1) to (8);
- (b) sections 3 to 10; and
- (c) sections 12 to 18.

(3) An Order in Council under this section may not provide that a court dealing with a person arrested for an offence mentioned in subsection (1) above shall not be under a duty to determine whether the evidence would be sufficient to warrant his trial if the offence had taken place within the jurisdiction of the court.

(4) For the purposes of the provisions of the Criminal Justice Act 1988 specified in subsection (2) above, in their application by virtue of an Order in Council under this section as between the United Kingdom and any other State, any act wherever committed, which is—

- (a) an offence mentioned in subsection (1) above; and
- (b) an offence against the law of that State,

shall be deemed to be an offence committed within the territory of that State.

(5) In this section and section 6 below “the Convention” means the Convention on the Physical Protection of Nuclear Material opened for signature at Vienna and New York on 3 March 1980.”

96. The following subsections shall be substituted for section 7(1) of that Act—

“(1) Sections 17 and 22 of the Extradition Act 1870 shall extend to section 5 above.

(1A) Sections 19 and 20 of the Criminal Justice Act 1988 shall extend to section 5A above.”

*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—

*“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)*

105. In section 15(4) of the Local Government Act 1985 (probation service) for the words “paragraphs 6 and 7” there shall be substituted the words “paragraph 6”.

## SCH. 15

*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.

*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)—

"( ) 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;"

1987 c. 22.

*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".

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)—

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“(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)—

“(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.”.

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”.

SCH. 15 (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,".

Section 170.

## SCHEDULE 16

## REPEALS

Chapter	Short title	Extent of repeal
7 Geo. 4. c. 24. 24 & 25 Vict. c. 100.	Criminal Law Act 1826. Offences against the Person Act 1861.	Section 30. 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 centre". 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 "detention 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".



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Chapter	Short title	Extent of repeal
1967 c. 80.	Criminal Justice Act 1967.	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. 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."
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".
1969 c. 54.	Children and Young Persons Act 1969.	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".
1970 c. 31.	Administration of Justice Act 1970.	Section 41(8).
1971 c. 40.	Fire Precautions Act 1971.	In section 40(2)(b), the words "detention centre".

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Chapter	Short title	Extent of repeal
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 1968.
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(1), the definition of "detention centre". In Schedule 3, paragraph 2(4)(b) and the word "and" 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 murder 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.

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Chapter	Short title	Extent of repeal
		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 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).

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Chapter	Short title	Extent of repeal
		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;". 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" before "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 been

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Chapter	Short title	Extent of repeal
1986 c. 45.	Insolvency Act 1986.	<p>instituted or continued," and in paragraph (b), the word "substantial".</p> <p>In section 25(3), the words "varying or revoking a previous Order in Council".</p> <p>In section 38(11), the words "in England and Wales".</p> <p>Section 264(1)(d) and the word "or" immediately preceding it.</p> <p>Section 266(4).</p> <p>Section 267(3).</p> <p>Section 277.</p> <p>Section 282(2).</p> <p>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".</p> <p>Section 297(1).</p> <p>Section 327.</p> <p>Section 341(4) and (5).</p> <p>Section 382(1)(c).</p> <p>In section 383(1)(a), the words from "(being," to "question)".</p> <p>In section 385(1), the definition of "criminal bankruptcy order".</p> <p>Section 402.</p>
1987 c. 38.	Criminal Justice Act 1987.	<p>Section 9(3)(a).</p> <p>In section 11, in subsection (8)(e), the word "engaged", and subsection (11).</p> <p>In Schedule 2, paragraph 1(2).</p>
1987 c. 41.	Criminal Justice (Scotland) Act 1987.	<p>Section 45(7)(c)(ii) and the word "and" immediately preceding it.</p>
1988 c. 13.	Coroners Act 1988.	<p>In Schedule 3, paragraph 14.</p>

## 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.

- SCH. 16      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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